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HOUSE OF COMMONS

Fifth Session—Twenty-first Parliament
1951

(Second Session)

JOINT COMMITTEE OF THE SENATE AND THE HOUSE OF COMMONS

ON

COMBINES LEGISLATION

Joint Chairmen—The Honourable Senator A. L. Beaubien
Mr. James Sinclair, M.P.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 1

TUESDAY, NOVEMBER 13, 1951
THURSDAY, NOVEMBER 15, 1951

WITNESSES:

Mr. T. D. MacDonald, Commissioner, and Mr. A. S. Whiteley, Deputy Commissioner, Combines Investigation Commission.

OTTAWA
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1951

JOINT COMMITTEE OF THE SENATE

AND THE HOUSE OF COMMONS

ON

COMBINES LEGISLATION

Joint Chairmen: The Honourable Senator A. L. Beaubien,
James Sinclair, Esq., M.P.

FOR THE SENATE

Hon. W. M. Aseltine,
Hon. George P. Burchill,
Hon. Vincent Dupuis,
Hon. J. G. Fogo,
Hon. J. A. Godbout,
Hon. W. H. Golding,
Hon. C. G. Hawkins,
Hon. R. B. Horner,
Hon. Norman P. Lambert,
Hon. C. C. Pratt,
Hon. Cyrille Vaillancourt.

FOR THE HOUSE OF COMMONS

Mr. R. Beaudry,
Mr. W. A. Boucher,
Mr. W. F. Carroll,
Mr. C. W. Carter,
Mr. Robert Cauchon,
Mr. Gordon Churchill,
Mr. D. A. Croll,
Mr. John Dickey,
Mrs. Ellen Fairclough,
Mr. D. M. Fleming,
Mr. E. D. Fulton,
Hon. Stuart Garson,
Mr. D. S. Harkness,
Mr. J. H. Harrison,
Mr. Geo. H. Hees,
Mr. R. Jutras,
Mr. A. MacInnis,
Mr. Wm. M. Mott,
Mr. A. C. Murray,
Mr. A. Y. McLean,
Mr. L. E. Roberge,
Mr. F. D. Shaw,
Mr. A. W. Stuart,
Mr. W. R. Thatcher,
Mr. W. J. Welbourn.

A. L. BURGESS,
Clerk of the Committee.

ORDERS OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Thursday, November 8, 1951.

Pursuant to the Order of the Day, the Senate resumed the adjourned debate on the motion of the Honourable Senator Hugessen, seconded by the Honourable Senator Taylor—

That the Senate do unite with the House of Commons in the appointment of a Joint Committee of both Houses of Parliament to consider the Interim Report of the committee appointed to study Combines Legislation, tabled in the Senate Tuesday, November 6, 1951; and to consider appropriate amendments to the Combines Investigation Act based thereon;

That the following Senators be appointed to act on behalf of the Senate on the said Joint Committee, namely the Honourable Senators Aseltine, Beaubien, Burchill, Dupuis, Fogo, Godbout, Golding, Hawkins, Horner, Lambert, Pratt and Vaillancourt;

That the Committee have power to appoint, from among its Members, such sub-committees as may be deemed advisable or necessary; to send for persons, papers and records; to examine witnesses under oath; to sit during sittings and adjournments of the Senate, and to report from time to time;

That the Committee have power to print such papers and evidence from day to day as it may order for the use of the Committee and of Parliament, and that Rule 100 of the Senate be suspended in relation thereto;

That a Message be sent to the House of Commons to inform that House accordingly.

After further debate, and—

The question being put on the said motion,

It was resolved in the affirmative.

Extract from the Minutes of the Proceedings of the Senate, Tuesday, November 13, 1951.

The Honourable Senator Beaubien, from the Joint Committee of the Senate and House of Commons on Combines Legislation presented their first Report.

The same was then read by the Clerk, as follows:—

TUESDAY, 13th November, 1951.

The Joint Committee of the Senate and House of Commons on Combines Legislation begs leave to present the following as a first Report:

Your Committee recommends:

1. That ten of its members constitute a quorum.
2. That the Committee be empowered to retain the services of counsel.

All which is respectfully submitted.

A. L. BEAUBIEN,
Chairman.

With leave of the Senate,
The said Report was adopted.
Attest.

L. C. MOYER,
Clerk of the Senate

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HOUSE OF COMMONS,

TUESDAY, NOVEMBER 6, 1951.

Resolved,—That a Joint Committee of both Houses of Parliament be appointed to consider the Interim Report of the committee appointed to study Combines Legislation, tabled in the House of Commons Friday, October 12, 1951; and to consider appropriate amendments to the Combines Investigation Act based thereon.

That twenty-six Members of the House of Commons, to be designated by the House at a later date, be Members of the Joint Committee on the part of this House, and that Standing Order 65 of the House of Commons be suspended in relation thereto;

That the said committee have power to appoint, from among its Members, such sub-committees as may be deemed advisable or necessary; to call for persons, papers and records; to examine witnesses under oath; to sit while the House is sitting, and to report from time to time;

That the said committee have power to print such papers and evidence from day to day as may be ordered by the committee for the use of the committee and of Parliament, and that Standing Order 64 of the House of Commons be suspended in relation thereto.

And that a message be sent to the Senate requesting that House to unite with this House for the above purpose and to select, if the Senate deems advisable, some of its Members to act on the said proposed joint committee.

FRIDAY, November 9, 1951.

Resolved,—That Messrs. Beaudry, Boucher, Carroll, Carter, Cauchon, Churchill, Croll, Dickey, Fairclough (Mrs.), Fleming, Fulton, Garson, Gillis, Harkness, Harrison, Hees, Jutras, Mott, Murray (*Oxford*), McLean (*Huron-Perth*), Roberge, Shaw, Sinclair, Stuart (*Charlotte*), Thatcher, Welbourn be appointed to act on behalf of the House of Commons as Members of the Joint Special Committee established Tuesday, November 6th, 1951 to consider the Interim Report of the Committee appointed to study Combines Legislation tabled in the House of Commons, Friday, October 12th, 1951 and to consider appropriate amendments to the Combines Investigation Act based thereon.

That a Message be sent to the Senate informing Their Honours that the above Members have been appointed to act on behalf of the Commons on the said Joint Committee of both Houses.

MONDAY, November 12, 1951.

Ordered,—That the name of Mr. MacInnis be substituted for that of Mr. Gillis on the said committee.

TUESDAY, November 13, 1951.

Ordered,—That ten of its members constitute a quorum of the said Committee.

Ordered,—That the said Committee be empowered to retain the services of counsel.

Attest.

LEON J. RAYMOND,
Clerk of the House.

REPORT TO THE SENATE

TUESDAY, November 13, 1951.

The Joint Committee of the Senate and the House of Commons on Combines Legislation begs leave to present the following as a

FIRST REPORT

Your Committee recommends:

1. That ten of its members constitute a quorum.
2. That the Committee be empowered to retain the services of counsel.

All of which is respectfully submitted.

A. L. BEAUBIEN,
Joint Chairman.

REPORT TO THE HOUSE OF COMMONS

TUESDAY, November 13, 1951.

The Joint Committee of the Senate and the House of Commons on Combines Legislation begs leave to present the following as a

FIRST REPORT

Your Committee recommends:

1. That ten of its members constitute a quorum.
2. That the Committee be empowered to retain the services of counsel.

All of which is respectfully submitted.

JAMES SINCLAIR,
Joint Chairman.

MINUTES OF PROCEEDINGS

TUESDAY, November 13, 1951.

The Joint Committee of the Senate and the House of Commons on Combines Legislation met at 11 o'clock a.m.

Members present:

For the Senate: The Honourable Senators Aseltine, Beaubien, Burchill, Fogo, Golding, Hawkins, Horner, Lambert.

For the House of Commons: Messrs. Beaudry, Boucher, Carter, Cauchon, Croll, Dickey, Fleming, Fulton, Harkness, Harrison, Hees, Jutras, MacInnis, Mott, Murray (*Oxford*), McLean (*Huron-Perth*), Shaw, Sinclair, Stuart (*Charlotte*), Thatcher, Welbourn.

On motion of the Honourable Senator Burchill, the Honourable Senator Beaubien was appointed Joint Chairman representing The Senate.

On motion of Mr. Welbourn, Mr. Sinclair was appointed Joint Chairman representing the House of Commons.

The Joint Chairmen thanked the Committee for the honour conferred upon them.

On motion of Mr. Croll,—

Resolved,—That the Chairman order the printing from day to day of such copies, in English and French, of the Minutes of Proceedings and Evidence of the Committee as he may consider necessary.

On motion of Mr. Jutras,—

Resolved,—That the Committee recommend that ten members constitute its quorum.

On motion of Mr. Croll,—

Resolved,—That a sub-committee on procedure and agenda, comprising the Joint Chairmen and seven members to be named by them, be appointed.

On motion of Mr. Croll,—

Resolved,—That the Committee ask that it be empowered to employ counsel.

On motion of Mr. MacInnis,—

Resolved,—That certain organizations who have stated their views through the medium of the press and others who have made representations to the Minister of Justice be invited immediately to submit briefs and to indicate whether they wished to appear before the Committee.

It was agreed that the whole question of the calling of further witnesses be referred to the Sub-Committee on Procedure and Agenda with instructions to report to the main Committee at its next meeting.

At 12.10 o'clock p.m. the Committee adjourned to the call of the Chair.

THURSDAY, November 15, 1951

The Joint Committee of the Senate and the House of Commons on Combines Legislation met at 10.30 o'clock a.m.

The Honourable Senator A. L. Beaubien and Mr. James Sinclair, M.P., Joint Chairman, were present, Mr. Sinclair presiding.

Also present,

For the Senate: The Honourable Senators Aseltine, Burchill, Golding, Hawkins, Horner, Lambert, Vaillancourt.

For the House of Commons: Messrs. Beaudry, Boucher, Carroll, Carter, Cauchon, Croll, Dickey, Fulton, Harrison, Hees, Jutras, Mott, Murray (*Oxford*), McLean (*Huron Perth*), Shaw, Stuart (*Charlotte*), Thatcher, Welbourn.

In attendance: Mr. T. D. MacDonald, Commissioner, and Mr. A. S. Whiteley, Deputy Commissioner, Combines Investigation Commission.

On motion of Mr. Croll,

Resolved,—That the Sub-Committee on Procedure and Agenda be enlarged to comprise the Joint Chairman and eight members.

The presiding Chairman announced the members of the Sub-Committee on Procedure and Agenda to be, in addition to the Joint Chairman, the Honourable Senator Burchill and Messrs. Boucher, Croll, Fleming, Fulton, MacInnis, Shaw, Stuart (*Charlotte*).

The presiding Chairman presented the First Report of the Sub-Committee on Procedure and Agenda which is as follows:

NOVEMBER 14, 1951

Your Sub-Committee on Agenda and Procedure met on November 14th and has agreed to recommend,

1. That the associations referred to at the last meeting of the Committee, i.e., those who have publicly stated their position in regard to the report of the MacQuarrie Committee and those who have made representations thereon to the Minister, be the first witnesses to be given an oportunity to appear before the Committee.

   In accordance with this recommendation tentative arrangements have been made, subject to confirmation by the main Committee, to hear the representatives of the Canadian Congress of Labour on Tuesday, November 20th and the representatives of the Allied Beauty Equipment Manufacturers and Jobbers Association on Wednesday, November 21.
2. That no provincial association affiliated with a national association which has made representations to the Committee be heard unless the provincial body states that it dissents from the views expressed by the national organization.
3. That the Committee insist that all briefs be filed in advance of the appearance of the witnesses and that copies be distributed to members of the Committee.
4. That the brief be not read in Committee but that examination be confined to a short statement by the witness, and questioning.
5. That, if possible, not more than one sitting of the Committee be allotted to the examination of the representatives of any one organization.

6. That travelling expenses be paid only to witnesses who appear at the request of the Committee and not to those who are heard on their own application.
7. That the Clerk of the Committee be instructed to furnish representatives of the press with copies of briefs submitted, the day preceding the appearance of the witnesses on the understanding that they will not be released until the witnesses are called.
8. That the Committee sit at 10.30 a.m. on Tuesday, November 20 and every week day thereafter excepting Saturday.

On motion of Mr. Croll, the first report of the Sub-Committee on Procedure and Agenda was concurred in.

Mr. Croll moved that the Combines Investigation Commission be asked to resolve, in legal form, the recommendations contained in the Interim Report of The Committee to Study Combines Legislation.

Mr. Fulton moved in amendment thereto that the following words be added: and that there be laid before the Committee the draft bill based on the Committee's Report already proposed by the Combines Investigation Branch.

After discussion, and the question having been put on the said amendment, it was negatived.

And the question having been put on the motion of Mr. Croll, it was resolved in the affirmative.

Mr. MacDonald was called, heard and questioned.

Mr. MacDonald tabled a proposed draft bill based on the recommendations of the Committee to Study Combines Legislation, entituled. An Act to amend the Combines Investigation Act, which is printed as *Appendix A* to this day's Minutes of Proceedings and Evidence.

The witness retired.

At 12.40 o'clock p.m. the Committee adjourned until Tuesday, November 20, at 10.30 o'clock a.m.

A. L. BURGESS,
Clerk of the Committee.

EVIDENCE

NOVEMBER 15, 1951

10:30 a.m.

The CHAIRMAN: I call the committee to order. Might I say that it is my intention with this committee to call it to order just as soon as we have a quorum. With knowledge of that fact in mind, I am sure that the members will be prompt in their attendance.

The first order of business this morning is to present an apology on my own behalf for a misunderstanding which developed because I moved the committee meeting forward from Friday to Thursday. One of the members spoke to me about it and I apologized. But at the same time, in the report of the steering committee, you will find that we intend to have regular meetings from now on. I offer my apologies to Mr. Beaudry.

Now, I would like to make the first report of our steering committee, but before I do so, let me say that when the steering committee was actually called, we found that, because it was a joint committee, we were not able to give representation to the social credit group. That was unfortunate. However, by consent of each of the parties concerned, we enlarged the steering committee from a membership of 9 to 10. Perhaps a motion would now be in order to that effect.

Mr. Croll moves and Mr. Beaudry seconds the motion that the steering committee be composed of 10.

Anticipating that motion we had Mr. Shaw present with us at our first meeting.

The first report of the steering committee is as follows:

> 1. That the associations referred to at the last meeting of the committee i.e., those who have publicly stated their position in regard to the report of the MacQuarrie committee and those who have made representations thereon to the minister, be the first witnesses to be given an opportunity to appear before the committee.

The clerk of the committee, after our last meeting, telephoned all these groups and asked them to file their briefs as quickly as possible. These two are the groups who said they would have their briefs filed first, the Canadian Congress of Labour, whom we will hear on Tuesday, November 20, and the Allied Beauty Equipment Manufacturers and Jobbers Association, whom we will hear on Wednesday, November 21. Is that first item agreeable to the committee?

Agreed.

> 2. That no provincial association affiliated with a national association which has made representations to the committee be heard unless the provincial body states that it dissents from the views expressed by the national organization.

There will be complete opportunity to file briefs; but as far as being heard before the committee is concerned, we wanted as much as possible to eliminate duplication. Is that agreed?

Agreed.

3. That the committee insist that all briefs be filed in advance of the appearance of the witnesses and that copies be distributed to members of the committee.

As soon as we receive the briefs we will submit them to the members of the committee so that they may have an opportunity to study them and get a knowledge of the contents before we have the witnesses appear before us. Agreed?

Agreed.

4. That the brief be not read in committee but that examination be confined to a short statement by the witness, and questioning.

Agreed?

Agreed.

5. That, if possible, not more than one sitting of the committee be allotted to the examination of the representatives of any one organization.

That will, of course, depend on the extent of the questioning, but as a general rule I thought that would be advisable. Agreed?

Agreed.

6. That travelling expenses be paid only to witnesses who appear at the request of the committee and not to those who are heard on their own application.

Agreed?

Agreed.

7. That the clerk of the committee be instructed to furnish representatives of the press with copies of briefs submitted, the day preceding the appearance of the witnesses, on the understanding that they will not be released until the witnesses are called.

Agreed?

Agreed.

8. That the committee sit at 10.30 a.m. on Tuesday, November 20, and every week day thereafter excepting Saturday.

We have the priority on 10.30 sittings, but on Wednesdays some of the Committee have caucuses and if there is any caucus on Wednesday, then we will hold the sitting on Wednesday afternoon.

Several members came to me to inquire about one point in the order of reference, that point being that at the conclusion of the first paragraph—"and to consider appropriate amendments to the Combines Investigation Act based thereon." There seemed to be some doubt as to whether we ourselves would frame that legislation or whether we were going to await reference of the government legislation from the House. On the first point the Minister of Justice said that the intent was expressed right here that this committee will be expected from their deliberations to suggest legislation to the House. As with all suggestions of committees it does not necessarily follow that the government will act upon those suggestions.

I then asked the Minister of Justice whether in that case we might have the advice of the Combines Branch Commissioners on such legislation by having them turn into legal form the recommendations which were made by the MacQuarrie Commission. The Minister of Justice said he had no objection to that at all. I then checked with the clerk of the committee to see if this would establish a precedent and he informed me that this has been done on

many occasions, most notably in the Veterans Affairs Committee where draft bills were prepared by the department and given to the committee as a starting point.

As a result of that I took the liberty of asking Mr. MacDonald, the Combines Branch Chief Commissioner, to turn into legal form the two recommendations of the MacQuarrie Commission with the understanding that if this committee would like that as a starting point for our work it would be made available to the members. If you do not want it, then it will not be made available.

Now, here this morning we have Mr. MacDonald, the Chief Commissioner of the Combines Branch; Mr. Whitely, the Deputy Commissioner; Mr. Phelan, the chief counsel, and Mr. Fauvreau, junior counsel.

Now, unless there are any observations by the members I think we will call on Mr. MacDonald.

Mr. FULTON: Just before you do, Mr. Chairman, the last remarks made by you on that point require some discussion. To my recollection of what took place in the House the Minister of Justice said there was already draft legislation in the department. He said his intention—I think he said—was to make it available to the committee by way of a suggestion. Do I now understand there is no such draft legislation previously prepared and all that that will be done will be for Mr. MacDonald now to prepare the suggested draft bill?

The CHAIRMAN: That is why I was so careful to clear up that matter with the Minister of Justice. The Government, of course, asked Mr. MacDonald to prepare a draft. Then the members of the government would consider that draft, and frame the legislation which would become a matter of government policy. This was, of course, referred to in the Speech from the Throne. Such a bill, of course, could only come to us through the House of Commons. That is why I want to make it quite clear that what I asked for was to have a draft prepared by the Combines branch for us, translating into legal terminology the recommendations of the MacQuarrie Commission.

Mr. FULTON: Is it not the case that it can only come to us through the House because you remember on the Veterans Affairs Committee there was no prior committee or commission which met and recommended certain things which were then put into shape by the department for the purpose of our committee? The government itself, or the minister, as a matter of government policy apparently had the Department of Veterans Affairs prepare certain draft legislation which embodied the ideas then current in the government which would be incorporated in the veterans' charter and that was submitted direct to the Veterans Affairs Committee simply as a draft to form the basis of our discussions and it was those drafts—in some cases with amendments and in some cases without amendments—which were reported and recommended by the committee to the House as the form of the veterans' charter. So, the mere fact that a bill has been prepared by the Combines Investigation Commission and discussed by the cabinet does not, as I see it, in any way prevent that same legislation, which is still only draft legislation, from coming first to this committee without having been submitted previously to the House, and I think that we would like to know if they did have draft legislation just what was in their minds at the time previously. Possibly we will have it in two forms, the draft bill which has already been considered and the new draft bill, if Mr. MacDonald is going to prepare the new one. But in view of what the minister said in the House it was to be draft legislation already prepared which was to be placed before the Committee.

Mr. CROLL: Did he not make that observation while this resolution was under discussion?

Mr. FULTON: Yes.

Mr. CROLL: Mr. Chairman, Mr. Fulton is right when he indicated that the legislation which we had before us in the Veterans Affairs Committee was sent to us by the Veterans Affairs Department; yes, and that is exactly what the chairman has suggested this morning, that the Combines Branch is presenting us with what they consider to be the results, the legislation that might follow from the MacQuarrie report. That is exactly on all fours, exactly an all fours with the legislation that we had before the Veterans Affairs Committee. That was not government legislation, nor is this government legislation. We are asked to consider this as a draft amendment, for that is all that it is, that would be submitted to us, and in the light of that we would make a recommendation. That is the position as I see it, exactly the same situation as we had before the Veterans Affairs Committee and it worked out very well.

The CHAIRMAN: That is the very point I raised. There is a difference between the Veterans Affairs Department preparing a draft for discussion by that committee, and the government putting forward a bill as a matter of government policy. Exactly the same thing is true with the draft prepared by Mr. MacDonald, the combines commissioner, if he is asked to translate the recommendations of the MacQuarrie Commission into legal form, and he does so; but as to whether or not that is accepted by the government in the form of legislation I think is a very different matter. If it is accepted by the government then it should come to us through the House of Commons for approval. I put it to the committee that, if they want something to work on, this draft is a base and I think it would be a good thing because it would limit our area of future committee work. If the committee does not want that but wants to start off right from scratch without any such legislative base on which to work, I have no objection.

Mr. CROLL: There is no objection, it was merely an observation made by Mr. Fulton. There is no objection.

Mr. FULTON: This is the point that I have in mind. If we are going to have draft legislation then we should have it coming to us through the proper channel, from the House, because the speech from the throne certainly indicated there was draft legislation which would be submitted to us; and to complete our investigation into this matter I think we should know what was in the mind of the government at that time; that is, if it is to be through a new draft which Mr. MacDonald has prepared, if that is not the same then we can only proceed on the assumption that it has not received government approval, and that if any draft bill had been prepared by Mr. MacDonald it would have to be submitted to the cabinet for approval; and I take it that such is not the case with respect to what Mr. MacDonald is now to present to us; so I take it that we are to assume that the draft which was submitted to the caboinet, as we understood from the speech from the throne was the case, and which is now confirmed by the chairman, is different from the draft which Mr. MacDonald is now being asked to prepare. So, I think we should have that so that we can see it and know exactly what is involved in the change. I think we should study the language of the two draft bills.

Mr. JUTRAS: Hasn't Mr. Fulton something different in mind? As I understand the chairman's suggestion it is that we should have this draft bill; in other words, through it we get the recommendations of the MacQuarrie Commission report in legal form and in that way we can see and we can know what the MacQuarrie Commission recommended. I think it would be helpful if we had that in legal terms. Whether or not the government decide to adopt or do anything with that draft bill is an entirely different question, a question of government policy. Our job here is to make recommendations along the lines of the MacQuarrie Commission report. When we have this material

before us we can see whether it sets these recommendations out in legal form and we can go on from there. I think it is fair that we should have that.

Mr. FULTON: Well, it is not quite accurate because the minister did state, and I took it as a statement of policy at the time, that draft legislation had been prepared and it was then hoped it would be submitted to the committee. Now, that draft legislation can only refer to draft legislation that was already prepared.

Mr. BEAUDRY: The terms of reference would settle that point.

The CHAIRMAN: The order of reference reads:

> That a joint committee of both houses of parliament be appointed to consider the interim report of the committee appointed to study combines legislation, tabled in the House of Commons Friday, October 12, 1951; and to consider appropriate amendments to the Combines Investigation Act based thereon.

There is no suggestion in the order of reference that we are going to have the right to see the government's bill.

Mr. CROLL: The minister made it very clear. He was most emphatic that he was referring no legislation to this committee, and I heard him on the last night when he spoke; he was most emphatic on that point, and he was questioned by some members on the other side and he emphasized it.

Mr. FULTON: But he was most emphatic on the point that although he was not going to introduce legislation into the house, nevertheless there was a draft of the legislation prepared and available and it was his thought that that should be made available to the committee. That was his very definite statement in answer to a question.

Mr. CROLL: I do not recall that. When did he say it?

Mr. SHAW: May we take exactly what he said and try to find out what it means. On the 2nd of November he made a statement and on the 6th of November the minister quoted himself the second time. I read: "It is the hope and the expectation of the government that this joint parliamentary committee will get its work under way at the earliest possible moment, and will proceed with sufficient dispatch to enable the appropriate legislation it is set up to consider to be dealt with by parliament before the end of this session as forecast in the speech from the throne."

Let me just repeat, he says "to enable the proper legislation it is set up to consider". Now, what is that legislation? As I say, the minister has quoted himself from his previous speech. His quotation is found on page 784 of the unrevised *Hansard* dated November 6, 1951. It is a direct quotation from his speech of November 2.

Mr. CARROLL: I do not care what the minister's speech was. We have the order of reference here.

The CHAIRMAN: Let me put it this way. It is this, as a starting note: the combines commissioner to turn the recommendations of the MacQuarrie Commission into legal form, and as far as the second part is concerned the only time we will have knowledge of the government's proposals in legislation is when the bill is introduced in the House of Commons and has been referred to us, and that has not been done as yet.

Mr. FULTON: What has been referred to us by the Combines Branch is the draft of that legislation.

Mr. CROLL: Of course not.

The CHAIRMAN: The draft which the Combines Branch would prepare is probably the same as that provided to the minister to present for cabinet discussion, or for his own use.

Mr. CROLL: Any draft the Combines branch would prepare for the minister would be privileged. It is departmental privilege. It is not a matter for us. If it is in order, Mr. Chairman, I will move that the Combines branch be asked to resolve in legal form the recommendations of the MacQuarrie Commission for our consideration.

Mr. BEAUDRY: I will second that.

Mr. FULTON: I move an amendment that along with that draft bill there be laid before the committee the draft bill already prepared by the branch.

Mr. CROLL: Question.

The CHAIRMAN: I will put the amendment first. All in favour of the amendment? Contrary?

The amendment is defeated.

All in favour of the main motion? Contrary?

The motion is carried.

Now, I do not know whether this is in anticipation of the motion but I actually did ask the combines commissioner to prepare such a draft. In any case, I think the next order of business would be to call on Mr. MacDonald, the combines commissioner.

Mr. T. D. MacDonald, Commissioner, Combines Investigation Act.

The WITNESS: As requested by you, sir, some days ago, I have brought here copies of a draft amendment to the Combines Investigation Act which I think substantially represents the recommendations of the MacQuarrie committee report in legislative form.

The CHAIRMAN: Is it the pleasure of the committee to have this distributed now?

Mr. CROLL: Yes, let us file it.

The WITNESS: May I also distribute for the convenience of members copies of the Combines Investigation Act?

Mr. THATCHER: May I ask one question before you proceed? Is this legislation that you have just passed out to us any different from the draft Mr. MacDonald prepared earlier for the minister?

The CHAIRMAN: As I understand it we are asking the Combines Commissioner to turn into legal form the recommendations of the MacQuarrie Commission. The only knowledge we will have of the bill which has been approved by the minister will be when we see it in the House of Commons.

Mr. FULTON: Well, why can we not ask the commissioner whether this is the same as the bill he previously drafted?

Mr. BEAUDRY: Why do you not try to find out what time the minister goes to bed. I object to that.

Mr. THATCHER: Are the government members trying to streamroller this thing through?

The CHAIRMAN: Order, one at a time, please.

Mr. FULTON: I quite agree that the private life of the minister is none of our business but I do suggest that the policy of the government as announced in the speech from the throne is our business and it is to that my question is directed. The interruption by the honourable member who says I want to know what time the minister goes to bed was stupid. We are dealing here with government policy as announced in the speech from the throne, and that announcement made it quite clear there was legislation and that was confirmed

by the remarks Mr. Shaw has quoted—that we were set up to consider appropriate legislation. I am simply asking Mr. MacDonald whether the draft bill before us now is the same as the appropriate legislation previously presented by him?

Mr. THATCHER: Just on a point of order and I think this is a fair question. Every retailer, wholesaler, and manufacturer, is interested in knowing what the government's intentions are as far as the actual legislation is concerned. They are going to want to come down here and make representations. If they know what the government originally intended I think they can make saner representations than they might otherwise do. The fact that you say this is what the government intended is not going to tie you in any way but it will let us know what the government proposes?

Mr. BEAUDRY: Mr. Chairman, I would submit this, and I hope that Mr. Fulton will not consider it too is stupid. The commissioner of Combines has no authority to speak for the government.

Mr. FULTON: No one is asking him to do that.

Mr. CROLL: On a point of order, there was a motion or an amendment a minute ago that was defeated by this committee—dealing with the same point raised now by Mr. Thatcher and Mr. Fulton. The amendment was defeated and it was decided that we would proceed in this way.

The CHAIRMAN: Every member here, as a member of the House of Commons or of the Senate, has seen many examples where the minister has rightly refused to produce an inter-departmental communication from his staff to himself.

Mr. THATCHER: But also on a point of order, when we start to ask questions of the witness are we going to have back bench government members make the answers—

The CHAIRMAN: If that is your attitude you will find that you are also a back bench member.

Mr. THATCHER: I am an opposition member.

The CHAIRMAN: Every member of this committee, whether a senator or a member of parliament and of whatever party has equal rights as a member of this committee.

Mr. THATCHER: If we have equal rights, when we ask questions why cannot we have them answered by the witness.

The CHAIRMAN: You can ask questions of the witness and have them answered if they are in order, but I rule that a question of the kind you asked is out of order.

Mr. FULTON: I move that we ask the Minister of Justice to attend immediately and I will put the question to him?

The CHAIRMAN: I think you are also aware that in such a committee as this it is not proper to ask one of our own members to attend. Mr. Garson is a member but he is out of town today. He will be present in future.

Mr. FULTON: Well, I will not press that but I give notice that I wish to ask the minister that question which you have ruled out of order as a question to Mr. MacDonald?

The CHAIRMAN: To the minister the question is perfectly in order but it is out of order to ask it of Mr. MacDonald.

The WITNESS: As I said, this draft that the members of the committee now have before them represents what I believe to be the recommendations of the MacQuarrie committee in legislative form. I have brought them at your request.

Now, I do not know whether you wish me to make some remarks but I do not think there is anything more than that which I can say at the moment.

The CHAIRMAN: In that case, I throw the meeting open to questions by members of the committee. Please raise your hands since there are two rows of you and it is difficult to see you.

The WITNESS: I perhaps should have said that in reading the draft amendment and looking at the recommendations of the MacQuarrie committee it may occur to some of the readers that there are apparent differences between those recommendations and this draft. Now, or at a later time, as you see fit, sir, I would be glad if you wish me to do so, to indicate how I proceeded from the recommendations to the present draft that you have before you.

The CHAIRMAN: I think it would be very helpful if you did that right now.

By Mr. Fulton:

Q. Before that is done I think Mr. MacDonald might throw some light on an earlier matter. This is the form my question would take—and it is not covered in the report of the MacQuarrie committee: Why is it necessary to have additional legislation? On what ground is it felt that this present Combines legislation does not deal adequately with the practice under discussion? I refer you particularly to Section (1) (3) which deals with the question of fixing resale prices.

I would like to know why it is felt necessary? What experience have you had under that section? Have any attempts been made to deal with retail price fixing, and if so, what is the result of those attempts?—A. Mr. Chairman, the Canadian courts have not yet had occasion in any criminal case to adjudicate directly upon the validity of resale price maintenance as an individual and independent policy of a single manufacturer. Of course, resale price maintenance achieved by agreement among manufacturers or among a manufacturer and a group of dealers would ordinarily constitute a combine within the present provisions of the Combines Investigation Act if the restraint of trade resulting therefrom was undue.

Where there is no element of combination by the manufacturer with other manufacturers or with a group of dealers, and where his action in fixing or suggesting resale prices is really a unilateral independent action upon his part, then even though the courts have not clearly pronounced upon the problem it does not necessarily follow that the manufacturer's action in fixing or suggesting resale prices is necessarily legal.

Q. " . . . is necessary legal" or "illegal"?—A. Legal. In each case consideration would have to be given as to whether what was done was by way of arrangement. I stressed that point first—whether it was done by arrangement—and whether it was undue within the meaning of section 498 of the Criminal Code or against the public interest within the meaning of the Combines Investigation Act. Here, such matters might have to be considered as the competition of other similar products which were not price protected, the availability of substitutes, and the extent of the particular manufacturer's control of the market.

Now, I hope you will forgive me for reading this, but I think I can perhaps keep it in more precise form if I do so.

The provisions of the Combines Investigation Act that would come nearest to this question are apparently Section 2(1) (c), (e), (f), and possibly (d). There is no paragraph in Section 498 of the Criminal Code corresponding to Section 2(1) (c) of the Combines Investigation Act but there are provisions similar to (d), (e), and (f). I simply point out that to some extent there are overlapping provisions in those sections.

Looking at paragraph (c) of Section 2(1) of the Combines Investigation Act, we find the words: "fixing a resale price".

If I may interpose, there may be a small question arise upon the particular interpretation of those words in view of the repetition of the word "common" throughout that paragraph.

I will go on and say that this is the question that apparently arises: what would constitute an actual or tacit contract agreement or arrangement within the meaning of Section 2? It might be difficult to spell out any arrangement where the facts were that the manufacturer simply deposited his goods with the retailer and said in effect: these goods are to be sold at such and such a price, and if you do not sell them at such a price I shall not replenish your stock. The distinction has been put in a United States case from which, with your permission, I will read a short paragraph:

The court in this case—it is the Supreme Court of the United States—said:

> It seems unnecessary to dwell on the obvious difference between the situation presented when a manufacturer merely indicates his wishes concerning prices and declines to deal with all who fail to observe them, and one where he enters into agreements—whether expressed or implied from a course of dealing or other circumstances—with all customers throughout the different states, which undertake to bind them to observe fixed retail prices. In the first case the manufacturer but exercises his independent discretion concerning his customers and there is no contract or combination which imposes any limitation on the purchaser. In the second, the parties are combined through agreements designed to take away dealers' control of their own affairs and thereby destroy competition and restrain natural flow of trade amongst the states.

I simply refer to that as showing recognition of a difference between the situation where the manufacturer enters into agreements with a customer that the customer will maintain prices, and the situation where he simply fills an order and indicates expressly or by implication that unless prices are adhered to the merchant will have difficulty when he wants to replenish his stock.

Now, going back to the situation where there is a contract to maintain prices, then another question arises as to what is the detriment within the meaning of the present section.

In the ordinary Combines case the court looks for a substantial amount of control of the trade brought about by the Combine itself—that is, by the actual situation that you bring before the tribunal.

In the case of vertical price resale maintenance—since the distinction will be coming up, I assume, from time to time in this committee between a situation in which prices are maintained by one manufacturer down through a chain of his distributors to the retailers, and the other situation where prices are maintained by manufacturers or other suppliers of different products getting together, I would like to mention that those situations have been tagged with the names of "vertical" and "horizontal" respectively, which are perhaps fairly good words to mark the distinction and, with your permission, I will use those expressions.

To continue then, in the case of vertical resale price maintenance, that does not involve different manufacturers but simply one manufacturer working down through the chain of his distributors, the detriment might not be capable of being shown in one particular arrangement but might be found in the cumulative effect of a large number of individual arrangements which are not related in such a manner that they could all be brought into court in the same proceedings.

I would not say, by any means, that no vertical arrangements could be brought within the present application of the Act. I would say that there are

certain such arrangements, which I think would not come within the Act, and others in respect of which it is doubtful that they would come within the Act and that the changes proposed would afford a much surer basis for eliminating them and would affect an area much wider than would be affected by the present section in its most liberal interpretation.

Finally, such an amendment—and I want it understood that I am simply putting this forward by way of explanation of what I consider would be the effect—such an amendment would be a general, current, and authoritative prohibition which would be much more effective than starting to work up, piecemeal, a jurisprudence for the guidance of the commission and business.

In other words, this would seem to be a case where, if the policy be determined against resale price maintenance in its vertical aspect, and I say "If it be determined"—I am not speaking about that policy—but if the policy be determined against resale price maintenance in its vertical aspect, then the present uncertainty of the law is sufficiently great to make it eminently desirable to define that policy or redefine it in explicit terms.

By Mr. Croll:

Q. While you are there, what about the Frosst case—which is one dealing with the vertical arrangement?—A. I am not sure, Colonel Croll, of the exact basis on which the Frosst case is proceeding. There is a further report in this morning's paper which I have not yet seen.

Q. You have not seen the judgment?—A. I have not seen this morning's paper on it.

Q. I do not expect you to give an opinion on a newspaper report, but did not the department follow the case?—A. Yes, we do follow the case, Colonel Croll.

Q. You know what is involved—what principle is involved?

Mr. FULTON: Is that the famous 222 case?

The WITNESS: I am not sure of the exact nature of your question.

By Mr. Croll:

Q. Well, my question was merely that you comment on the principle that was involved there, related to what you have told us was the principle involved in the Supreme Court case?—A. I am not sure, sir, that the Frosst case in its present stage at least is of very much or any assistance to us. The action appears to have proceeded on two bases: one, violation of contract, and the other, that the action was contrary to the Combines Investigation Act.

His lordship said there were other effective remedies available; that if it was charged that the defendant company had violated some law related to combines or restraint of trade then action might be taken under the Criminal Code, or complaint might be laid with the commissioner—that is the commissioner of the Combines Investigation Act. According to this report, the court does not express any views that might assist us.

Q. Perhaps it is unfair this morning. I thought perhaps you were a little closer to the case than it appears. I will wait until they get a copy of the judgment and Mr. MacDonald may make his comments on it at a later date?—A. I do not want to leave the impression that we are not close to these cases; I can assure you we are.

Q. It is unfair to ask you to comment from a press report, but when you see the judgment you will comment? —A. Yes.

Mr. THATCHER: I was going to ask Mr. MacDonald if we can assume this legislation drafted here will make it illegal for firms to send out suggested resale prices—although there is no compulsion involved? That is, can a manufacturer send out suggested resale prices with his merchandise, or will that be illegal also?

The WITNESS: With your permission, Mr Chairman, I would like to cover the answer to Mr. Thatcher's question now, by pointing out to the committee if they wish me to do so, how I proceeded from the recommendations to the draft —because the answer is implicit in that explanation.

By Mr. Fulton:

Q. As to the necessity of further legislation, I take it from what you have said that the question itself has never been decided in Canadian courts, as to whether the mere practice of resale price fixing is an offense against the present Combines Act; in other words, that technical question has not yet been decided?—A. That is correct.

Q. Have you conducted any investigation into the separate steps of resale price maintenance under the existing Combines Investigation Act following which you have come to the conclusion that the present law is not sufficient, or is that merely an approach which is hypothetical?—A. No inquiry under the Combines Investigation Act has yet been directed specifically towards that question.

Q. I notice too that under the Combines Act, as it stands at the moment, not only must you prove a combination as defined by virtue of the appropriate subsection, but you have also to prove that it operates to the detriment or against the interests of the public. That is one of the reasons why you have come to the conclusion, I take it, that the present law would make it difficult to obtain a conviction for resale price maintenance, because I notice that you do not have the same provision in your draft?—A. It is one of the reasons, in this way: that under the present section, when you bring a combine situation before a tribunal—that is, a combine of the nature of a horizontal price fixing arrangement—then the court looks for a substantial measure of control in the trade arising out of that arrangement itself. Now, in the case of resale price maintenance, as the policy of an independent manufacturer, the situation would obviously be considerably different. The detriment might be the accumulative effect of that particular arrangement, plus another particular arrangement, and plus even another particular arrangement, and more particular arrangements that had no immediate relation one to the other; so it would be difficult to bring them into court as part of the first, in order to establish the effect of them.

Q. You are dealing there with one aspect only of the detriment, that aspect whereby if a practice tends to gather control into one pair of hands that is detrimental to the public, and you are saying in effect that you could not prove it in this case because of the accumulative aspects, the number of agreements. What about other aspects which are detrimental to the public? Is there any other way in which the effect of the practice which is against public interests can be proven, which would enable you to proceed now against resale price maintenance agreements?—A. We are in an area, of course, that has not been passed upon by the courts, so it is really a difficult area to go about in for that reason. It could be argued I have no doubt—along the lines which Mr. Fulton has suggested—that they are detrimental; but you would not have the same firm guidance that you have at the present time from the principles established in connection with combines. The principles would not be entirely the same. I think you understand also that is only one of the reasons why I expressed the opinion that there could be a situation of the vertical kind which would not come within the present section. The other reason would be the doubt as to whether you could establish that it measured up to the requirements of the words: contract, agreement or arrangement.

By Mr. Beaudry:

Q. Would you mind clarifying that point for me, please. Do we understand that the terms of this draft are such as to imply that this will not do as it states and that irrevocable legal presumption of guilt is present? I refer to Mr. Fulton's remarks that the term "has operated or is likely to operate to the detriment or against the interests of the public" has been omitted. So must my conclusion be from that that the very fact of an agreement would constitute a presumption of guilt or of an offense?—A. Mr. Beaudry, it is not a question of a presumption, perhaps, so much. The fact is that the Act—I am sorry—that the draft, does not deal in terms of public detriment as does the present section of the Combines Investigation Act. It simply prohibits the practice.

Q. And to carry this out further, if we should agree that this is the form of legislation which should be implemented, then the very agreement, in a given time, falling under any one of these sections, would in itself constitute a legal offense?—A. Yes, that is correct.

Q. Thank you.

By Mr. Fulton:

Q. We also understand at the moment that the present legislation has not yet been tried and found wanting?—A. I do not know just how to reply to that question because I want to do it full justice. I said a moment ago that no inquiry had been directed specifically against the situation of vertical resale price maintenance; and that no such situation has come directly before the courts. At the same time, I think that the other part of my answer must be incorporated into my present answer; that is, that in my opinion there are situations which are covered by this draft amendment which would not and could not be reached under the present section.

Q. Yes, and one of the reasons for that—and I am not suggesting that it is the only reason—is that the present section requires you to prove they are detrimental to the public; where as the new section would not require that proof.—A. Yes, but I would prefer to put it this way: that under the present section, the possibility to which you would have to be alive would be that the tribunal might expect you to prove detriment arising out of the neat arrangement, the vertical arrangement alone, which you brought before them.

Q. I quite appreciate your difficulty in answering me and perhaps my question if answered categorically would be that although the department had grave doubts as to the adequacy of the present legislation, it has not been tried before the courts and found wanting with respect to vertical price fixing.—A. It seems to me—and I know that you did not intend it so—that the question carries a little implication that would make an affirmative answer to it not entirely correct.

Q. But I was following as closely as I could what you said.

Hon. Mr. LAMBERT: All these discussions in connection with this draft and the possibilities arising out of it are, in my opinion, entirely suppositious, and based on the development of evidence which is before you and what you may have in mind in the way of preventive legislation. In other words, is there evidence to support this draft, or are we supposed, as a committee, to find that evidence?

The CHAIRMAN: Perhaps you were not here at the beginning, Senator Lambert, when we discussed this draft.

Hon. Mr. LAMBERT: I heard the preliminary discussion, and I think it would properly clarify the questions which Mr. Fulton has been asking if we were reminded again that this is all suppositious, and that we here as a committee, I suppose, to determine the validity of the evidence which will come up later. This is sort of an indirect approach to this evidence.

The WITNESS: I think that is a fair statement. In other words, Mr. Fulton and I have been discussing hypothetical questions.

By Mr. Fulton:

Q. Not only that. I have been asking: what has been the experience under the present legislation? That is something which concerns me and I think it is a fair statement to say that it has not yet, with respect to resale price maintenance agreements, been tried in the courts and found wanting.—A. Might I put my answer beside your summation?

Q. Yes.—A. Let me say this—perhaps repeating what I have already said —that no inquiry under the Act has been directed specifically to a situation of independent price maintenance itself, firstly; and secondly, that problem has not come before any court directly in any criminal prosecution.

The CHAIRMAN: I think what the committee would like to have the witness do is to state the procedure by which he translated these two recommendations into this draft. Mr. Beaudry asked to speak before and I decided that we would not have time to hear Mr. MacDonald if he did so. However, I shall call on Mr. Beaudry and then Mr. MacDonald, and then, if we have time, we can return to the general questions. Mr. Beaudry?

By Mr. Beaudry:

Q. Mr. MacDonald, this constitutes your normal legal conclusion, I assume, following the conclusions of the MacQuarrie report? In other words, the MacQuarrie report, if implemented by legislation in keeping entirely with the conclusions of the report, would normally translate itself into these legal terms?—A. That is correct; this is a drafting exercise.

Q. Yes, without making them binding on anyone. I am merely trying to clarify this in my own mind. Would you say this: that perhaps this is a series of conclusions which, if carried in some cases a bit farther, might prove a working state of affairs in this country?—A. Now, Mr. Beaudry, you have taken me from the position in which I came here this morning. The chairman requested that these recommendations be translated into legislative form; but you are taking me into a field of policy.

Q. Very well. Let me reword my question then.

Mr. FULTON: Going back to my question, Mr. Chairman.

The CHAIRMAN: Would it not be more helpful if we could have a statement of the process by which he changed the recommendations into this draft?

Mr. BEAUDRY: Very well, provided you will allow me to speak after that.

The CHAIRMAN: You shall have the first opportunity to ask your questions, following Mr. MacDonald.

The WITNESS: Going to page 21 of the MacQuarrie committee's report, the recommendations were as follows:

> The committee, therefore, recommends that it should be made an offence for a manufacturer or other supplier:
>
> 1. To recommend or prescribe minimum resale prices for his products;
> 2. To refuse to sell, to withdraw a franchise or to take any other form of action as a means of enforcing minimum resale prices.

Now the committee went on to say this:

> . . . that the committee does not recommend that it be made an offence to prescribe and enforce resale prices which are not minimum. It follows that suppliers would be free to suggest and enforce maximum resale prices. It should not be overlooked that the fixing of a specific resale price unavoidably involves the fixing of a minimum price. It is

useful to compare these recommendations with the British proposal which reads as follows:

> The Government proposes to provide in the legislation to be introduced that manufacturers shall be entitled to indicate, recommend or prescribe only maximum prices for the resale of their goods and it will be unlawful to give any indication of resale price unless it is clearly stated that the price indicated is a maximum.

Then the MacQuarrie report goes on and says: and I am paraphrasing—they do not go as far as the British proposals:

> While in the legislation which is contemplated in the United Kingdom a manufacturer will not be entitled to mention any price, unless it is clearly indicated that it is a maximum, it would still be possible, in the framework of our proposals, to indicate a maximum or other price and to issue price-lists, provided that it is made clear that the price mentioned is not recommended or prescribed by the manufacturer as a minimum.
>
> The committee is not prepared to recommend action so drastic that it would interfere with established practices of issuing list prices. It is of the opinion that it will be sufficient to prohibit the recommendation, prescription or enforcement of *minimum* resale prices. If all list prices were to be made enforced maximum prices we think it not improbable that the results would be merely higher list prices.

Now, the committee therefore recommended that the prescribing of minimum prices be prohibited, and when recommending that minimum prices be prohibited, it indicated that it was not recommending a prohibition against the indicating of particular prices.

The committee was apparently concerned with not interfering with the policy of issuing list prices so long as the issuing of those list prices did not amount to a prescribing or a recommendation. So they drew a line which, for their purposes I think can be followed, between a recommendation and an indication.

Now, when you come to get that into legislative form, well, I had some difficulty in translating that position, which in a report you can follow, into drafting language. So you will notice that in this draft the words used are "require or induce", because it seemed to me to be the practical line between the situation which the MacQuarrie committee wished to let alone and the situation which it wished to rule against would be indicated by the word "induce".

That is, if there were no inducement and a company only indicated resale prices, then that would fall on the side which the committee was prepared to leave alone. On the other hand, if the mentioning of price were accompanied by any inducement to the effect, for instance, that if you follow out these prices you will likely have your stocks replenished, and the chances are it will be difficult to do so otherwise—

By Mr. Fulton:

Q. Or get a trade discount?—A. Yes, or get a trade discount—that would fall on the other side. In other words—I do not know whether I am clarifying this for you or whether I am confusing you on it—I resolved the distinction between the word "recommend" and the word "indicate", to which the committee attached different meanings, one being harmless and the other being harmful, by using as an expedient the word "induce" in the draft.

Now, maximum prices are all right. To set maximum prices was not reported against and was not recommended against in the report, so it does not, of course, carry into the draft.

Subsection 3 of the draft was intended to carry out the second part of the recommendations which is complementary to the first: that since you cannot recommend or prescribe minimum prices, then neither can you refuse to deal with a person who refuses to maintain minimum prices. And subsections 5 and 6 and section 2 are to assimilate the situation to a combines situation under the present Act for the purposes of investigation and, if necessary, prosecution.

The CHAIRMAN: I take it that concludes your statement?

The WITNESS: Yes, that concludes my statement, Mr. Chairman.

The CHAIRMAN: Very well, Mr. Beaudry, you are first.

By Mr. Beaudry:

Q. Mr. MacDonald, I refer to your proposed draft and to the committee's report which states, by the way—and it should not be overlooked—that the fixing of specific retail prices involves the fixing of minimum prices, and that the manufacturer will not be entitled to mention any price unless it is clearly indicated that it is a maximum, and that it would still be possible within the framework of our proposal to indicate a maximum price, provided that it is made clear that the price mentioned is not recommended or prescribed by the manufacturer as a minimum. I return to my original question which I would like the committee to understand as not necessarily committing you in the form in which I will word my question. It is merely because of my lack of legal practice.

Mr. CROLL: Or training!

Mr. BEAUDRY: Well, training and practice. No, just practice. May I conclude that this draft covers more than would normally be reasonable. In other words, this draft creates offences where in effect there would be no offence; where in effect price fixing would not be to the detriment of the public. But I will go further.

Mr. CROLL: No, no. That is the question.

The CHAIRMAN: I do not want to interfere at this point because we have heard so little evidence. But I would suggest that this morning the question is whether or not Mr. MacDonald has translated the recommendations of the committee into this draft.

Mr. BEAUDRY: I want it to be very clear in my mind what the legislation emphasizes.

Mr. FULTON: Is that not the whole question which is before the committee?

The CHAIRMAN: I agree with you, Mr. Fulton.

Mr. FULTON: I mean, the question before the committee is to consider the report of the MacQuarrie Commission which said that resale price maintenance is ipso facto bad.

Mr. BEAUDRY: We are questioning the Commissioner of Combines, with his experience, in connection with this draft.

The CHAIRMAN: My point is that as far as the MacQuarrie Commission is concerned, whatever they have recommended or not recommended is certainly there. At the moment, I think our point with Mr. MacDonald is whether he has accurately translated these recommendations into this draft. And when we get through with that problem, we can explore other offences.

Mr. BEAUDRY: I am assuming that it is.

The CHAIRMAN: Has any other member any questions as to whether this draft accurately reflects the recommendations?

Mr. BEAUDRY: Mr. Chairman, what I am driving at is this: assuming that it is—and I am taking it for granted that it is, unless Mr. MacDonald says

that it is not—my submission will be this: does not the MacQuarrie report which we are studying and which we shall use as a basis for eventual legislation —does not this report go so far as to make offences or to suggest that it be considered an offence to do certain things which in themselves are not detrimental to the public interest?

Let me suggest this to you, Mr. MacDonald, that should we adopt the conclusions of the report as they are, and as they are available and implemented here in the study which you have given us, that the first group of corporations which I would submit to you for your consideration would be that of the newspapers in Canada, because they definitely would fall under this proviso with respect to the fixing of specific resale prices, the fixing of minimum prices, where it says: it is further directed, and it is made clear, that price fixing is not recommended, or the prescribing by the manufacturers of a minimum price. And I fail to see how the daily newspapers can put 5 cents or 7 cents on their copies as a price without necessarily recommending it.

Mr. THATCHER: But they can put up their own prices, can they not?

The CHAIRMAN: Mr. Thatcher, you are committing the very offence which you complained about earlier. Let Mr. Beaudry's question be answered if the witness can answer it, or if he is competent to answer it.

Mr. BEAUDRY: And I submit that the daily newspapers or the weekly newspapers would definitely come under this Act, because that offence is created by them every day in the week.

Mr. CROLL: Why?

Mr. BEAUDRY: Because they are resold through other dealers or retailers to whom they would fix the prices. The newspapers put on their banners what their prices are.

The CHAIRMAN: We are speaking about things with respect to which we have not got definite knowledge. But if you feel that there is a wish, when we come to call witnesses, it might be proper to call the newspaper publishers.

Mr. BEAUDRY: I merely direct attention to the point. However, I am in the hands of the chairman. It may be that perhaps this report goes farther than it would be wise to legislate upon.

The CHAIRMAN: That is the very point of this committee. Having got this draft, we shall hear witnesses and say what the impact of it will be.

By Mr. Thatcher:

Q. I would like to ask this: can we take it from this legislation that suggested retail prices in the future are not contrary to this law? It is quite all right for a manufacturer to send out suggested prices just so long as there is no compulsion.—A. As long, Mr. Thatcher, as they are not required or induced; I mean not required to be maintained, and as long as there is no inducement to maintain them.

Q. In my experience in business,—such little experience as I have had,— I always found that many of these resale prices are only suggested prices. Would not that mean that this proposed resale maintenance legislation is very watered down because there are going to be so few goods to which it will apply? If manufacturers and wholesalers can sell and suggest resale prices, even if there is no compulsion, there are so many ways, whereby they can suddenly find reasons, it may be, such as that the goods are short, or they can find that they are not going to send them? It seems to me that the whole effect of the legislation is going to be much weaker than it is in Britain, and I do not see how it can be made effective if they are still allowed to suggest resale prices.—A. If there is no requirement, no formal requirement to maintain those prices, and if there is no inducement to maintain those prices, then I suppose your question really raises the difficulty of proof.

Q. Yes, exactly. How are you going to prove that if suddenly a manufacturer does not ship merchandise, or if one of his shippers sends it to the wrong place, because the price has not been maintained? I do not see how this is going to be possible unless you add the clause which is also in print. You just told us that in Britain they are not allowed to send out suggested prices at all, not maximum prices.—A. No, minimum prices.

Q. You say minimum prices?—A. Yes.

Q. Why did you not think——A. It seems to me, Mr. Thatcher, that the position would not be as vulnerable there as your question suggests it might be. Of course, it is true that in an individual case it might be very difficult to straighten out your facts so as to say whether the goods had been discontinued and the merchant cut off because he had not maintained the prices, or for some other reasons such as the manufacturer might give. But over a course of practice, it seems to me that you could establish a true cause for the discontinuing. That is, if the manufacturer does so in one case, very well, it may be impossible to find out just what were the real motivations behind it. But if that manufacturer does it again and again, it seems to me that it is going to be difficult for him to fail to set up a pattern of behaviour which is going to convince a court that his real motive was to secure the maintenance of prices rather than because he thought that a man's credit was not good, or because he was in short supply with respect to goods, or for some such reason that he might give.

Q. It would certainly seem that the fear which many had about this legislation would not be nearly as clear if suggested resale prices are permitted.

Mr. SHAW: It occurs to me, Mr. Chairman, that probably we have not got the proof this morning. We have before us the conclusions and recommendations of the MacQuarrie Committee. I understood that we were here to pass judgment on those recommendations. Here we have them before us. And we have asked Mr. MacDonald to draft legislation which carries out the intent of those recommendations. We are not debating on the point of whether the recommendations are good or bad. So it occurs to me that this type of debate should follow the hearing of evidence.

The CHAIRMAN: I am grateful to you, Mr. Shaw. That is my idea exactly.

Mr. SHAW: We will be going far afield if we do not hold to the purpose of this meeting.

The CHAIRMAN: This translation of the recommendations into legislative form should be a guide to us with respect to all the witnesses who may come before us. And if Mr. Beaudry so wishes, and if the steering committee agrees, I suppose that the industries which he thinks follow this practice can be examined by us, in the light of the legislated draft of legislation which Mr. MacDonald has prepared.

By Mr. Fulton:

Q. I would like to ask Mr. MacDonald a question, going back to the discussion which I think was not concluded, that it is necessary to have this legislation. I understand that Mr. MacDonald outlined what he considered would be the difficulty in proving a combine in the case of a vertical price fixing. I can see that, in some cases. But, Mr. MacDonald, let me put this case before you: if it is to be assumed to be a bad practice, as we are now assuming, on the basis of the MacQuarrie report, then why is it not possible under the present legislation, why is it not possible under the provisions of the present legislation? I refer now to section 2 of the Combines Investigation Act as it now stands, which reads as follows:

2. In this Act, unless the context otherwise requires,

(1) "Combine" means a combination having relation to any commodity which may be the subject of trade or commerce, of two or more persons by way of actual or tacit contract, agreement or arrangement having or designed to have the effect of...

And I now read paragraph (c) as follows:

(c) fixing a common price or a resale price, or a common rental, or a common cost of storage or transportation, or...

There are other subsections, but I refer to this one particularly for the purpose of this discussion.

The CHAIRMAN: Mr. Fulton, for the purpose of the record, would you conclude with the final paragraph, please?

Mr. FULTON: Yes, Mr. Chairman. It concludes:

...or a merger, trust or monopoly, which combination, merger, trust or monopoly has operated or is likely to operate to the detriment or against the interest of the public, whether consumers, producers, or others.

At first glance, it would seem to me at any rate that that clearly covers the case of resale price maintenance, because of that subsection (c); but you have pointed out the difficulty where you are dealing with a practice between the manufacturer and the retailer. He does it by way of a suggestion rather than by a joint actual agreement; and the suggestion may take the form which you yourself have pointed out, with a threat that if you do not maintain this price, you will not get any new goods.

You have also said that you have not had any investigation directed exclusively or even mainly to the question of whether or not this legislation is in fact adequate to deal with the practice of resale price maintenance. But what about the case of a manufacturer who does not supply his retailer direct, but who supplies him through a distributor? I have in mind any one of several companies, but I shall not name any industry. They would be well known to all of us who are here. There are many industries where the manufacturer never deals directly with the retailer but rather, through a dealer; yet there are no threats. The resale price is fixed and maintained, and the mark-ups are fixed and maintained, but there are not required certainly more than two parties, yet you have to have three. Have you not considered, or have you found anything which leads you to conclude that you could not prove a combination which was detrimental to the interest of the public under the present legislation, under such a situation?—A. I am not sure that that carries the situation further than the simple relationship between the manufacturer and the retailer, because it seems to me that the pattern is the same. You must have something to measure up to an arrangement or contract or agreement. You may have a manufacturer saying to the dealer—

Hon. Mr. FOGO: Could you not have a series of unilateral actions?

Mr. FULTON: That would amount to a tacit arrangement.

The CHAIRMAN: Mr. Fulton is questioning the witness, Senator Fogo.

Hon. Mr. FOGO: Pardon me!

The WITNESS: The manufacturer would deal with the dealer on practically the same terms as he deals with the retailer. He would say to him: You buy these goods from me for such and such a price and this is the resale price which is usual, or which I expect to be maintained; and this is the price which is usual for the retailers to maintain. The dealer is in much the same position as the retailer and he takes the goods, and he passes them on to the retailer with no firmer arrangement or agreement or contract.

By Mr. Fulton:

Q. These are not unilateral cases. Here we have a case where a manufacturer issues a retail price list. Now then, that can only be implemented when his goods are distributed through a distributor. They go direct to the retailer. Yet he issues a retail price list. This price list—there must be some tacit arrangement or agreement or contract between the manufacturer and the distributor, or if not between the distributor and the retailer. So it would seem to me to make it impossible to regard that as a series of unilateral acts. But it does seem to me obvious, whether it be explicit or tacit, it is an agreement involving two or more persons, by the very fact you have got two or more persons involved. Yet the manufacturer issues a retail list.—A. I see your point clearly, Mr. Fulton, and I think that is a somewhat stronger case than the simple case between the manufacturer and the retailer. But notwithstanding that, it seems to me that there is a very considerable doubt as to whether that situation cannot be passed off on the basis of unilateral action from the manufacturer to the distributor, and the distributor to the retailer, so as to avoid bringing themselves into a situation which under the Act would amount to an arrangement among them. If you take the case of a distributor, and you tax him as operating under this arrangement—of course, this is to a certain extent theorizing—he may say: Well, I have no desire to maintain these prices. I did not make any arrangement, agreement or contract to do so. But I did know that if I did not pass these goods on at the prices which appear in the price list of the manufacturer, though the manufacturer said nothing about it I would in fact have difficulty in replenishing my stock. Therefore I thought the course of discretion for me would be to put those prices into effect. But I did not make any arrangement with the manufacturer to do so and I never discussed the question of price maintenance; the list simply came out showing the prices. And he will no doubt say too: I thought those prices were reasonable prices so I passed them on with the hope that the retailer does the same thing. Well, in some cases, there would be a straining of credulity a little—

Q. I think you are straining it pretty far.—A. You will realize the difficulties you are under, particularly in conducting a criminal proceeding, to show that those people come under an arrangement agreement or contract within the Act.

Q. I find it difficult to understand and I am surprised that you have not actually introduced some investigation into industries where the establishment of a price on the goods was carried on in order to find out whether it was felt to be wrong or detrimental to the public interest.—A. In reply to that, let me say, in the first place that we have many fields of inquiry open to us where the lines of jurisprudence have been clearly or more clearly laid down, and in which it would appear that our efforts were more likely to result in successful proceedings; and in the second place, when this matter was brought up by the Royal Commission on Prices, they recommended a further study be made of it. And then, early in 1950 the MacQuarrie committee was set up and the matter was within their terms of reference and they expressly singled it out to ask for representations. So from that time on it did not seem to be appropriate to be exploring new fields, particularly when we had lots of other fields that were pretty well covered by the established jurisprudence.

By Mr. Croll:

Q. Will you not add one step to that, and say that you did not have too much confidence that you would be able to make it work under section (c)?—A. There is a point there, Colonel Croll.

Q. I thought that was what you were trying to say all the morning.

The CHAIRMAN: Now, Senator Fogo, I think you have the floor.

Mr. CROLL: Do you not want to finish with my question?

The CHAIRMAN: One reason why we hired counsel—on Tuesday the counsel will support the questioning—was because all the members were not lawyers; and in the past it has been felt that some of the members who were lawyers have taken up a little more of the time than was equitable with their questions. However, Senator Fogo now has the floor.

By Hon. Mr. Fogo:

Q. Mr. MacDonald has answered the question which I really wanted to ask. It grew out of the discussion with Mr. Fulton. And the other question which was put forward by Mr. Croll is one which we would all like to clear up finally, although I think that Mr. MacDonald has already answered it two or three times. However, I would like to say this: When and if in this draft legislation it contemplates specific fixing of prices being an offence, is there anything here to cover the course of conduct or the series of items to which you referred in your conversation with Mr. Thatcher with respect to the point he raised? You mentioned the fact that this might arise from time to time. I was thinking that the legislation as drafted was directed at specific instances of resale price fixing rather than the course of conduct.—A. The legislation is directed against each specific instance of resale price maintenance; and the only reason, Senator Fogo, that I mentioned the course of conduct was to suggest to Mr. Thatcher that the course of conduct might be of assistance to the court in seeking out the motives in the individual instance.

Q. If they could look at it?—A. Yes, if they could look at it.

The CHAIRMAN: Now, Mr. Croll?

By Mr. Croll:

Q. Let me say first that it is not a reflection in the field of legislation. It does not do what it is intended to do. That is our task and we have to pass on it. Earlier you appeared to say there was a more lucrative field in the Combines Act.—A. I did not say "lucrative field".

Q. No, you did not. "Lucrative" is my word.—A. There were fields in which the jurisprudence was more firmly established.

Q. Yes, I followed that. Perhaps it would be more lucrative for the government. But I followed from what you said, if I am correct in my assumption, that you did not have too much confidence in dealing with the matter of resale maintenance under subsection (*c*)?—A. One thing which occurs now in connection with subsection (*c*) is that if I were engaged in defence work, I would argue, whether with success or not, that when you refer to paragraph (*c*) as to fixing a common price or resale price, or a common rental or a common cost of storage or transportation, that the governing word to be considered is "common", and that it qualifies "resale price" and covers only such a case as when two or more independent manufacturers or suppliers fix a common resale price.

The CHAIRMAN: Now, Mr. Thatcher?

By Mr. Thatcher:

Q. I think the original MacQuarrie recommendation said something about loss leaders. I read from the last page of the MacQuarrie report as follows:

> As to the loss leader device, the committee believes that it is a monopolistic practice which does not promote general welfare and therefore considers that it is not compatible with the public interest.

The committee took the view that there was no emergency about it, however. But are we to assume from this draft resolution that something will be done about the loss leader feature at the present time?—A. I cannot answer your question.

Q. Would not that be something, a part of the MacQuarrie recommendations, that something be done about loss leaders?—A. There is nothing in the MacQuarrie report or recommendation that I could translate into legislative form.

Mr. FULTON: It does not deal with loss leaders?

Mr. THATCHER: But the MacQuarrie recommendations did.

Mr. DICKEY: They said it was an important problem, but, for specific reasons which are set out in the report on it, it did not think anything should be done about it at the moment, but that it should receive further study. They did not think that it presented any immediate danger.

Mr. CROLL: We may think that it does. In fact, I think that we do.

Mr. DICKEY: When the drafter was directed to put the recommendations into the form of a draft bill and leave out something which they say should be left out, he is only doing what he was asked to do.

Mr. HEES: Yes. The whole importance of this inquiry is to decide whether or not retail price maintenance is or is not in the public interest. If we decide that it is in the public interest, then all these discussions about legal and technical aspects are of no avail. But if it is against public policy, then I think these arguments are very apropos. I think we are putting the cart before the horse. I would agree with you that if we can stop these legal arguments now and get on with hearing witnesses, that would seem to me, in my own un-legal way, the proper procedure to follow.

The CHAIRMAN: We have another 15 minutes left. I think Mr. Carroll is next.

By Mr. Carroll:

Q. As to the original Act, section 2, I presume—is it the presumption of the Justice Department that section *(f)* applies to all the other sections, for example, fixing a common price or a resale price or a common rental, or a common cost of storage or transportation, that it must be to the detriment and against the interest of the public?—A. Yes, sir.

Q. Now then, will that section also apply to your new Act?—A. No sir.

Q. And that would be your difficulty of course, if it applies to the other and there is some doubt about that very thing, whether section (*f*) of the Act—I mean of the original Act—does take in all the other sections; for example, the one that I mentioned; and there was some doubt in some of the legal minds even about that. That is with respect to the interpretation of statutes.—A. Yes?

Q. That this section (*f*) is something apart altogether from all the other Acts.

Mr. FULTON: I think we should clear that up. You are not referring to subsection (*f*), but to the general words immediately following subsection (*f*).

Mr. CARROLL: Yes, which follow subsection (*f*), as I understand it.

The WITNESS: My view would be that the words at the end:

> or a merger, trust or monopoly, which combination, merger, trust or monopoly has operated or is likely to operate to the detriment or against the interest of the public, whether consumers, producers, or others—

my view is that those words qualify all the other paragraphs (*a*), (*b*), (*c*), (*d*), (*e*), and (*f*).

By Mr. Carroll:

Q. And that is not within this new Act?—A. That is right.

Q. Because it would be almost or absolutely impossible to prove in the first instance that the section for fixing a common price would be against the public interest. There is some doubt as to whether it is or is not, and one of the things which you would have to prove clearly under the old Act is that the resale prices were against the public interest. And I am glad that it has been cut out of this, if it is going to help out the public in any way.—A. I may be slipping across the line now into an area where I should not be. But I would assume that the committee in making its report and recommendations was satisfied that it was against the public interest, and therefore did not see the necessity of qualifying it from case to case.

Q. Yes.—A. By adding that criterion.

Q. I suppose the Justice Department thought that this being an amendment to the original Act, in dealing with one specific case, that section (*f*) has no application to this new Act.—A. Yes, sir. I may not have understood your first question, otherwise I would have replied more precisely to it.

By Mr. Dickey:

Q. I understand, Mr. MacDonald, that it is your view that the words "has operated or is likely to operate to the detriment or against the interest of the public" in section 2 actually constitute an element of the offence that is to be proved?—A. That is correct.

Q. In order to get a conviction under section 2?—A. That is correct.

Q. Then I take it from the fact that that element is not included in the draft legislation, that it would certainly, at least in your view—that in dealing with this particular practice—either it was not necessary or that it should not be introduced as an element of the offence?—A. It was my opinion that to have inserted them in this draft would not have carried out the recommendations of the committee.

Q. Your view was that the recommendations of the committee could not be properly put into the form of an amendment to the Combines Act unless you eliminated that element of the offence?—A. Yes.

Q. Is that fully in accord with our usual approach to legislation of this kind in this sense, that when the Combines Act itself was drafted and enacted, I presume that it was considered by parliament that the combines would be either operated or likely to be operated to the detriment or against the interest of the public? That was the purpose of the legislation. But now, instead of that, it was inserted and intentionally inserted as an element that has to be proved in order to get a conviction.—A. That is right.

Q. What is the difference in the situation in respect to this particular thing that may be regarded as the proper field of legislation and a proper thing to deal with by legislation? Why should not the same consideration that put those words into the Combines Act itself not dictate the presence of the same or similar provisions in this draft?—A. Now we are getting back to the recommendations of the committee which are merely translated into legislative form in this paper. Perhaps it is relevant in this context to refer to section 498-A. In 498-A certain specific practices are prohibited. You will find them on page 7 of the copies which you have. Now, section 498-A originated about 1935. It does not incorporate expressly as an element of any of the offences mentioned "contrary to the public interest". That is, it assumes that those practices which are mentioned are contrary to the public interest. Indeed, it must make that assumption. It must be taken to make that assumption, for it proceeds on the basis of criminal law.

I can only suggest that what the committee did here, as indicated by their report, was to arrive at the conclusion that the practice in question is contrary to the public interest generally and that it was unnecessary therefore to qualify their recommendation.

My point is this: that it would seem to me that the general combines legislation would proceed from the same assumption as that which underlies the proposal for the type of legislation that is included in this draft.—A. I am not entirely sure about that, Mr. Dickey. This occurs to me: that without such a qualification, the definition of combines in section 2 of the Act, which is punishable under section 32, would be a very far-reaching provision. You see, it would say that any combine, of two or more persons, by way of a tacit or actual contract, agreement or arrangement for fixing prices would be unlawful.

Without the additional criteria, I suggest, that it must be contrary to the public interest, you would bring in everything even down to an arrangement between two merchants operating at the end of a long street, who could not possibly affect the trade even in their own small district.

Q. Yes, I appreciate that. But I was wondering whether or not there was some element that could be—whether there was anything in the MacQuarrie report that clearly indicated that they were recommending that legislation be drawn in such a way as to eliminate that particular element of the offence which is prescribed under the Combines Act.—A. I would take it to be so from the fact that they did not mention it in their recommendation and from the terms of the discussion in which they led up to it.

By Mr. Fulton:

Q. You mean that they came to the conclusion that it was a monopolistic and harmful practice?—A. Yes, that it was.

The CHAIRMAN: Now, Mr. Croll.

By Mr. Croll:

Q. Mr. MacDonald, I was just taking a look at section 5. It would appear from the discussion this morning that there will be some difficulty with respect to administrative problems, if this is carried into the law of the land. Are you completely satisfied that sections 16 and 17 of the Act as they stand at present fortify you sufficiently to carry through this new section, if we should pass it?—A. Sections 16 and 17 of the present Act?

Q. Yes.—A. Yes. I am satisfied that the provisions of this draft sufficiently assimilate resale price maintenance to a combine as to give the commission the power of investigation which it now has, for combines under the Act.

Q. My point is: Have you got ample powers? Do you think you ample powers in view of this new field you are entering?—A. In an investigation?

Q. I mean to carry out the intention of the Act. You may find some problem.—A. As far as I can see at the moment, yes.

Q. That is all right.

Mr. CARROLL: Do they suggest to you any amendment to this Act?

The CHAIRMAN: There will be plenty of opportunities for suggesting amendments.

By Mr. Fulton:

Q. On the question of the technical steps of the legislation alone, if we proceed and it should eventually be passed, is it your opinion based on your

experience that the penalty of $25,000 in the case of a corporation is sufficient, or do you not think that there should, in addition, be some penalty which would be imposed on the directors of a corporation?

Mr. CROLL: I do not think that is a question for Mr. MacDonald to answer.

The WITNESS: I think I can answer the question without over-stepping the bounds, Mr. Chairman. As I have said, I was conducting an exercise in drafting; and when I came to that section I simply went to the Combines Investigation Act and took the present provision relating to combines which is contained in the Act. The matter of penalty had to be filled in, so I took this thing right from the Act.

By Mr. Fulton:

Q. I do not want to impose on you or upon the committee if it is felt that this is not the time at which to discuss penalties. But the question of penalties is going to arise. We have with us Mr. MacDonald who can say, speaking from his opinion and experience under the Act, whether the penalty under our Act is adequate or not. I think we should at the same time have a discussion under the Act about penalties.—A. I have two remarks which will, I think, still keep me within the bounds I should be within. In the first place, it would seem to me that the prosecution of a director or of any other person directly concerned in a combine, or an arrangement such as this draft covers, would not be precluded at the present time. In the second place, this question is certainly one of the questions which will receive the earnest attention of the committee which is still studying the legislation generally.

The CHAIRMAN: Are there any further questions?

By Mr. Fulton:

Q. Is that as far as you care to go with respect to your opinion?—A. I do not think I could go farther.

Mr. FULTON: Mr. MacDonald has had a great deal of experience.

Mr. CROLL: Yes, but he is not here to give us his opinions.

Mr. FULTON: I do not think they should be ruled out.

Mr. CROLL: That is a matter of government policy, to decide what the penalty is.

Mr. FULTON: I raised the question because penalty is included in the draft legislation; and I was simply asking for assistance in making up my mind. After all, who is better qualified to inform us as to the adequacy of the penalty than the Combines Commissioner?

Mr. CROLL: No. Parliament sets what the penalty should be.

The CHAIRMAN: When we hear all the evidence, and what has happened, after hearing the evidence, then we will decide, not Mr. MacDonald.

Mr. FULTON: I did not expect any suggestion that we are to be precluded from examining into the adequacy or otherwise. I was simply asking Mr. MacDonald for his opinion.

The WITNESS: I was rather hoping on that point that I would not be asked that question at this particular time because, when it is a thing which is under review by a committee like that, I would prefer not to be put in that position. However, I am in the hands of the chairman and I shall bow to his direction.

The CHAIRMAN: Mr. Thatcher.

By Mr. Thatcher:

Q. I wonder if Mr. MacDonald would tell me the significant point of section 2-A? I do not follow why that is necessary. It reads:

(2) No dealer shall directly or indirectly by agreement, threat, promise or any other means whatsoever, require or induce or attempt to require or induce any other person to resell an article or commodity

(*a*) At a price specified by the dealer or established by agreement.

The MacQuarrie committee said that they could not prescribe or enforce a minimum price, but that would not mean that they could not sell at that price. How do you translate that?—A. The MacQuarrie committee on page 2 under recommendation No. 2, the third sentence, said as follows:

It should not be overlooked that the fixing of the specific resale price unavoidably involves the fixing of a minimum price.

Now, from the standpoint of writing a report, that is no doubt quite correct, but the fact is that, particularly under the Wartime Prices and Trade Board regulations, a three-way classification has been recognized; maximum price, minimum price, and maximum-minimum or fixed. So, it seemed to me that to translate that idea into the form of legislation, you had to recognize that three-way division and deal specifically with a fixed price and also with a minimum price.

Q. I see.

The CHAIRMAN: If there are no other questions, I might say that we have not had a formal motion to incorporate this draft as an appendix to our proceedings today.

Mr. CROLL: I so move, Mr. Chairman.

The CHAIRMAN: All those in favour?

Carried.

Secondly, in connection with counsel and officers of the Combines branch, the counsel are engaged as counsel to the committee; and the Senate chairman has been good enough to secure room 534 in the Senate wing for their use. The telephone number is 2690. And any member of the committee is free to take advantage of the services of the counsel, as soon as we begin receiving briefs.

Hon. Mr. Garson told me to say that the officers of the Combines branch are at the disposal of any member who would like to go to them to discuss any of the points which may trouble him.

Mr. CROLL: I move that we adjourn.

The CHAIRMAN: The next meeting will be on Tuesday morning, November 20, at 10:30 o'clock, when we shall hear from the Canadian Congress of Labour.

The committee is now adjourned.

APPENDIX A

An Act to amend the Combines Investigation Act.

His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

1. The Combines Investigation Act, chapter twenty-six of the Revised Statutes of Canada, is amended by adding thereto, immediately after section thirty-seven thereof, the following section:

"Dealer" defined.

37A. (1) In this section 'dealer' means a person engaged in the business of manufacturing or supplying or selling any article or commodity.

Resale price maintenance.

(2) No dealer shall directly or indirectly by agreement, threat, promise or any other means whatsoever, require or induce or attempt to require or induce any other person to resell an article or commodity

(*a*) at a price specified by the dealer or established by agreement,

(*b*) at a price not less than a minimum price specified by the dealer or established by agreement,

(*c*) at a markup specified by the dealer or established by agreement, or

(*d*) at a markup not less than a minimum markup specified by the dealer or established by agreement,

whether such markup or minimum markup is expressed as a percentage or otherwise.

Refusal to sell or supply goods.

(3) No dealer shall refuse to sell or supply an article or commodity to any other person for the reason that such other person

(*a*) has refused to resell or to offer for resale the article or commodity

(i) at a price specified by the dealer or established by agreement,

(ii) at a price not less than a minimum price specified by the dealer or established by agreement,

(iii) at a markup specified by the dealer or established by agreement, or

(iv) at a markup not less than a minimum markup specified by the dealer or established by agreement, or

(*b*) has resold or offered to resell the article or commodity

(i) at a price less than a price or minimum price specified by the dealer or established by agreement, or

(ii) at a markup less than a markup or minimum markup specified by the dealer or established by agreement.

Penalty.

(4) Every person who violates subsection two or three is guilty of an indictable offence and is liable on conviction to a penalty not exceeding ten thousand dollars or to two years' imprisonment, or if a corporation to a penalty not exceeding twenty-five thousand dollars.

Inquiry.

(5) The Commissioner has authority to institute and conduct an inquiry into all such matters with a view of determining whether this section has been or is being violated and to make a report thereon in writing to the Minister, and for such purposes the Commissioner has all the powers, authority, jurisdiction and duties that are conferred upon him by this Act, including sections sixteen and seventeen, with respect to an inquiry as to whether a combine exists or is being formed.

Report.

(6) A report of an inquiry under this section shall be dealt with in the same manner as a report of an inquiry or investigation under this Act as to whether a combine exists or is being formed.

2. The part of subsection two of section thirty-nine A of the said Act that precedes paragraph (*a*) thereof is repealed and the following substituted therefor

(2) In a prosecution under section thirty-two or *thirty-seven A* of this Act or under section four hundred and ninety-eight or four hundred and ninety-eight A of the Criminal Code:

HOUSE OF COMMONS

Fifth Session—Twenty-first Parliament
1951

(Second Session)

JOINT COMMITTEE OF THE SENATE
AND THE HOUSE OF COMMONS

ON

COMBINES LEGISLATION

Joint Chairmen—The Honourable Senator A. L. Beaubien
Mr. James Sinclair, M.P.

MINUTES OF PROCEEDINGS AND EVIDENCE
No. 2

TUESDAY, NOVEMBER 20, 1951

WITNESSES:

Dr. Eugene Forsey, Ph.D., Director of Research, and Mr. H. A. Chappell, Acting Secretary-Treasurer, Canadian Congress of Labour.

OTTAWA
EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY
1951

MINUTES OF PROCEEDINGS

NOVEMBER 20, 1951

The Joint Committee of the Senate and the House of Commons on Combines Legislation met at 10.30 o'clock a.m., the Joint Chairman, Mr. James Sinclair, M.P., presiding.

Also present:

For the Senate: The Honourable Senators Aseltine, Burchill, Fogo, Golding, Hawkins, Horner, Lambert.

For the House of Commons: Messrs. Beaudry, Boucher, Carroll, Carter, Cauchon, Croll, Dickey, Mrs. Fairclough, Messrs. Fleming, Fulton, Garson, Harrison, MacInnis, Mott, Murray (*Oxford*), Shaw, Stuart (*Charlotte*), Thatcher, Welbourn.

In attendance: Dr. Eugene Forsey, Ph.D., Director of Research, and Mr. H. A. Chappell, Acting Secretary-Treasurer, Canadian Congress of Labour.

The Hon. Mr. Garson explained the reasons for the procedure adopted in presenting to the Committee a draft of a proposed bill based on the recommendations contained in the Interim Report of the Committee to Study Combines Legislation.

It was agreed that the Wednesday sittings of the Committee be called for 3.30 o'clock p.m.

Dr. Forsey was called, tabled a submission on behalf of the Canadian Congress of Labour, which is printed as *Appendix A* to this day's proceedings and evidence, and was questioned thereon.

Mr. Chappell was called and questioned.

The witnesses retired.

At 1.05 o'clock p.m. the Committee adjourned until Wednesday, November 21, at 3.30 o'clock p.m.

A. L. BURGESS,
Clerk of the Committee.

95986—1½

EVIDENCE

NOVEMBER 20, 1951,
10.30 a.m.

The CHAIRMAN: It is 10.30 and we have a quorum, gentlemen, will you come to order?

Mr. FULTON: On a point of order, before you proceed with the witness this morning I would like to refer to a matter which was discussed at the last meeting and left open for the time when the minister might return and it was a question as to whether the suggested legislation presented to us by Mr. MacDonald at our last meeting was in the same form as the legislation which the government had had under consideration, and you indicated it was recorded on page 15 of our proceedings that to the minister that question is perfectly in order.

As I think it is important since a lot of our discussion will proceed on the basis of the legislation which Mr. MacDonald presented—I think it is important to know it is a matter which was previously considered by the government as outlined in the Speech from the Throne.

I see the minister is here and I would like to ask him that question. I am quite sure Mr. Garson has had the opportunity to see the brief presented by Mr. MacDonald and I would like to ask whether that is the same as the bill which the cabinet was considering and which was mentioned in the Speech from the Throne.

Hon. Mr. GARSON: First of all, I think I should apologize for not having been present at the last meeting, but unfortunately I had an appointment in Toronto of some six months' standing and could not possibly avoid keeping it. After I got back I read the *Hansard* report of the proceedings and in particular this question of my hon. friend. I think, if it will not take up too much time I, perhaps, should offer a word or two of explanation as to just what happens in general in regard to the preparation of legislation.

First of all we—and I can take this case as an example—first of all in this case we took the MacQuarrie report to cabinet for consideration as to policy. If as happened here the decision is favourable—that may be even as a tentative position—a sufficient decision to warrant our asking the draftsman to devote a sufficient amount of his time and attention to the preparation of the necessary draft legislation.

Now, that decision goes from myself as a member of cabinet, whose proceedings are not only confidential but secret, back to the department through the deputy minister to the draftsman, who then proceeds to draft what he thinks is appropriate legislation. He may make one or two or half a dozen or more drafts before he is satisfied that he has something that represents a satisfactory statement in legislative form of that policy. Then he sends it back to the deputy who checks it and if he approves of it he sends it to me and I read it and if I am satisfied that that is a correct representation of policy I take it back to the cabinet. If not, we may have one or two or more conferences as officials within the department to make sure that the legislation which we are drafting does actually represent government policy.

Now, all this takes place before the cabinet ever sees the draft at all. Then when it comes before cabinet it is gone through clause by clause and if it is accepted, all well and good. If not, then cabinet may set up a

subcommittee to consider it further, or they may give it to me with certain instructions that certain clauses should perhaps be reconsidered and redrafted in this way, the draft bill goes back either to the subcommitttee of cabinet or the Dept. of Justice either in so far as those particular clauses are concerned or until we get a bill which is acceptable in its entirety to the cabinet.

Now, I have citations to this effect if you wish to hear them; but it is very obvious that all of these proceedings being essentially of the nature of cabinet proceedings advised by the confidential advisers of the cabinet are not only confidential but they are secret, and I would be breaking my oath as a cabinet minister if I were to divulge any of them.

In this particular case I have already stated in the House what our position was. It was as set out in the Speech from the Throne—I will not bother quoting it, for I think it is familiar to most of the members—that we had received the report of the MacQuarrie Commission and we had approved of it to the extent that we announced in the Speech from the Throne that we were going to introduce legislation based upon it.

I cannot disclose to you what took place after that with regard to the advice of the law officers and so forth, but I ask you to use your imagination that in line with the procedure which usually takes place in such matters men like Mr. MacDonald, the draftsman, Mr. Varcoe and myself would in all likelihood consider this matter at considerable length, and for that purpose if we acted in accordance with the usual practice, drafts of the legislation would be prepared. Then, while those were being considered, we received from a host of individual merchants, from certain trade associations, from individual manufacturers and from the manufacturers association the representations which have already been referred to in my remarks before the House of Commons. We told these gentlemen that before we reached a decision as to the final form in which legislation emerged as a matter of government policy we would give them an opportunity of being heard so that we would have their viewpoints, not strained through the deliberations of a commission and emerging in the form of a prepared, condensed report, but direct from them; and that we would have representations not only from those who were opposed as they say to resale price maintenance but from those who were in favour of it. We said moreover that having regard to the fact that scarcely any public opinion had been developed in relation to this matter because the proceedings before the MacQuarrie Commission were held confidentially, it would be much more desirable from many standpoints that any representations which the people concerned might wish to make should be made before a parliamentary committee open to the press and the public where other persons could hear them, rather than that these representations should be made to the Government privately.

For that purpose we moved a resolution setting up this committee. Our thought was that we as a government, having clearly announced our government policy in the speech from the throne, would suspend judgment as to the form of the legislation until we have had the advantage of reading—I will hear it myself, but my colleagues will have to read it or will have to get reports from me concerning it—reading the evidence which is given before this committee and also having the benefit of the views of this committee representative of all parties in the House, as to what the committee would consider to be appropriate legislation. Now, I thought that I had tried to make that abundantly clear in my remarks in the House of Commons, and I must say I was quite cast down when I saw that there were certain members of the committee who had apparently misunderstood me; but, in order to justify my position perhaps

I might be permitted, Mr. Chairman, to read what I said. This will be found at page 664 in *Hansard* for November 2, 1951.

> In the light of this specific and concrete proposal the government has been strongly urged, by many individual merchants and manufacturers and by executives of several representative industry or trade associations, to afford them an opportunity to present their views to the government or to a parliamentary committee. The government has decided that it ought to accede to this request but that it is preferable from many standpoints that this presentation of views should take place before a joint parliamentary committee open to the public and to the press of Canada in such a way as to make the information which is presented there available to all concerned, including all the members of this House. The joint committee will therefore be directed to consider the MacQuarrie committee's interim report and to consider appropriate amendments to the Combines Investigation Act based thereon.

My honourable friends will remember that on the day preceding this presentation in the House of Commons Mr. Coldwell raised certain questions. He objected to the fact that we were not appending to the resolution which went on to the committee, the full text of the draft bill. Now, apart from these reasons which I have already indicated to the committee there was another reason why we could not do this. We had considered this as an alternative, but in conferring with the officers of the House of Commons we found that before a bill had been introduced or considered by the House, there was no precedent for the government moving a resolution with the full text of the bill incorporated therein to send such a matter as this to a joint committee of the Senate and the House of Commons. What we might possibly have done, and for which we could have found a precedent going back as far as 1892, was to introduce a bill and carry it through the first and second readings before referring it to such a joint committee. In this event we would ourselves be bound by the principle of the bill, and we would have asked all members of the House to be bound by the principle before we ever heard from anybody at all. This under the circumstances would not seem to make sense. Thus when this objection was taken by Mr. Coldwell, this is what I said, I think this language is quite clear:

Mr. Coldwell asked, "Will the legislation be introduced for study of the House" and Mr. Knowles interjected, "As intimated in the speech from the throne." And I replied:

> In reply to my hon. friend's last question, may I say that I would hope that the committee in the early stage of its proceedings would receive from the Department of Justice a draft copy of the bill for consideration along with the report.

That is exactly what has been done here. While being absent I was not a party to it, I must say, but I think it was a very wise move indeed, simply for this reason: I do not know how you gentlemen feel about it, but it has always been my experience if you are considering a policy it is a great deal of help in weighing the merits or demerits of the policy to have a draft bill before you which carries that policy into effect, not in its final form but in draft form; because in my experience the possession of that draft bill illuminates the problem with which the policy is intended to grapple. Our position therefore, gentlemen, is that, cabinet having suspended a consideration of the final form in which a draft bill would be produced until this committee makes its report, there is no draft bill that I could produce even if my oath of secrecy did not prevent me from doing so. But I do not think with all deference

that this is going to embarrass the proceedings of the committee at all. You have here a bill which was introduced by Mr. MacDonald at the last sitting. I can help you to this extent. I do not think that it is exactly the same as any other drafts that have ever been considered in connection with this matter, but I am also prepared to say that in my opinion it is a very fair and competent rendering into legislative form of the recommendation of the committee, and if there were no further evidence coming from the witnesses who are to come before you which would tend to modify your opinion, the passage of the bill which Mr. MacDonald has introduced would, I think, be, in the terms of your resolution, an adequate expression of the report of the MacQuarrie committee. In other words, Mr. MacDonald's draft carries my judgment as a lawyer.

I make this further and final point, that we have here a report from the MacQuarrie Committee which makes two explicit recommendations. Now, I know my hon. friend from Kamloops, who is a lawyer and a man of common sense, will realize that when you have two simple . . .

Mr. CROLL: What a qualification!

Hon. Mr. GARSON: I added the second lest there should be any doubt in the matter . . . the hon. member will realize that when you are dealing with two fairly simple recommendations, once they have been rendered into legislative form in a competent manner, there will not be any fundamental differences between that draft and any drafts that might be brought alternative to it.

Mr. FULTON: I am sure the committee is indebted for the long and thorough explanation of the Minister of Justice, and I think the answer to the question has emerged in the last minute or so, when the minister said that the draft now before us is not the same as any other draft which has ever been considered. That is the question I asked, whether that was the same as the legislation being considered by cabinet, because the question arose out of the passage which the minister referred to when he was asked on November 1 whether we could take it that the resolution contained in *Votes and Proceedings* for October 31 asking the House to approve the appointment of a committee to consider the interim report on the combines legislation supersedes the intimation in the speech from the throne that we are to consider legislation; and then there is the latter question which he was asked on page 605: will the legislation—referring to the legislation which the government had forecast—be introduced for study of the House, and the minister's reply: "I would hope that the committee in the early stage of its proceedings would receive from the Department of Justice a draft copy of the bill"; all of which questions and answers obviously referred to the bill which was then being considered in parliament. That is why I asked whether the bill which we are now considering, as drafted by Mr. MacDonald, was the same as the one that was considered in cabinet, and the answer we now have is that it was not the same as the one considered in cabinet. That is the point I wanted pointed out.

Hon. Mr. GARSON: My hon. friend knows that there is no bill that emerges from the cabinet that has any significance at all until the final draft emerges in its final form as a matter of government policy. All these other preliminaries are merely paper writings or tools which are used in the process of arriving at a final form.

Mr. MACINNIS: Might I ask if the draft which was before us on Thursday would be in that same category, that is, something which is not in its final form?

Hon. Mr. GARSON: Surely.

Mr. BEAUDRY: What is specified . . .

The CHAIRMAN: Gentlemen, order. Mr. MacInnis has the floor. Mr. MacInnis?

Mr. MACINNIS: My question was: was not the draft which was submitted to us on Thursday merely a draft which has no official sanction behind it?

Hon. Mr. GARSON: That is right, surely. It is a paper writing, a tool of thought in the committee's deliberations made by a very competent man in that field.

Mr. MACINNIS: I am not questioning that.

Hon. Mr. GARSON: Yes.

Mr. MACINNIS: But the minister did not see it before it was presented here, did he?

Hon. Mr. GARSON: No.

Mr. MACINNIS: And it has not any authority behind it.

Hon. Mr. GARSON: That is right.

Mr. THATCHER: Is the answer to Mr. Fulton's question to be "yes", "no", or "no answer"?

Mr. FULTON: The answer is "no, it is not the same".

The CHAIRMAN: Mr. Thatcher asked his question of Mr. Garson, not of Mr. Fulton.

Mr. FULTON: Well, government members can get away with it, but not members of the opposition.

The CHAIRMAN: Just a minute. We might as well have it out right now. I hope I can preserve order here. At the last meeting, I was quite severe with Mr. Thatcher for such interruptions. When Mr. MacInnis was interrupted I cut off Mr. Beaudry. I would like to be fair. Mr. Garson was asked a question and Mr. Garson can answer it.

Hon. Mr. GARSON: My hon. friend from Kamloops who is sometimes quite ingenious in these matters, asked me a question pretty much akin to "when did you stop beating your wife?" He asked me whether the draft which Mr. MacDonald produced before the committee is the same as another draft which does not exist. The reason it does not exist is that during the course of proceedings in the Department of Justice and in the committee's deliberations, you may have 25 drafts of one kind or another at different stages as you proceed with a complicated bill. But the only thing which in any way can be said to reflect government policy is the final decision, the official draft which is going to be introduced as government policy. And I have already, I hope, made it clear that in this particular case when we were in the course of considering the manner in which the report of the MacQuarrie committee could be put into legislative form—we reached that stage where we were requested to hear further representations before we made a final decision on that matter. So for that important reason we did not make any decision on that matter. We came into the House of Commons and announced in the frankest possible manner that we were not going to make it until these presentations had been made before this committee and then, when we had got a copy of the committee's report and a copy of the evidence, we would make it and not before. So what my hon. friend asked me is this: is Mr. MacDonald's draft the same as something else which does not exist? Yes or no? The answer is that there is nothing in the terms of my hon. friend's question with which the MacDonald draft can be compared at all.

Mr. FLEMING: Could not the minister sum it up in this way, which I think would be a correct summary: is it a fact that neither he nor the government indicate a policy or take any responsibility for the bill which is printed on pages 34 and 35 of our proceedings?

Hon. Mr. GARSON: I am glad that my hon. friend raised the point, and I do not want to take too long in answering. I want to emphasize that the government is not abdicating its responsibility in this matter at all in referring it to this committee for the purpose of hearing representatons and receiving the suggestions of the committee members concerning appropriate amendments. The government could very well have heard these representations in private and embodied them in any matter of legislative policy that it brought forward. It chose not to do so, and the government, while it certainly cannot take any responsibility for the form of this draft which I did not see until I came back from Toronto, let alone any other members of the government—will take complete responsibility after these presentations have been made before the committee and the committee makes its report. In the light of these representations and all other matters, the government will take the responsibility of either adopting what the committee regards as appropriate legislation or, in the light of the committee's report and this evidence, it will draw up appropriate legislation of its own.

Mr. THATCHER: I wonder if the minister would say whether the answer to that is yes or no?

The CHAIRMAN: Perhaps we had better get back to how this legislation started. I asked the commissioner of the Combines Investigation Act to bring the recommendations of the MacQuarrie Committee in legislative form before us so we would have some basis with which to start off. I think we have gotten a long way afield from the start of these proceedings. I made that suggestion to the committee and asked them if they wanted it or did not want it and the committee decided they would like to have it as an appendix, and as a basis of operation.

Mr. FLEMING: May I raise one other point, briefly. It is about the meetings of this committee. I raised the point at a former hearing—the difficulty of overlapping of meetings. There is another committee meeting at eleven o'clock this morning which regards itself as an important committee. I am referring to the Radio Committee. Have you had any opportunity to confer with them on the matter of meetings so that we can arrange that we do not have an overlapping? I think there are other committees meeting as well.

The CHAIRMAN: I did not confer with the Chairman of the Radio Committee but I did meet with the chief government whip. I was told, as I said in the House, that this committee has top priority as the government hopes that we will be able to get this report in before the end of this session. You will be gratified to see that our *Hansard* is coming out quickly—we are getting it as quickly as we do the *Hansard* in the House of Commons. I was then told to schedule our meetings at times which would suit us best and they are I think 10.30 on Mondays, Tuesdays, Thursdays, and Fridays. We can decide whether it will be 3.15 or 3.30 on Wednesday—it will depend of course upon progress in the House.

Mr. FLEMING: 3.30 on Wednesday.

The CHAIRMAN: The other major committee which is considering legislation at the moment is the Railway Committee. There is no overlapping in the membership of these two committees although I believe there is some overlapping with this committee and one or two others sitting. If the other committees realize that we have these times they can adjust their times so there will be no overlapping.

Mr. FLEMING: The Radio Committee is in a similar plight because they have legislation to deal with too. I was just hoping that if this committee is to have the right of way the chairman of the Radio Committee might see fit to adjust the hours of that committee accordingly. It has not happened this morning and there is a meeting at 11 o'clock. When I go to that committee I might say something about the discussion in this committee this morning.

The CHAIRMAN: Yes.

Mr. CROLL: Mr. Chairman, I have one suggestion. It occurred to me that this committee does not know a great deal about the Combines Investigation Branch. It might be useful to the committee if the Combines Investigation Branch file with the committee some indication as to the number of its personnel, what their duties are and so on, so that we would have some idea as to their duties and capacities to do certain kinds of work.

The CHAIRMAN: Mr. Croll, we had the Combines Commissioner before us at the last meeting and that is what I had hoped he would do but we got so involved in the matter of the proposed legislation that we never got around to actually having him discuss that for the benefit of the committee. We could have him come back here at some convenient time and make a full statement as to the organization of his staff and its functions. He could come back before us as a witness.

Mr. FLEMING: We can call him back at a later date.

The CHAIRMAN: Yes, perhaps we could find some morning when the witness before us does not take up the full time and we might have him called back to fill in the balance of the morning giving us that information.

Hon. Mr. LAMBERT: Have you any witness to give evidence here today?

The CHAIRMAN: Oh, yes.

Hon. Mr. LAMBERT: I would suggest that you would keep that separate, if possible, rather than have it in with other material.

The CHAIRMAN: Gentlemen of the committee, the first witness to give evidence before us will be a representative of the Canadian Congress of Labour, and I think on behalf of the committee I should express our appreciation of the promptness with which they have come before us. As you know, we all wish to have this committee conclude its proceedings as quickly as possible and get this legislation ready for the House, and it is particularly gratifying, Mr. Mosher, and we are very grateful to you that you are ready to go on this morning. Who is it that you are going to have speak for you, Mr. Mosher?

Mr. MOSHER: Dr. Forsey.

The CHAIRMAN: We will now ask Dr. Forsey to address the committee. You will notice that I have separated witness and counsel by some distance with the thought that they would have to speak up so that we can all hear what they have to say. Mr. Phelan, our chief counsel will lead the questioning and then, when counsel is through, the witness is available to any member of the committee. Our suggestion when writing to the various witnesses was that they should file their brief without reading it, but if a witness so chose he could give a short summary of the brief before being questioned.

Mr. BEAUDRY: Mr. Chairman, before questioning Mr. Forsey, might I call your attention to the fact that paragraphs 2 and 3 of the brief before us state—

The CHAIRMAN: Mr. Beaudry, I think it is most unfair to start questioning before the witness has an opportunity to make his statement or counsel completes his cross-examination. Perhaps you could hold up your questioning until counsel is through, Mr. Beaudry.

Mr. BEAUDRY: Very well, Mr. Chairman.

Dr. Eugene A. Forsey, Ph.D., Research Director Canadian Congress of Labour, called:

The WITNESS: Mr. Chairman and members of the committee, I understand that your wish was to begin with a short summary of the brief which you have in your hands. I think that I can do that in a very few moments. First of all, we regret that the shortness of time we had to prepare this document makes it less adequate than we should like it to be. Second, I want to make it very clear that the congress does not regard this legislation as of vast importance or likely to be of enormous effect upon the cost of living. We indeed feel that the Combines Investigation Act as a whole is not an adequate way of dealing either with monopoly or high prices. That is the position we have taken many times and we adhere to it. We are inclined to feel that the same is true of this particular proposal to an even greater extent and I ventured to put in the brief a quotation from Dr. Johnson who compared a certain thing to, "setting up a farthing candle at Dover to give light at Calais". However, our attitude is that this is the only new measure of legislation, rather the proposal which was embodied in the speech from the throne was the only new measure of legislation that the government proposed to introduce to meet the problem of high or rising prices, and our attitude is that we are thankful for small mercies.

The brief goes on to point out that re-sale price maintenance is an old story in Canada. It is referred to in the report on the Proprietary Articles Trade Association, the Tobacco Combine report, the Dental Supplies Combine report, the Optical Goods Combine Report, the Western Baking Industry report and the report on the match combine. In four of these, the P.A.T.A. report, the tobacco report, the optical goods report and the matches report, it was made clear that this problem, this special problem of re-sale price maintenance by individual manufacturers, was a prominent issue. Of course, the problem of re-sale price maintenance by an association is something that is, I understand, already covered by the Act, but the problem of re-sale price maintenance by a particular manufacturer is not covered; and that, as I understand it, is the problem which is specifically before you. Then our brief quotes from the remarks from the Royal Commission on prices in 1949, on this subject; and refers, also, to the report of the Royal Commission on Price Spreads in 1935. The substance of our brief, is this; first, that re-sale price maintenance restricts competition and therefore on the basis of the public policy embodied in the Combines Investigation Act is suspect, and that the burden of proof rests on those who defend that practice. A very large part of our brief is taken up by quotations from the late British government's white paper statement on re-sale price maintenance, whose arguments in the main we adopt as our own. The statement says first of all that the cost of trading varies considerably from one shop to another, that there are different services provided, and that they should be reflected in different prices; that it is no answer to say that even with retail price maintenance merchants can compete in services, in offering services that the consumer does not want and would prefer not to have and not to have to pay for; that the effect of re-sale price maintenance is to limit competition among merchants, to slow down improvements in the service offered by retail merchants because the efficient merchant is debarred from cutting the prices of these articles which are covered by re-sale price maintenance and therefore there is no incentive to the other merchant to imitate the efficiency which he has been able to achieve.

The other objection to the whole thing is that the prices which are fixed are fixed entirely by private persons according to a system of what you might call private law of their own and not subject at the present time to any

public regulation. The British statement goes on to deal with a number of answers to the position that it takes up. The first answer might be summed up I think in the classic response of the fox hunter to the protest against fox hunting; "the fox likes it." The defence, astonishing as it may appear, is that housewives like fixed retail prices because they know what they will have to pay and don't have to travel all over the place to find out what the thing costs. That appears to me inherently improbable. I agree entirely with the statement made by the British government on the subject, that it seems unlikely that in fact the housewives would prefer fixed prices to a system where lower prices might be available, where goods might be available at lower prices in one shop than in another. It is very unlikely that if things are available at a $1 one shop and 90 cents in another the housewife will complain that this confuses her and she would like to have it all the same so she would know where she was, what she had to pay.

Next there is the argument that branding and fixed prices must necessarily go together. That just is not so. Then there is the further defence that if there were not fixed retail prices the consumer would be doubtful about the quality of a branded product, if it was offered for sale at one place at 90 cents and at another for $1.00. But the answer to that is, of course, that any consumer would know perfectly well that if you have two articles put up by the same manufacturer, in the same package, the consumer knows they are the same. There is no real danger that he will worry about the quality of the article which is made available to him at the lower price because the price is not fixed by the manufacturer but is determined by the retailer himself in accordance with his own costs.

I do not think it is necessary to go into all the arguments which were advanced in defence of this practice but I do want to mention two others which are somtimes put forward. One is that the retail price, the fixed re-sale price, has been below what the manufacturer or the retailer might have exacted or extorted from the customer, that the traffic would have borne more. The answer to that, I think, is that in the legislation which was recommended by the MacQuarrie committee there was absolutely nothing to prevent the manufacturer from fixing a maximum re-sale price if he wants to, that the retailer might not charge more than that. Nobody is going to object to that, certainly the MacQuarrie committee could not, and, certainly, we do not object to it. What we do object to is the fixing of the minimum retail price so the retailer cannot sell below that, no matter what his costs may be.

The other point is the loss leader, and I think the answer to that is that the loss leader is not particularly important or common now. In general it is rather a feature of a time when merchants have an abundance of goods on their shelves which they must get rid of; but at a time like the present when we are in a period of relatively high employment and high income the incentive to loss leaders is relatively very small. Furthermore, of course the loss leader, as the British statement points out, really presupposes a background of numerous fixed prices, and unless you have that background against which a loss leader stands out as a strong inducement to a consumer the loss leader is not likely to be very prominent.

In our brief we refer to the buying spree which took place in New York last summer after the Supreme Court of the United States declared that the "non-signer" clause in the "fair trade" Act was invalid, and a very large number of articles were sold in Macy's, particularly, I think, at varying percentages below the fixed prices which had formerly prevailed.

And then, I should like to read the last paragraph of our brief which puts our position clearly:

"The Government and Parliament of Canada have apparently set their faces like flint against public control of prices. Yet they have tolerated for years private control of prices by individual firms, "behind closed doors", as the British Statement says, "and without any supervision by the courts or by Parliament". The Congress thinks it is time this paradox was ended. If it can't be ended by imposing public price control in the public interest, let it be ended by stopping, or trying to stop, private price control in the private interest. If we must have "free enterprise", let us have it really free and really enterprising, for retailers and consumers, not just for manufacturers. The Congress reiterates that it is not very sanguine about the effectiveness of attempts to restore competition and make the "free economy" really free. But that seems to be what the people want. Anyhow, they voted for it. Surely it is high time to let them have it, or at least to try".

The CHAIRMAN: Thank you, Mr. Forsey.

By Mr. Phelan:

Q. Mr. Forsey, it might be of interest to the committee if they had some information as to your personal attainments and experience in economic problems.—A. Well, my present position, which I have held since 1942, is Director of Research for the Canadian Congress of Labour. For a year before that I was on a Guggenheim Fellowship at Harvard. For twelve years before that I was teaching in the Department of Economics and Political Science at McGill University. I took my B.A. from McGill in Economics and Political Science and English. Later I took my M.A. in Economics and Political Science at the same institution, and then my B.A. at Oxford in 1928, in Philosophy, Politics and Economics. Later on I got my Ph.D. at McGill in Political Science.

Q. So that on the theoretical aspect of economics you would have some considerable knowledge?—A. Oh, I would not say a great deal, but some, at any rate.

Q. All right. And now, the Canadian Congress of Labour have about how many members?—A. Somewhere between, I should say 325,000 and 350,000; something in that neighbourhood.

Q. And are you able to tell the committee how far the brief sets forth the views of your members? Does it represent the views of your members?—A. Well, yes, I think I can say pretty positively that it does. The brief does represent the general opinion of our membership; first of all, because we had already made in very short form a similar statement of policy before the MacQuarrie committee; and, second, only last week, a week ago yesterday, our executive council met here in Ottawa and adopted a resolution setting forth substantially, although in briefer terms, substantially the conditions which we have just presented to this committee. The executive council is our highest legislative and administrative body between conventions. It is composed, first of all, of an executive committee, the inner core or cabinet, perhaps you might call it, which has 14 members elected by the convention; and, in addition to that, roughly 30 other members belonging to the executive council who are chosen by the various affiliated unions. For example the steel workers are represented by delegates to the executive council chosen by the steel workers; the rubber workers who would elect a delegate, the packing house workers and others unions in the same way.

Q. So we may take it that the views therein set forth represent with fair accuracy the views of your members?—A. Yes, I think so. We have at any rate had no unfortunate repercussions from the submission we made to the MacQuarrie committee. I think it is safe to say that the executive council is

a representative body, representative of all the affiliated unions such as I have mentioned, and it represents substantially the viewpoint of the membership.

Q. And, I take it that this 350,000 membership are substantially all the members of the consumer class?—A. Oh well, hardly that—no.

Q. What part of that 350,000 would be members of the consumer class?—A. Oh, I misunderstood you. Of course they are all consumers.

Q. You think they would all be members of the consumer class?—A. Yes, and their wives and children also.

Q. Are there any other nation wide organizations of labour having somewhat similar aims and objects to your own?—A. Yes, sir, there are several.

Q. Would you just name them?—A. First of all, there is the Trades and Labor Congress of Canada, the oldest and largest central labour organization in Canada.

Q. Approximately what is its membership?—A. According to my recollection it would be around 100,000 more than ours.

Q. So that would bring it up to about 450,000?—A. 450,000 to 475,000.

Q. And their membership would also be members of the consumer class?—A. Yes.

Q. And, next, we have the Canadian Congress of Labour—the Trades and Labor Congress; is there anyone else?—A. There is also the Canadian and Catholic Confederation of Labour, which is almost entirely, if not entirely, within the province of Quebec, and mainly French-Canadian.

Q. And their membership would be what?—A. It would be around 90,000.

Q. Around 90,000. Is there anyone else?—A. In addition to that there is a body known as the Dominion Joint Legislative Committee of the Railway Transportation Brotherhoods, which combines two organizations which are affiliated with the Trades and Labor Congress of Canada, and also four unaffiliated railway labour organizations; the conductors, the trainmen, the locomotive engineers, and the locomotive firemen and enginemen.

Q. I see, and do those comprise—.—A. They are known as the Big Four and the affiliated organizations have roughly a membership of 40,000.

Q. Now, that is all the national organizations, is it?—A. Yes. There are a certain number of unaffiliated international unions, most of them organizations which have been thrown out of our congress as being communist-dominated. They have a membership of around 40,000 or 50,000.

Q. I observed that in one of your opening remarks, rather one of your opening remarks was that this question or problem of re-sale price maintenance might not be of vast importance or have any substantial effect on the cost of living. Have you any statistical information for the committee that would support that conclusion, or otherwise?—A. No, sir, I am sorry to say we have not. If we had had more time I should have made an effort to get that through our organizations, but in the time available it was frankly quite impossible, even if our unions had been admirably prompt in their replies, to prepare any material on that point.

Q. Have you any views at all as to the extent of retail price maintenance and its result on the volume of sales throughout Canada?—A. I would not even hazard a guess on that. I simply do not know, and whatever I would say would be worth nothing.

Q. I have heard it said that the proportion of goods affected would be somewhere in the vicinity of 30 per cent. Have you any comment to make on that?—A. That is in the British report?

Q. Yes, over there.—A. I do not know whether that would have any bearing on the situation here, conditions are so different.

Q. So then we are without any information at all as to the effect in percentage of the total cost of this practice, we have no information at all?—A. As

far as we are concerned, yes. I am sorry about that, but if I had put in anything about that I would merely have been guessing. You see, we have not had time to collect any evidence from our organizations.

Q. Do you consider the practice a substantial part of commercial life, or an unsubstantial part of it?—A. I should think it is a fairly substantial part in certain lines of trade. I suspect that it is. I suspect it is still going on to some degree at least.

Q. You refer in your brief to a number of prosecutions under the Combines Act, I think you refer to them by name—at least you refer to one of them by name.—A. I referred to a number of reports, I do not think I referred specifically to the prosecutions.

Q. What was Mr. MacDonald's expression of two days ago, that these prosecutions or investigations were concerned with the horizontal aspect of price control?—A. Yes, and that is what they were essentially, some of them. But this other aspect came up in connection with the four which I specifically mentioned, the Proprietary Articles Trade Association report, the tobacco report, the optical report, and the match report. There was a very apparent vertical action by individual manufacturers. In the tobacco report it was the Imperial Tobacco Company, and in the Proprietary Articles Trades Association it was Wampole's and Colgate's; in optical goods it was American Optical, in matches it was Eddy Match. They were all referred to as having individually and specifically attempted with fair success to control retail prices.

Q. Vertically though.—A. Yes.

Q. Then I have one other question. One of the suggestions made in support of the maintenance of retail price practice is that unlimited competition between retail distributors has an undesirable effect on their interests. Have you any comment to make on that for the committee?—A. Well, the only thing I can say about that is that I think it may in some instances be undesirable. I would not want to put it in general terms, but if that is so, then it should in our judgment be dealt with by substantive legislation; some kind of public control, through parliament if parliament in its wisdom sees fit. It should not be a subject of private control by private individuals or corporations simply in their own interests.

Q. How is price control exercised under a price maintenance system, if it is exercised?—A. Well, the manufacturer simply sets the price and provides a variety of penalties to ensure its enforcement, which would apply if the price is not adhered to.

Q. What kind of penalties?—A. Well, they vary. It all depends on the arrangement. Sometimes it is fines and sometimes it is a matter of cutting the distributor off the list.

Q. Yes.—A. There are a variety of systems or ways by which that is done, I understand.

Q. And so that what you are saying to the committee is, that if there is abuse in limiting competition, the proper method to deal with it is by the institution of some kind of parliamentary action?—A. That is our position.

Q. That is your position?—A. Yes.

Q. What about the suggestion that retail price maintenance is a necessary method for the manufacturer to provide necessary protection for the purchaser against pyramiding costs through lack of competition. Have you anything to tell us on that?—A. Would you make that question a little more specific? I am not sure that I understand exactly what you have in mind.

Q. The argument, as I understand it, in favour of the maintenance of the retail price system is that it gives the manufacturer necessary protection against pyramiding of costs, let us say, in the matter of labour and wages? —A. You are suggesting, or rather this argument suggests, that if there is not re-sale price maintenance the manufacturer may be squeezed?

Q. That is right.—A. Between the price cutting of the retailer and the wage raising of the unions?

Q. That is what has been suggested; now, have you any comment you would like to make on that for the benefit of the committee?—A. I am not impressed by that argument. In the first place, I suspect it grossly overestimates the influence which the unions can bring to bear. We are not nearly as powerful as some people think. In the second place, I do not think that the manufacturers who engage in this practice are in need of very much in the way of protection, I think they can look out for themselves and do look out for themselves. I should suppose rather it is the retailer who needs to be protected. But I do not think that the manufacturer needs much protection. I am not very much worried about that problem.

Q. One of the problems you mentioned in connection with unlimited or unrestricted, unregulated competition is the loss-leader. Do you suggest that that should be the subject of special legislation?—A. If it is necessary to deal with this specifically. I do not think it is a very serious problem in a time of high employment and high incomes such as we have now, and as we are going to have as long as Mr. Stalin remains in his present frame of mind.

Q. Well, in view of the range of the problem and all that is involved in it, how do you propose that it should be dealt with?—A. I think that is a rather large order for me.

Q. Are you familiar with the legislation we have in some of the provinces relating to minimum price and fair trading practices?—A. Well, I know there is such legislation.

Q. Have you read it at all?—A. I haven't had an opportunity of studying it.

Q. You don't know what the effect of that has been?—A. I would not attempt even a guess on that.

Mr. CROLL: What provinces do they have such legislation in? I understand they have it in British Columbia and Manitoba. Is it in effect anywhere else?

The WITNESS: I believe they have it in Alberta, also. I have seen reference to that legislation but I have never had occasion to go into it with any great care.

Mr. PHELAN: Mr. Chairman, I think that is all I have.

The CHAIRMAN: Mr. Favreau:

Mr. PHELAN: My learned colleague (Mr. Favreau) suggests that you made a statement that there is no connection between brands and fixed prices—is that what you had in mind, Mr. Favreau?

The CHAIRMAN: Perhaps Mr. Favreau would like to put the question himself.

By Mr. Favreau:

Q. I understood you to say that there is no necessary connection between branding and retail price maintenance?—A. Yes.

Q. Would you care to qualify that statement and explain what you meant by that answer?—A. Well, I think it is simply that it is perfectly possible to have branded goods, for the manufacturer to have branded goods, and sell them to the wholesaler who in turn sells them to the retailer without any fixed retail price being placed on them. I do not see any reason why there should be. I do not see that there is any necessary connection. I do not see why there should be.

Mr. PHELAN: May I ask a question before I leave the witness. We have been using the expression "resale price maintenance". In that system are there other matters incidental to sale which are controlled, as well as price? I have

reference to such things as the take-in value of articles taken in as part payment. I have also reference to such things as the terms or conditions of conditional sales agreements, and things of that kind. Are they part of the system of resale price maintenance too?

The WITNESS: I think in some cases they are—but I do not know whether they are universal.

Mr. BEAUDRY: This might be a privileged question in so far as the witness is concerned, in view of your statement at the last meeting, Mr. Chairman, regarding some of the reports presented to the committee being privileged.

The CHAIRMAN: That is right.

By Mr. Beaudry:

Q. May I ask this question, deferring the chairman's decision for the moment. You did, Dr. Forsey, state that you presented a report to the MacQuarrie Committee?—A. Yes, a very short submission.

Q. May we discuss it in so far as this one angle is concerned?—A. I have not got it here, and my recollection of it is not as clear as I could wish.

Q. I would ask one question and, Mr. Chairman, if you decide the question is out of order I will withdraw it.

The CHAIRMAN: Perhaps, in advance, the submissions made to the MacQuarrie Committee covered more than resale price maintenance, and this particular committee is only interested in that phase of it.

By Mr. Beaudry:

Q. I am only interested in it too. In so far as your report to the MacQuarrie Committee is concerned, short though it may have been, was it substantially different from the brief we have before us?—A. It was very much shorter and I think, in fact, it simply contented itself with saying what our attitude was. As I recall, we did not present any argument—we merely said we agreed with the recommendations of the Royal Commission on Prices in 1949. That was substantially what we said.

Q. I am interested to this extent. Some passages in the report say that representations to the committee were made by labour organizations, farm co-operatives, and consumer associations. My question is this: Did your report to the MacQuarrie Committee include any more substantial or concrete information than the brief which is before us this morning?—A. Most decidedly not. My impression is that some of the other labour organizations did put in much more elaborate documents than we did. For reasons which escape me now, but which seemed adequate at the time, we put in a very brief submission.

Q. You state in this brief, and you have reiterated it verbally, that in your opinion the matter this committee is now discussing is unimportant in so far as the cost of living is concerned?—A. Yes, and I am in excellent company there because I think the Prime Minister said exactly the same thing.

Q. My question to you, is, therefore: Your attitude on the subject or your objection to that price maintenance merely relates to principle?—A. No, it is more than that because, as I said, "small mercies, thankfully received". We think this would be a help but we do not expect it to produce any earth-shaking consequences.

Q. That is fine, and I agree with that too. However, I submit this is not a Prices Committee; this is a Combines Legislation Committee, and I do not necessarily agree with the conclusion that the subject to be discussed by this committee necessarily has any bearing on higher or lower prices.—A. Well, I do not know what comment I am expected to make on that.

Q. None. I am merely suggesting this to bring you back to the statement in your brief that this proposed legislation we are now studying will, in your opinion, have a very small and unimportant effect on prices. I submit we are not discussing that phase of it at all, but I am taking your brief as is. You state that resale price maintenance limits competition. We will come to that in a minute. You also state that resale price maintenance establishes a private law between some parties?—A. Yes.

Q. Which puts them—and maybe I am putting words in your mouth and if so I will withdraw this—but which puts them beyond the pale of the ordinary law.—A. I am not a lawyer and therefore I speak with some diffidence before a committee many of whom are lawyers. However, my understanding is that contracts of this sort are not at present enforceable at law in Canada. So, in that sense, I should think it does put them outside the law.

Q. You know we are both in the same boat. I am not a lawyer either, although I went to law school.

Mr. FULTON: You saw the error of your ways.

By Mr. Beaudry:

Q. Under the Napoleonic Code, which is the basis of civil law in Quebec, as the Minister of Justice is well aware, we were taught that it was an axiom of law "la convention des parties fait la loi". In Quebec, anyway, I think it is perfectly legal for private parties to enter into a contract which becomes a law unto themselves—in so far as the terms of contract are concerned?—A. I am not going to attempt to argue on the civil law.

Q. I am not either. I merely want to point that out because your brief does specify at one stage that resale price maintenance becomes in effect a law between the parties. I am only pointing out that in the province of Quebec under the civil law I think it is perfectly legal.—A. As far as I have any connection at all with the law I belong to the tradition of what my friend Professor Scott calls "the barbarous common law" rather than the civil law. I apologize if I in any way left out the question of the civil law of Quebec. I was speaking of the common law provinces—but my opinions on legal matters are not worth anything anyway.

Q. I think they are worth mine.

You did state that resale price maintenance in your opinion would limit competition, and you also stated in your brief that, however, you see no objection whatever to producers or manufacturers imposing a maximum price? —A. Yes, we are not worried about that.

Q. How, in the normal course, would a manufacturer enforce against anybody stepping over the maximum price?—A. Presumably by the various sanctions which counsel for the committee mentioned, or rather which I mentioned in reply to his question. It would be rather difficult to do.

Q. We will assume that would be normal procedure?—A. I should think so.

Q. If that is so, obviously it would not come under the scope of the drafted amendment or the draft of a suggested amendment, but I do think it would definitely limit competition in so far as these offenders were concerned?—A. Yes, but I did not attempt to say that we objected to all limitations of competition. What I did say was on the assumption, which seems to me to be basic to the Combines Investigation Act, that limitations of competition are prima facie undesirable, and that the case has to be made out for such limitations. That is the public policy embodied in the Combines Investigation Act—but it is not our public policy.

Q. I am just suggesting that this price maintenance to which you object as a factor which might limit competition, cannot be corrected, at least in my humble opinion, by allowing the practice of setting a maximum price. The

recourse of the producer or manufacturer against the offender is in the same position—and therefore if one limits competition the other must too?—A. They both limit competition. One limits competition in our judgment in a highly undesirable way, and the other in a desirable way. We are interested, sir, in spite of your suggestion that our reference to prices was perhaps irrelevant, if I understand your objection in prices, and we have not the slightest objection to anybody stopping prices from going up, but we do object to people stopping prices from going down unless there can be shown some definite sound reason in the public policy for such action—and there may be cases where there are sound reasons. In that case, let us deal with it, we suggest, by legislation. In the present circumstances we feel action which will reduce prices is desirable, and that action which will increase prices is undesirable.

Q. In so far as this committee is concerned, and your brief is concerned, must I take it now that you are not opposed to price maintenance as a practice but you are only opposed to price maintenance when it becomes an obnoxious practice?—A. We are opposed to price maintenance in principle, in the same way I think as the MacQuarrie Committee Report is opposed to price maintenance. The proposal which the committee submitted to the government was, I understand, the basis for this committee's deliberations. That proposal is a proposal to stop the fixing of minimum resale prices, not maximum.

Q. Are we not putting the cart before the horse. You say you are in agreement with the MacQuarrie Report. I would point out the MacQuarrie Report only came after you and various other parties made your submissions?—A. Well—

Q. Well, that puts a slightly different complexion on the matter. I think you can hardly take the MacQuarrie Committee Report now, because the MacQuarrie Committee Report is based on your argumentation. I think it is the reverse. The MacQuarrie Committee did take your representations and others on which to base its report?—A. I speak subject to correction by the committee, but my understanding was that what was before this committee was the problem arising out of the report of the MacQuarrie Committee, which report definitely recommended the prohibition of fixing of minimum resale prices. That, I thought, was the matter that we were supposed to discuss and in the brief I specifically excluded any discussion except incidentally of this business of maximum resale prices—which came in only as an answer to the argument put up for fixing minimum prices. I thought we were discussing the proposal which arose out of the MacQuarrie Committee Report.

The CHAIRMAN: Mr. Beaudry, I have at least six speakers who have indicated that they wish to ask questions.

Mr. BEAUDRY: I just want three minutes.

I merely point out that the words of the MacQuarrie Report state very clearly that its views on the question of price maintenance as something objectionable were based—or its conclusions were based—particularly on the representations made by the labour unions, farmers, agricultural co-operatives, and consumer groups. My whole reason for putting the question to you is that you, being one of the three parties on which the MacQuarrie Committee based its conclusions—I am interested in finding what your premises were to lead them to those conclusions.

However, I think I can continue on to something else.

The WITNESS: I can answer that, sir.

Mr. BEAUDRY: I do not think it requires an answer, doctor.

Mr. CROLL: Let him answer.

Mr. CARROLL: Yes, because we do not know what his submission to the commission was.

The WITNESS: As far as we were concerned our submission to the MacQuarrie Committee was pretty much the statement that we agreed with the conclusions of the Royal Commission on Prices. Now, the MacQuarrie Committee has produced a variety of arguments on the subject which I read with some care. I think the conclusion we have come to in our organization is that our original feeling is strengthened by the arguments which the MacQuarrie Committee put forward.

By Mr. Beaudry:

Q. Then, you did not produce to the MacQuarrie Committee any statistical or other information which might logically have led the committee to follow your submission?—A. This was a very minor point in our submission to the MacQuarrie Committee but I must again point out that we were only one of a variety of labour organizations, of even the central organizations, and for all I know dozens of individual labour unions in the country may have submitted briefs to the MacQuarrie Committee. I cannot say.

Q. "Resale price maintenance limits competition" is your statement in this. What is the definition of a closed shop?—A. A closed shop, in a collective agreement, a closed shop clause, is by which an employer binds himself to hire only members of a given union. It limits his freedom of hiring.

Q. Does that limit competition in so far as available staff, personnel, or the category of artisans is concerned?—A. Yes, I should say it does, and we think there are in some instances good reasons for that.

Q. Let us not go into that.—A. Well, you asked the question, Mr. Beaudry and I want to make one point clear—that the closed shop is something that hardly affects our organization at all. If you want to stress the importance of that to anybody you had better address yourself to the Trades and Labour Congress of Canada, because we are not an organization of skilled craftsmen and, therefore, we have very, very few closed shop agreements. We have a few, but I think you could count them on the fingers of one hand.

Q. Therefore, you agree with me that it does limit competition?—A. Yes, and I think there are sound reasons for it in many cases.

Mr. CROLL: Had not the witness better complete the answer—he was giving us sound reasons and I think we are all interested.

Mr. FULTON: Are we getting close to the question of relevancy?

Mr. CROLL: Now that the question has been raised I suggest that he be permitted to give us the reasons.

The CHAIRMAN: Why the limitation to competition is desirable in so far as the closed shop is concerned?

The WITNESS: I think I can sum it up very briefly, Mr. Croll, by saying that when you are dealing with labour and wages you are dealing with something that is not a commodity. You are dealing with human beings, and you are dealing with—what the Pope calls " la dignité de la personne humaine"—the dignity of the human personality. That I think is the fundamental reason why we feel, and why I think most labour organizations feel, that the limitation upon competition in labour agreements, collective agreements, can be justified. I do not say all cases. I am not trying to give a blanket absolution or anything of that kind to what may appear in all agreements. But we do think there are sound cases, in certain circumstances, where undercutting wages should not be permitted—basically because it involves human beings and not simply merchandise.

Q. Mind you, Dr. Forsey, do not think I disagree with you in principle. I have been involved in hiring labour for a number of years and I am fully in agreement with the dignity of the human being in agreements at all times. I am not disputing the value of your contention that men should at all times

be well paid and take all means to enforce that—and I am not disputing it. However, there are many other members who want to question you—.—A. There is an admirable statement, from our point of view, on this whole subject of union security by the Abbe Dion of the Faculty of Social Science of Laval University, with which possibly you are familiar.

Q. I think we agree. This is my last question and it may seem irrelevant at this time but I think it will not be so later on. In the general taxation statistics for the Department of Revenue, 1950, I find Canadian taxpayers classified by occupation for 1948—listed occupationally by order of average income and so on. I find that two people who are next to one another in brackets and classified as a whole are business proprietors without employees with an average income of $2,341, and immediately under them, arranged in order of average income I find employees, $3,301. I merely want to put that on the record. I thank you very much, Dr. Forsey.

The CHAIRMAN: Mr. Croll is next.

By Mr. Croll:

Q. Dr. Forsey, you are familiar with the merchandising practices in the old country, in England, the British Isles, as compared with the merchandising practices in the United States and Canada?—A. I would not say so, I am sorry.

Q. Well, you gave us some indication of your experience as a layman so let me just say this. You started out by stating that you did not think loss leaders are an important problem to the retailer or to the trade.—A. At present.

Q. At present. In the light of that, three provinces have already in some way dealt with it. Is it your view—and you have had an opportunity to see the draft legislation—.—A. No, I have not seen it.

Q. Well, assuming that the MacQuarrie Report is carried into legislative form, is it your view—your view of our merchandising practices in this country, and I have reference to loss leaders—that the retailer does not need some form of protection?—A. I doubt very much whether he does.

Q. It is your view that the loss leader is not a factor today?—A. I do not think it is a serious factor. If you had a depression again it might be a serious factor, but I do not think there is any prospect of a depression in the immediate future.

Q. I am glad to hear that.—A. I have indicated already that I think perhaps our best safeguard against that is Mr. Stalin—and I hope nobody is going to accuse me of being a communist.

Mr. CARROLL: You have gotten over that.

By Mr. Croll:

Q. Well, from the point of view of the large body of consumers that you represent or speak for today, you think the loss leader is not something that should seriously concern us?—A. I do not think it is, no.

The CHAIRMAN: Mr. Dickey is next.

By Mr. Dickey:

Q. Dr. Forsey, following up your questions to Colonel Croll—

The CHAIRMAN: A little louder please.

By Mr. Dickey:

Q. Dr. Forsey, following up your questions to Colonel Croll, I understood you to say in dealing with the question of loss leader that it was your view that under present conditions there was not much incentive to retailers to employ that particular device?—A. Yes.

Q. Is that correct?—A. Yes.

Q. Now, I presume you make that statement in the light of present retailing conditions in which, I suppose we must presume, there is a certain element of maintenance of resale price—which I think we also must presume would discourage the practice of loss leaders?—A. Yes.

Q. Is that correct?—A. Yes, I think that is true, but I think also that there is a fairly ample field in which the retailer can go in for loss leaders if he is so inclined. I have not hazarded any guess as to how much trade is covered by resale price maintenance, but I should be very much surprised if he has not at least half the field perfectly clear in which to do that kind of thing if he wants to. I doubt very much if any evidence the committee will receive will show that as much as half the retail sales in Canada are covered by resale price maintenance practices. I should be inclined to think, in fact, that the proportion might be much lower than that. That is sheer guesswork. You might have something in mind to show that 90 per cent is now covered by this practice.

Q. No, I have nothing in mind by way of statistical information but I wanted to get as clearly as I could your approach to the problem, and get it in the perspective of the present situation and the possible future situation. For that purpose I would like to put it to you whether or not you have considered the device of the loss leader, and its possible effect, presuming that some effective legislation is brought into force which would completely eliminate the practice of resale price maintenance? Do you believe that under those circumstances it might become a serious problem?—A. I think it very unlikely. It would probably become rather commoner than it is now but I think it is very unlikely, under any circumstances which seem probable in the near future, that it would be a very serious matter. If it turns out to be a serious matter then action can be taken against it.

Q. You did not think the possibility of it becoming a serious matter is sufficiently proximate to have it require consideration of what should be done to prevent it before action to outlaw resale price maintenance is taken?—A. No.

Q. It is rather a future problem than an immediate one, in your opinion?—A. Yes.

Q. I was also interested, Dr. Forsey, in your reference to the price cutting flurry in New York—Macy's and Gimble's, etc. I wondered if you had observed the similar but less important flurry that took place in Hamilton a few weeks ago?—A. It is news to me.

Q. It is news to you?—A. Sorry.

Q. As you apparently did have some interest in the Macy-Gimble one, I wonder if your researches in that regard have indicated to you that there was any residual effect in the lowering of prices generally, or the prices of any specific articles over a considerable period of time?—A. No, I do not think there has been enough time since that business in the early summer in New York to enable one to form very definite judgment about it—in any case we have not.

I must, I am afraid in justification for these inadequate answers, point out that we have a very large number of things before us. We are not quite as badly off as members of parliament in that respect, but we have to spread ourselves pretty thin on a lot of them and to concentrate on some things we think are of paramount importance to our unions. I have said that we have not regarded this as a paramount problem, while there are things that the trade union movement is much more vitally concerned with on which we are spending more time.

Q. Perhaps you are not as badly off as members of parliament in several respects, but do I understand that you have not been able to make any extended study of the retail field to determine what the relative proportion of price maintenance articles is, and what their importance is?—A. No, we have not.

Q. The argument has been put forward, Dr. Forsey, that over the recent period of price rises or rising prices, that there has been a considerably smaller percentage of rise in the prices of articles that are price maintained than in those which are not. Have you any views on that particular argument or proposition? —A. I should think that is probable, sir. Judging by the evidence submitted to the Royal Commission on Prices, as I recall it, there is a tendency, where all these restrictions operate, for prices to move more sluggishly. There is a tendency for them to become more rigid; they do not move up as fast and they do not move down as fast. I think that is pretty generally agreed, but I cannot give you chapter and verse for it. I just know we have run across that a great many times in reports and documents of one kind or another, which seemed to me to be based on substantial evidence and the results of careful enquiry by people of sound judgment.

Q. That is all, Mr. Chairman.

The CHAIRMAN: Next is Mr. Thatcher.

By Mr. Thatcher:

Q. Dr. Forsey, did I understand you to say that the Congress has not really had time to go out among businesses and examine resale price maintenance in the field?—A. Yes.

Q. I wonder if you can tell me if the Congress has any specific evidence that retail mark-ups on price maintained goods are higher than the mark-ups on goods which are not price maintained?—A. We have nothing on that at all, sir.

Q. Are you assuming that they are?—A. I do not think we can say we assume anything about that. We were just assuming that probably those fixed prices were usually higher than they otherwise would be.

Q. But suppose you were shown that resale price maintained mark-ups were lower, than the mark-ups on other goods what would your attitude be towards the practice?—A. It depends I think, Mr. Thatcher, on the case. In some cases there may be justification,—quite apart from any retail price maintenance or arrangement—there may be justification for a lower mark-up on some types of goods than on others. I am talking to an expert, I have never sold anything in my life, and you have spent your entire life, or a large part of it, in business as a merchant. I should suppose, from the depth of my ignorance in such matters, there were some goods on which you might put a very high mark-up and others on which you might put a lower mark-up and that the price would vary from commodity to commodity.

Q. Of course, that might very well be the case. But you are not prepared to say to this committee that prices are higher, in Canada today, because of the practice of price maintenance?—A. We haven't got any information on that; we haven't had time to collect it and we never went around collecting it just for the purpose of having it ready in cold storage for use at a moment's notice.

Q. Well then, let me put it this way; has your congress any reason to believe that prices might go down if this legislation was passed?—A. We think so, yes.

Q. On what information do you base your opinion?—A. Partly on that business which happened in New York last summer and to which I referred. I was talking to a gentleman only yesterday, I think it was, who had been down there and he spoke to me of some very remarkable cuts in prices—one, from which he benefited directly, was when he picked up a Ciné-kodak for about $30 less than the usual price, and he was very well pleased with it.

Q. You inferred that the opposition of your congress was based on the same arguments which have been advanced by the MacQuarrie Committee for abolition of the practice; you suggested for instance that price maintenance eliminates competition. But some associations contend that this is true only

in the academic sense. Let us take the case of a refrigerator manufacturer. Perhaps there are 10 or 12 lines on sale in Canada. While one of those lines may be price maintained the dealer has the other 11 lines to compete with. In addition there is U.S. competition. Would you care to comment?—A. I think we have got something on that in here in the brief, Mr. Thatcher; in the brief which I sent to the committee.

Q. Oh yes, I think perhaps it is page 3, at the top of the page.—A. Oh yes, I have it here. At the top of page 3, right there in the first paragraph, in connection with the report on optical goods where it says:

> "The Report added: The basic case against policies of resale price maintenance generally is that price competition amongst dealers is thereby eliminated in the sale of the goods affected. In lines of business in which goods are supplied by many manufacturers, only some of whom prevent sales below fixed minimum resale prices, consumers have some measure of protection. Consumers in such cases can turn to the products of other manufacturers who impose no such restrictions. Even this alternative, the availability of goods not so controlled in price, can be a most inadequate public safeguard. It is especially inadequate when a considerable part of the goods in strongest public demand (a demand often stimulated by the suppliers) cannot be sold below fixed minimum resale prices."

I think that is the only comment I need to make on that.

Q. And, Mr. Forsey, there is another contention which has been made by some of the associations. They argue that if resale price control is abolished the position of the small retailer may be jeopardized in many of our communities.—A. I do not think there is a great deal in it. The large retailers are pretty powerful now but they have not been substantially increasing their proportion of retail trade. As I recall the figures, that has remained pretty stable for quite a long period. Even now, I should think if they were really anxious to put the little man out of business they could probably do it, even with this practice. It is possible that the abolition of this practice would have its effect on the small retailer, and that is certainly a point to be considered. I do not know that the small retailer necessarily has a vested interest such that he should be preserved as a splendid specimen of humanity, regardless of his service to the community. There is a tendency to view the small retailer as a noble fellow who ought to be preserved, no matter how essential or otherwise his services are to the community. I think that is an over-statement of the case. I think there is a certain amount of social value in preserving the small retailer, but not regardless of the cost to the community. I cannot get ecstatic about the small retailer as such; possibly because recently I have been reading H. G. Wells' "History of Mr. Polly".

Mr. FULTON: You have been reading the wrong author.

The WITNESS: What do you recommend, Mr. Fulton?

The CHAIRMAN: Have you any further questions, Mr. Thatcher?

Mr. THATCHER: Yes, I have one other question.

By Mr. Thatcher:

Q. It has been suggested that resale price maintenance tends to give all parts of Canada a more standard cost of living, by equalizing costs in all provinces. It was thus intimated that the outlying provinces benefited from resale price maintenance. Would you care to comment on this contention?—A. My comment on that, I think, would be, prohibition of resale price maintenance might bring down the price to people of, for example, my own native province,

Newfoundland, where the income of the people is much lower than it is in this favoured province. I am not interested in a uniform cost of living as such. If we had a uniform level of income across the country, then a uniform cost of living would be highly desirable. If you can bring about a reduction in the cost of living in certain parts of the country by abolishing this thing, that's enough for me. I suppose the argument might be made that it would be cut in the central provinces and not in the outlying provinces. I know that it would take a lot more consideration than I have been able to give to it as yet.

Q. Well, Mr. Forsey—again, would you say that by eliminating retail price maintenance you could bring down prices?—A. In some instances I should think that probable, yes.

Q. You cannot say in what specific field?—A. No, I cannot. I am sorry.

Q. Mr. Forsey, could we assume from your remarks that the congress is not vitally concerned or deeply interested in whether the legislation is passed or not?—A. No, I think that would be an over-statement. It is not a matter of major policy. But we do have strong feelings about it, even though we think it a matter of minor importance. You can feel strongly about something without its being a matter of extraordinary importance.

Q. I was just judging from page 1 of your brief. You say, "the congress does not believe that either the Combines Investigation Act (with related provisions of the criminal code), or the prohibition of resale price maintenance, will have any marked effect on the cost of living".—A. Yes.

Q. Can we then not assume that you have no strong feelings about the legislation?—A. No, I must again object to that. I do not think you can take from my brief as a whole that we have no strong feelings about it. We think it is a useful measure and we are heartily in favour of it. We do not think that anybody could fool himself that it is going to have any enormous effect, or even very much effect on the cost of living. It is a matter of priority, a matter of proportion; but, if you mean, Mr. Thatcher, that we are inclined to say; Oh, to the Dickens with it, we don't care what the committee recommends, we don't care what the government does, we don't care whether we have legislation with respect to it or not; that is not so.

Q. Then you definitely like this legislation?—A. We regard this as a very small but useful contribution and we would like to see it go through.

By Mrs. Fairclough:

Q. There has been considerable discussion about this price war in New York, that it was a major affair in retail selling over the border. I think a price war of that kind was merely a flash in the pan, in so far as it affects the cost of living. We may get a few drops in price, but in order for it to affect the cost of living it would have to cover a wide range of articles that the consumer wanted to buy. I think a far more important factor in the retail price situation is this practice we have heard referred to as the loss-leader in price selling and that that would affect the retailer much more than any price war here or there.—A. Would you mind saying that again?

Q. What I am saying is that a price war as such is not as severe a hardship in the retail field as the continuous practice of loss-leader selling.—A. Oh, I think that is probably true. Yes.

Q. I mean, if you want an expression of opinion from me, this matter of a national price, a maximum price regulation, or a minimum price regulation, whoever it is set by, or whatever you call it—it fixes the actual price of the goods to the consumer. And now, does that mean that the considered effect of a national price is to become a target price, a fixed price. We had very substantial evidence of that during the last war when there were fixed prices in a large number of cases and these prices kept rising and eventually were fixed and

stayed there. In the field of price fixing, the manufacturer is going to fix a maximum price, as long as it does not work to the detriment of the consumer—it might actually work to the benefit of the consumer, by giving him a price better than that which you would otherwise get on the article. Is that not possible?—A. The maximum, or the "suggested" price, might become the minimum, I suppose. However, I do not think that is a thing which you can very effectively deal with by legislation; I mean, if a thing is merely a suggested price. What this proposed legislation is to deal with, as I understand it, is a definite, fixed, minimum price. If the price is in fact nothing more than, as you say, a suggested price, then of course you may have no ground for action; but what we are concerned about here is not a suggested price at all, but an actual minimum price, fixed. A good deal hangs on that term, suggestion; it all depends on the way the suggestion is made and the form that it takes. I remember some years ago an instance in connection with a manufacturer in Montreal who had been told that his employees were thinking about joining a union. He called them together and what he said to them was, Do any of you want to join a union? Now, if he put that in a pleasant, friendly tone, it would mean one thing, but if he roared it out in an intimidating tone, the effect would be quite the opposite.

Q. Well, Mr. Forsey, what I had in mind was that we should consider the extent to which manufacturers are using this practice of price fixing. I think that we should be very careful today that we do not do what your organization refers to as changing from one evil to a greater evil in this matter of prices. Now, here is a very interesting point brought about in your answer on this difference between a suggested price and an enforced price; I mean, a minimum, a fixed minimum. There are a great many prices, minimum re-sale prices in this country that are suggested, even the labels on the bottles carry the price on them, and there are others which are hard to fix and which, as you have said, are obviously unfair. I think when you talk about the volume of retail trade in Canada which operates under price control we have to consider how much of that is subject to a penalty, and that we should have some idea of the proportion of retail trade which would be affected.—A. Presumably the committee will have evidence on that from the various trade associations and so on, and from individual retailers, who can speak with positive knowledge in that respect. I didn't pay much attention to this business of a maximum price being fixed, because it seemed to me that that was pretty clearly ruled out by the terms of reference.

By Hon. Mr. Lambert:

Q. Dr. Forsey, I understood you to say that you have not had time to consider the effect on the cost of living of the price maintenance system. Would you be interested in having more time, if it was available, in which to submit more evidence on that point?—A. If the committee wants us to do so, we should be quite willing to make an attempt. My own feeling is that the committee will get better information, faster, from the particular trade witnesses who come before the committee. I am quite prepared on behalf of my organization to make an attempt to do that, but I suspect that you would get more complete information and much more exact information from trade witnesses.

Mr. THATCHER: Might I interject there to say that that information was rather one-sided?

By Hon. Mr. Lambert:

Q. My point is really brought out in my next question. You will agree, and I think you admitted, that the consumer interest is the prevailing interest in connection with this whole investigation?—A. Yes.

Q. And that your organization represents a very considerable scattering of the general body of consumers. Now, is it correct to assume from your statement that you favour having price maintenance legislation?—A. Yes.

Q. As a minor step towards the objective of price control which your organization is advocating; is that so?—A. No, I would not call it a minor step towards that. We favour it in itself. I do not think it is necessarily a step in that direction. I was not trying to suggest that it was a step in that direction.

Q. You said very definitely that it was a minor step, a minor step towards what?—A. Towards getting lower prices.

Q. I see. That is very important because my thought, in listening to you, was that your emphasis was placed upon humanitarian grounds rather than on economic grounds, on the actual price foundation or the actual price structure. And now, if I am simplifying your position too much I think it would be important to clarify that distinction; in other words, is your organization interested in lower prices?—A. Yes.

Q. Essentially in lower prices?—A. Yes.

Q. Not in fighting any combine in particular?—A. No, not particularly any individual or group, we are interested in the result.

Q. And the result of resale price maintenance is a form of combine?—A. It is a restriction of competition. I think the term combine is one that would apply rather to a group of people getting together, where here it may be simply some individual or some company or corporation acting on its own. I rather think that one would call a combine a larger group of individuals.

Q. We are concerned here with the possibility of an amendment to the Combines Investigation Act to deal with price maintenance?—A. Yes.

Q. To that extent you would agree that it is a form of combine?—A. Yes.

Q. Have you any fundamental objection to a so-called combine in relation to the prices at which their products are sold?—A. Our objections are to the result. Essentially, I think our position on that is the same as the position of the Act itself. As I understand it, the Act does not make a combine in itself subject to prosecution, the related part of the criminal code does not, but a combine which acts in a manner detrimental to the public interest in specific ways, mentioned in the legislation, as I recall it.

Q. The reason I asked you that was because of the statement you made. You stated very definitely your reasons for believing in the question, which, you said, was humanitarian?—A. Yes.

Q. And I assumed that you probably took some ground on which to base your views, the strictly humanitarian other than the strictly economic ground?—A. Well, we objected to it in so far as it raised prices beyond what they otherwise would be, and it is in that respect that I think the consumer should be protected. That is the position in simple terms.

Q. You feel that the large department store, the chain store distributor, would affect the price maintenance practice. In other words, would you favour competition offered by these distributing agencies as of value and in the interests of the consumer as a whole, as opposed to a system of price maintenance?—A. Do I favour the continuing existence of chain stores and department stores?

Q. My question was would you regard—do you feel that these large department stores and chain store distributors have any effect on this practice of resale price maintenance that applies to manufacturers and retailers?—A. I am afraid I am dense. I don't quite get the point of your question yet. To some extent these people, like other retailers are forced to sell at a fixed resale price. They are freer to some extent. They may have their own brands which they use to compete with the manufacturers' brands.

Q. Do you think in their price structure as a whole they have any influence on this sort of thing, do they bring any pressure to bear on this retail price maintenance?—A. I should think they must.

Q. You think they must have some influence?—A. Yes, to some extent.

Q. And in that way would you say that they were rendering a service to consumers as a whole?—A. In competing with re-sale price maintenance goods, do you mean?

Q. Yes.—A. Yes, I think so.

Q. There was reference to brands. Does it depend—I agree with what you say, but I just wanted to clarify it a little; you said that you did not think the brand on goods had anything to do with price?—A. I suggested that there was no necessary connection.

Q. Price and quality?—A. Between re-sale price maintenance and branding of goods.

Q. Just why would you say that? Have you any evidence of the point that you can give us?—A. I haven't anything to go on, except what I say in my brief there.

Q. It would not relate particularly to a private brand as opposed, for instance, to a brand used by a chain store or a department store? In many cases they have their own special brands and the manufacturer has no right to sell that brand to anyone outside of those chain or department stores; but, with respect to goods which are distributed amongst others, that is what you mean? —A. It was something much more simple than that, sir. What I had in mind was simply, for example, that the mere fact that there is an article bearing a certain name does not necessarily mean that it has got to be sold at the same price in all the shops where it is displayed. For instance, there is a particular brand of coffee. That does not mean that it must be sold at the same price by all the people who sell it all over the country. That is what I had in mind; that there is nothing, in the very nature of things, to prevent different retailers from selling that particular article at different prices; but there is something in the system of re-sale price maintenance which will prevent them from doing that.

By Mr. Fulton:

Q. I have two questions, Mr. Chairman. I would like to be quite clear on this, Mr. Forsey, in this matter of loss-leader practice; that your congress would in no way be opposed to legislation which would eliminate this practice of loss-leaders in retail merchandising practice?—A. Not with respect to loss-leader practice generally, providing reason could be shown for it. We doubt that it is of any great importance at the moment, anyway. When the question comes up, if it does, and legislation is proposed, we would have to examine the thing on its merits and see just what is involved. Sometimes you get goods, merchandise, offered at attractive prices with a move to moving stock when as a matter of business practice it is not a loss-leader. In any event, we do not think the practice is sufficiently general at the present time and under present conditions to cause any great concern.

Q. I am just trying to make sure that I understand that phase of the picture. I think both are important, and therefore, what I am talking about, my question relates to the practice which I think is generally understood as the loss-leader practice. That is a device used, as I think you will agree, as unfair competition. And now, in that sense, I take it that your congress would not have any objection to legislation making that practice illegal?—A. I would put it this way, Mr. Fulton; that if it can be shown that some particular competitive practice is producing undesirable results, then we are in favour of legislation to curb that undesirable practice; but we are not committed to the elimination of competition in all circumstances regardless of the results. We

are concerned with what the results are, and if it can be shown that a particular competitive practice is having undesirable results from the point of view of the public, then we think that something should be done about it.

Q. In other words, with respect to loss-leader practice you would base your position on whether or not it affected the public interest adversely?—A. Yes.

Q. And in respect to the retail price maintenance practice you would not go quite so far—.—A. Our approach to it is its relation to the public interest. If it is injurious to the public interest that we think is a matter for legislative control.

By Mr. Thatcher:

Q. Further to that, Mr. Forsey; if it were shown by subsequent evidence that these prices were lower because of fixing, would your congress be opposed to the practice?—A. We are interested in the results, Mr. Thatcher; if we could be convinced that the practice was desirable, that it was in the interests of the public, we might be induced to change our minds.

By Mr. Croll:

Q. Would you look at the bottom of page 6, Mr. Forsey? Do you recognize your statement—"secondly"—would you read that, Mr. Forsey?—A. "Secondly, the methods of enforcement described above involve a private system of law and punishment allowing no appeal to the established courts of justice".

Q. How do you reconcile that with the very important principle which you have enunciated?—A. Well, that is certainly an objection in principle. To be perfectly frank, I am speaking here for the membership, and I think I may say for them, as I have said here, that they are interested in results. Now, if it can be shown that this system is objectionable in its results, they will want to see it controlled. If it is not, then I do not think they are going to be terribly worried about it. That may sound like a shocking confession, but I think that is the attitude they are likely to take. They are interested in results—and I think there is a good deal in it. I am afraid that on some of these matters I am an old Tory—I am interested in results.

This is what I was going to say in regard to Mr. Fulton's question. Again, if you can show a few cases where this loss leader is working badly I would not be terribly worried. I think there has to be a substantial abuse before the law is obliged to step in.

By Mr. MacInnis:

Q. I have got Mr. Fulton's permission to ask this question. In regard to the loss leader if, after investigation such as we have had at various times into resale price maintenance, they found there was a reason for legislating against the loss leader, would you be agreeable to it then?—A. Oh, certainly. We are open to conviction on the facts. We want to study the facts and the evidence and arrive at a conclusion which seems to be indicated by the evidence. If you can show substantial abuse which requires legislation we say: Yes, deal with it.

Q. In regard to restrictions on competition, if there have to be restrictions, you would say those restrictions should be made by parliamentary law and not by private law?—A. I think that is the desirable position. I know what Colonel Croll is going to say. He is going to say that I am contradicting myself. We are interested in results but I think we would also take the position that if there are to be restrictions it is desirable that they should be public and not private restrictions. Therefore, if you can show that private restrictions are working no appreciable harm I do not think anybody is going to get all excited and bothered about—

By Mr. Croll:

Q. Does not principle mean anything?—A. I am giving you my opinion on how our people react.

Q. I know, but I am talking to Forsey, not to 300,000 people. I appreciate that you fully understand what is involved here and we are speaking to you. I am sure that the man on the lathe would say: I am only interested in the results. But he is not here; you are here—and to me that appears to be the kerenl of the whole act.—A. Again, we are dealing with legislation or possible legislation, and I have this empirical approach to the thing. Legislation is not simply a matter of principle. You want it based on sound principles, to be sure, but there are a great many things with which legislation is not called upon to deal, in my judgment. Legislation is only called for when you have got substantial, practical injury to the public interest. There are a million things which I object to in principle but where I would say there is no reason for legislation, because while this particular thing under certain circumstances might have an injurious effect it is not having an injurious effect now. So let it alone until you have got substantial, practical cause for legislation. There are enormous numbers of things that need to be legislated upon. I do not think it is worthwhile wasting parliament's time, or anyone else's time, in dealing with things which are not of practical importance. I think this matter is of importance, but if it were just a matter of principle, without any substantial effect at the moment, I would say: why bother with legislation?

Q. May I follow that then with one more question? Under certain circumstances which you may consider beneficial would you say we should set up what we might term a super government—a government by private interests?—A. No, but that is purely a hypothetical question. After all, if you have got a super-government, a government by private interests, there would be an immediate, grave, substantial, and unmistakable injury of the public interest—in my judgment. But, if you say in a particular case: Here is something which, theoretically, pushed to its logical conclusion, would mean thus and so—then I say legislation is not concerned with pure matters of theory or logical conclusions. It is concerned, in my judgment, or ought to be concerned, with substantial injury to the public interest, and with preventing substantial injury to the public interest. There are thousands of things where we might say: this principle is bad, or that principle is bad—but you do not call upon parliament to legislate upon them unless you think there is a valid reason for doing so.

The CHAIRMAN: Perhaps Mr. Fulton can return to his question.

Mr. FULTON: Leaving the loss leader question, on which I do not think we can arrive at any finality—because you are not convinced there is any substantial detriment to the public interest—I would like to turn again to the legality of these contracts. Please be assured that I do not want to involve you in any legal argument but I think it is necessary to make one reservation. I understood you to say this: In your understanding, contracts such as those we have been discussing to maintain resale prices, would not be enforceable in the courts? That was your statement?

The WITNESS: That was my understanding of the position. I think I was basing myself largely on what the commissioner under the Combines Investigation Act said in one of these reports.

Mr. CROLL: And what he said here in evidence.

Mr. FULTON: Let us get that straight. All he said here was he would not think the present Act was sufficient to justify prosecution of somebody on a charge of resale price maintenance—which is a very different thing from

the question I am asking Dr. Forsey now. I understood Dr. Forsey to say—simply as a statement, and I am not wishing to get into any legal argument, but I do think it is necessary to make a reservation if that was your statement—I understood you to say that these contracts, individual contracts to maintain resale prices, would not be enforceable in the courts?

Mr. BOUCHER: In England?

The WITNESS: This is a quotation from the report of the commission, the final report on the Proprietary Articles Trade Association, 1927, at page 24:

> Wampole, Colgate, and others have for many years adopted price maintenance agreements. They have absolutely refused to sell their branded goods to a wholesaler or retailer who would not undertake to maintain the selling price fixed by the manufacturer. Contracts such as these in Canada are unenforceable at law.

That is what I was basing myself on. I was assuming that the commissioner had good legal opinion on that or he would not have said it. Being a layman I am not in a position to question—

By Mr. Fulton:

Q. Your statement is based upon that statement of the commissioner?—A. Yes.

Q. Then would it not be necessary, to be strictly accurate, to limit the statement to contracts of that particular type which is then being discussed by the commissioner, and not make it of general application to contract generally or agreement to maintain resale prices?—A. Possibly. I was under the impression that would apply more widely but, strictly speaking, it does apply only to prices in the contract that he mentions. My impression was it did apply more widely, but that may be my ignorance of legal matters.

In my own defence, I feel obliged to add that you can get pretty good legal opinion for quite a variety of conclusions on these matters—even judicial opinion.

Mr. THATCHER: On a point of order, I wonder if we could not call Dr. Forsey back, there being only ten minutes of free time left.

The CHAIRMAN: I think we can go on until one o'clock. I have only three others who want to speak.

The WITNESS: I am afraid I have been too long.

The CHAIRMAN: Mr. Stuart is next.

Mr. STUART: I would just like to read Section 29 of the Combines Investigation Act:

> 29. Whenever, from or as a result of an investigation under the provisions of this Act, or from or as a result of a judgment of the Supreme Court or Exchequer Court of Canada or any superior court, or circuit, district or county court in Canada, it appears to the satisfaction of the Governor in Council that with regard to any article of commerce, there exists any combine to promote unduly the advantage of manufacturers or dealers at the expense of the public, and if it appears to the Governor in Council that such disadvantage to the public is facilitated by the duties of custom imposed on the article, or on any like article, the Governor in Council may direct either that such article be admitted into Canada free of duty, or that the duty thereon be reduced to such amount or rate as will, in the opinion of the Governor in Council, give the public the benefit of reasonable competition. 1923, c. 9, s. 23; R.S., 1927, c. 26, s. 29.

In your opinion, could that particular section of the Act be used to greater advantage in Canada?

The CHAIRMAN: Mr. Stuart, our limit here is resale price maintenance. Your question, of course, will have to tie into that?

By Mr. Stuart:

Q. Yes. In your opinion, have manufacturers in Canada taken advantage of tariff protection to keep their prices way above that for the same article manufactured in the United States?—A. I think in some instances, yes, but I confess I was not prepared for that particular kind of question and I should not want to go into any kind of detail on it without having time to prepare a proper statement.

I do not think this particular remedy is likely to be sufficient in dealing with the question or problem before this committee. If you want my opinion—this whole thing is pretty "iffy" as Mr. Roosevelt would say—I doubt that, even pushed to the limit, it would meet the problem this committee has to deal with.

Q. There is one other question and it is in connection with price leaders that they speak of in different stores—

Some Hon. MEMBER: Loss leaders.

By Mr. Stuart:

Q. Loss leaders. In your opinion, would they be of benefit to more people than they would harm?—A. Which?

Q. A loss leader. Would it benefit a greater number of people than it would injure? In other words, could I put it this way? If a certain article sold normally for a dollar and, as a loss leader, if it was marked down to 75 cents, would that benefit a greater number of people than it would harm?—A. I do not think it is possible to give a categorical answer. Something depends upon how often it happens; something depends upon what kind of article it is; something depends upon why its cost is what it is; and something depends upon a variety of factors. I could not give you a categorical answer.

Q. Could it ever injure a greater number than it would benefit?—A. Oh, yes, I think it could.

Q. It could?—A. Yes, but if it were an occasional thing it might not injure anybody much at all.

The CHAIRMAN: The minister is next.

By Hon. Mr. Garson:

Q. I gather from your evidence that you are of the opinion that in theory there is no reason why resale price maintenance should not apply to unbranded goods just as much as to branded goods?—A. I do not see why it should not. It is probably easier to apply it to the branded goods.

Q. Have you any information as to whether in fact there are any unbranded goods ever under resale price maintenance?—A. No, I have not.

Q. I want to make sure that I carry away from the meeting here a correct over-all impression of the effect of your brief. I gather that your organization is in favour of public control of prices under present circumstances?—A. Yes.

Q. But that if you cannot have that public control you are opposed to private control which is exercised quite independently of parliament or the courts?—A. Yes.

Q. And in the absence of price control in the sense—in the public sense, in which you favour it—you favour free enterprise being really free and really enterprising?—A. Yes.

By Hon. Mr. Golding:

Q. This has been an interesting discussion this morning but, as one member of the committee, I am particularly anxious to know just how this practice has

affected the consuming public, if it has affected them detrimentally, and what it has had to do with the increased cost of living? Now, I think I am justified in drawing a conclusion that so far as Dr. Forsey is concerned, you have no evidence, doctor, on which you can put your finger, to show that it has acted detrimentally to the public or that it has increased the cost of living? Am I right in that?—A. Nothing but what is in here.

Q. But actually you have not pointed to anything in your evidence to show that, am I justified in drawing that conclusion?—A. Yes, in the time at your disposal we were completely unable to produce any case by case history of the thing. That is all. I am sorry, but we could not.

The CHAIRMAN: Mr. Carter.

By Mr. Carter:

Q. While we were talking about loss leaders I was wondering if Dr. Forsey would express an opinion of the effect of the loss leader on an industry such as the baking industry? They sell wholesale to chain stores, they also have their own retail outlets, and they themselves are in the retail business. When the big chain stores sell that bread below cost does that not have a detrimental effect on the other retailers and the industry as a whole?—A. It may have a detrimental effect on the other retailers, yes. I do not think that is the whole story, however. I think you have got to look at the whole story and weigh one detrimental effect against another beneficial effect.

Q. The nature of the industry itself is such that in most cases they are manufacturers and retailers at the same time.

By Hon. Mr. Lambert:

Q. Is it not important to consider in this question what "below cost" is?—A. Highly important.

Q. Because, there are certain well-known chain stores that do their own baking and sell their bread unwrapped or wrapped in competition with established bakeries which retail bread. Their prices are lower but I doubt very much if they are "below cost".—A. That is exactly the reason, Senator Lambert that I tried to cover myself on the point with Mr. Fulton. All that glitters is not gold, and everything that is called a loss leader is not a loss leader.

Q. I think, Dr. Forsey, that if you could arrange for your organization to give us a more detailed, complete statement based on data for these things, it would be very valuable from the consumers' point of view?—A. I am willing to try.

Q. I am not suggesting that you do it, you know, but I think it would be valuable if you could give us more of that information here?—A. It would have been most satisfactory to us to be able to do it, but I regret that with our facilities and the time at our disposal it was not possible. If the committee is going to sit long enough I woud be prepared to try it—but it is not something that I can do overnight.

The CHAIRMAN: Senator Fogo?

By Hon. Mr. Fogo:

Q. Most of the questions I had in mind have been answered but I would take Dr. Forsey back to his mention of the national labour organizations. I wonder if he omitted one. Is there an organization known as the Canadian Federation of Labour?—A. You may call it an organization if you want to.

Q. I am not calling anything; I am asking you a question?—A. In so far as it exists—and we have grave doubts of its bona fides on every ground. It is not a labour organization in the sense we use the word in the labour movement; it is completely disowned by all bona fide unions. It is "a roaring farce, and a resounding fake", to use a phrase of my old friend Mr. Meighen.

Q. In your opinion what is the approximate membership of the Canadian Federation of Labour?—A. I can give you exactly what the figures are. It claimed 3,971 members at January 1, 1951. It had then, apparently, six local branches—having lost one in the course of the year.

The CHAIRMAN: We are now in the second round—unless any person who has not already spoken wishes to do so now? The first person on the second round then, is Mr. Croll.

By Mr. Croll:

Q. Following the questions asked by Senator Golding and Senator Lambert, you did have an executive meeting of your organization last week, and you dealt with some three matters, one of which was price maintenance.—A. I do not know how many were dealt with, I was not present.

Q. But price maintenance was dealt with by the executive?—A. Yes.

Q. They passed a resolution?—A. Yes.

Q. Unanimously?—A. So I understand.

Q. I am now trying to find out just how far we can carry the views of the organization—.—A. I am afraid that with respect to what took place at the executive council meeting you had better ask Mr. Harry Chappell, our secretary-treasurer.

Mr. CHAPPELL: If I may answer that: Yes, it was a completely unanimous decision with the most largely attended executive council meeting we have had for years.

Mr. BEAUDRY: I would merely like to correct the record, Mr. Chairman. I said earlier that I was fully in accord with artisans taking all means to preserve their dignity and, in general, to preserve the dignity of man. I would like to interpolate the word "legal" in front of the word "means".

By Mr. Fulton:

Q. The only point I want to clear up has to do with the answer Dr. Forsey made in regard to the loss-leader practice. I want to make it clear that my question with regard to loss leaders refers to that practice which is the practice of selling brand named goods at less than cost in order to attract business from competitors. It is with respect to that practice my questions were asked. I would now, having defined it that narrowly, repeat the question: Does your organization at the moment at any rate take the position that it would be opposed to legislation making that practice illegal?—A. Not if there were shown to be substantial injuries resulting. If you merely get an occasional flash in the pan, the occasional instance, I do not think it is worth while bothering about legislation. But, if you can show it is a widespread practice causing injurious results, then by all means deal with it by legislation.

Q. Would you attempt to carry it one stage further—that the retailers contemplating legislation and the situation arising out of legislation, are justified in being afraid of the consequences of that practice—just as you feel that undesirable situations may arise out of resale price maintenance?—A. That they are justified in being afraid of the consequences of this proposed legislation?

Q. No, in being concerned over the possibilities of what may follow if resale price maintenance is made illegal without at the same time making illegal that particular loss leader practice to which I have referred?—A. No, I will not go so far as to say that and certainly I doubt if there is much there to worry about.

Mr. CROLL: Do you know, as a matter of fact, that in the United States—perhaps not the majority but a very large number of states have found it necessary to deal by legislation with the question of the loss leader?

The WITNESS: No, I do not know.

Mr. STUART: Speaking of the question of loss leader would there be any great difference between one item shown as a loss leader and the case where a clothes merchant in a town comes out with a big ad that he has marked down all his merchandise 20 per cent? If a merchant wants to come out with an advertisement that all the merchandise that he has is at a 20 per cent discount, is there any harm in it?

Mr. THATCHER: That is not a loss leader.

The WITNESS: Certainly, it is not a loss leader.

Mr. CROLL: The fellow that does that is completely lost after a while.

The WITNESS: There is no leader about it, because he is marking down everything.

The CHAIRMAN: Order.

The WITNESS: I am sorry that I interrupted. What I was going to say is that there might not be any loss.

Mr. STUART: That is exactly what I believe. I do not believe any retailer is going to sell below his cost?

The WITNESS: He may, in some instances.

Mr. BEAUDRY: Then, he does not fall into the practice of loss leaders.

The CHAIRMAN: In conclusion, does either counsel want to direct any questions?

Mr. PHELAN: I would like to ask a question or two which may be relevant.

By Mr. Phelan:

Q. The committee were obviously interested, Dr. Forsey, in getting information in the field where prices were maintained and where they were not—getting some statistics?—A. Yes.

Q. Would you tell me if this investigation to which I am going to refer might be of benefit to the committee. *Fortune Magazine,* and a number of other United States national oragnizations, have made a report very recently on extensive inquiries into that field. They selected a number of price maintained articles and they took prices in Washington where they have no price laws, and they compared them with prices in adjoining states where they have price laws. They got some very important results, showing that in Washington prices were lower. Would the situation there be comparable so that this report would be of any help to the committee?—A. I should suppose it would, yes. Because I think that generally the merchandising practices in Canada and the United States have a good deal of similarity. After all, a great many manufacturers here are branches of American firms, and the same is true of a certain number of retail firms.

Q. *Fortune* has a good article on it.

Mr. THATCHER: Before you leave that question—

Mr. BEAUDRY: May I suggest, very respectfully, that I think we are asking the witness to give us strictly an opinion—an answer based on his own personal opinion.

Hon. Mr. GARSON: But I want to point out that it is an answer based on his own expert opinion as an economist. The question is whether the comparison made between the resale price maintained prices in certain states in the United States, and prices in other states where they are not maintained,

would from an economist's point of view, be of value before this committee. I do not know any person around the country for whose opinion I would have higher regard in this context than Dr. Forsey?

The WITNESS: The minister is a good friend of mine and that should not be taken too seriously.

Mr. PHELAN: All I was going to ask was whether you think it would be of value?

The WITNESS: If you want me to be more precise, I would not consider it to be conclusive, because there would be a large difference between the American situation and the Canadian situation, but I think it would have some value.

The CHAIRMAN: Mr. Thatcher.

Mr. THATCHER: Following Mr. Phelan's question, I think it was a good one, but I do not see why we should take American prices. Would not the proper procedure be for this committee to call in companies who sell merchandise at resale prices and at other prices—and get a long list of prices and we can compare the two. It seems to me that would be the way for the committee to get at the Canadian situation.

The CHAIRMAN: At the next meeting of the steering committee we will know what briefs we are to receive and we will be in a position to know what witnesses we have to call.

By Mr. Phelan:

Q. I think you have probably covered this second question but I put this illustration to see if I get a correct conception of your position. We know from experience that two merchants in the same town may sell at different prices. The prices of one are controlled in part by the fact that he is in a low priced district, gives low service, and there are other factors. The other man's prices are higher because he is in a high priced district and so on. The customer has the right to decide whether he wants to buy at the higher price or the lower price?—A. Yes.

Q. Is it your objection that with resale price maintenance the customer has not that privilege?—A. That is one of our objections.

The CHAIRMAN: Tomorrow afternoon at 3.30 we will hear the Allied Beauty Equipment Manufacturers and Jobbers Association whose brief has been received; Thursday we will hear the Canadian Pharmaceutical Association, and Friday the Canadian Retail Association Federation whose brief is to be distributed.

Mr. THATCHER: On a point of order are our meetings to go on regularly from 10.30 until 1.00? Is that hour fixed?

The CHAIRMAN: I would hope so because it is the desire of most of us that we complete our proceedings as quickly as possible after due study.

The meeting adjourned.

APPENDIX A

SUBMISSION

of

THE CANADIAN CONGRESS OF LABOUR

to

THE JOINT COMMITTEE ON COMBINES LEGISLATION

Ottawa, Ontario.
November 20, 1951.

Messrs. Chairmen and Members of the Committee:

The Canadian Congress of Labour regrets that in the time at its disposal it has not been able to prepare as complete and fully documented a submission on this subject as this Committee has a right to expect. It was only on November 6 that the motion for the Committee's appointment passed the House of Commons. It was only on November 13, late in the afternoon, that the Congress was told to have its brief in the hands of the Committee by November 19. This left three working days to assemble the material and draft the submission. This is not enough.

It might perhaps be supposed that, with its special interest in everything that affects prices and the cost of living, the Congress would have had all the material gathered and laid away, in cold storage as it were, ready to be produced at the drop of a hat. This is not so. The Congress does not believe that either the Combines Investigation Act (with the related provisions of the Criminal Code), or the prohibition of resale price maintenance, will have any marked effect on the cost of living. In the words of Dr. Johnson, "It is setting up a farthing candle at Dover to give light at Calais." So the Congress has preferred to concentrate on price control, which it thinks far more effective.

However, prohibition of resale price maintenance was the solitary new measure the Government offered for dealing with the high and rising cost of living. As such, the Congress welcomed it, in the spirit, "Small mercies thankfully received." The Congress would still welcome it, and hopes this Committee will recommend it.

Resale price maintenance is an old story in Canada. A whole string of reports under the Combines Investigation Act have noted its existence, and condemned it.

The two reports on the Proprietary Articles Trade Association, in 1926 and 1927, both dealt with it. This Association, it may be recalled, comprised 157 manufacturers of drugs, 28 wholesale druggists, and 2,732 retail druggists. The 1926 interim report says (p. 18): "The agreements could not be clearer as to the intention to fix resale prices. Moreover, the intention has been carried out, as evidenced by the list of approximately 600 protected articles, with their minimum wholesale and retail prices attached, which was published by the Proprietary Articles Trade Association prior to August 28, 1926, on which date the new prices came into effect. True, the individual manufacturers have suggested the prices for their particular articles; but... the actual fixing of prices, and the machinery to establish them are the work not of the individual manufacturers but of the Association as a whole."

This last sentence, however, is qualified by something which appeared in the final report, in 1927. At p. 24, that document says that Wampole and Colgate, "and others," "have for many years adopted price maintenance agreements. They have absolutely refused to sell their branded goods to a wholesaler or retailer who would not undertake to maintain the selling

price fixed by the manufacturer. Contracts such as these in Canada are unenforceable at law, but according to the evidence, such manufacturers have found virtually no difficulty."

In other words, in the drug trade at that time, both individual manufacturers and groups of manufacturers acting with the wholesalers and retailers, fixed resale prices for a large number of goods.

The final report on the Proprietary Articles Trade Association noted (p. 17) that "most tobacco lines" handled by P.A.T.A. druggists were "handled on a minimum price basis." Eleven years later, the investigation into the tobacco combine showed that Imperial Tobacco, through its subsidiary, Imperial Tobacco Sales, was not only fixing resale prices for Imperial products but helping to fix them for products of other tobacco manufacturers as well. Imperial Tobacco Sales' contracts provided that the dealer should not sell Imperial products below the price fixed by Imperial, nor other products below the prices fixed by their manufacturers. (Report on the Tobacco Combine, 1938, pp. 24-27. The Report of the Royal Commission on Price Spreads, 1935, p. 53, had already noted this.)

The Dental Supplies Report, 1947, also dealt with resale price maintenance. Here the situation seems to have been that the fixing of prices was primarily the work of Canadian Dental Trade Association, a regional section of the American Dental Trade Association. The American association included manufacturers; the Canadian didn't, as there were practically no manufacturers in Canada. The Canadian dealers did the price-fixing, "frequently without discussion with the American manufacturers." Their defence was that really they were just telling their members what they should do "when faced with suggested resale prices by manufacturers." (P. 36.) The Report commented that "Even if in fact members of the association were merely agreeing to maintain resale prices suggested by American manufacturers, such an agreement would result in preventing competition or lessening it to a very great degree." (P. 38) Later, it said: "In some cases agreement involved the maintenance of resale prices suggested by the manufacturer." (p. 84.)

In the Optical Goods Report, 1948, the Commissioner drew attention to the fact that American Optical, from 1939 till early in 1947, shortly after the first hearings in the investigation, "controlled minimum resale prices," and that even after it stopped doing so, the trade had got so accustomed to "the higher level of prices," that "few were inclined to charge below the minimum, and a great many were able to continue with prices considerably above the minimum." (p. 79.) The Report added: "The basic case against policies of resale price maintenance generally is that price competition amongst dealers is thereby eliminated in the sale of the goods affected. In lines of business in which goods are supplied by many manufacturers, only some of whom prevent sales below fixed minimum resale prices, consumers have some measure of protection. Consumers in such cases can turn to the products of other manufacturers who impose no such restriction. Even this alternative, the availability of goods not so controlled in price, can be a most inadequate public safeguard. It is especially inadequate when a considerable part of the goods in strongest public demand (a demand often stimulated by the suppliers) cannot be sold below fixed minimum resale prices."

The Report on the Bread-Baking Industry in Western Canada, in 1948, also called attention to resale price maintenance: "The evidence establishes that the bakers were concerned not only with the fixing and maintenance of a uniform wholesale price, but also with the fixing and maintenance of a uniform retail price. The policy of retail price maintenance in itself prevented retailers from passing on the benefits of rebates and discounts to consumers." (p. 80).

The Report on the Match Combine, 1949, devoted a whole chapter to resale price maintenance. This chapter concludes: "While it is evident that

certain trade groups have been anxious that Eddy Match should establish resale prices and see that they are observed so that the members of such groups should be protected from active price competition, it is equally evident that Eddy Match has employed the policy of resale price maintenance for its own purposes in limiting the effects of competitive selling in periods when independent companies were operating. The objective of Eddy Match in this direction as in others has been to maintain, as far as possible, non-competitive conditions in the Canadian match industry and to prevent the development of any competition which would disturb the pricing policy which it has established on the basis of its substantial control of the industry." (p. 98.)

The next official comment on resale price maintenance seems to have been in the Report of the Royal Commission on Prices, 1949. In Volume I, at p. 28, that Report said: "Resale price maintenance, like other forms of restrictive practices, does offer what appears to the manufacturer and distributor to be a happy relief from the unending struggle against the harsh correctives of the free market system. But the solution we think is illusory. It not only vitiates the spirit of enterprise by which all commercial and industrial life is nourished, it deprives the consumer of his right to seek out and patronize the more efficient distributors, namely, those who over a period of time can offer goods for sale at prices lower than their competitors." At p. 41, it added: "Throughout our inquiry we have been impressed by the degree to which individual manufacturers fix the resale prices of their products and so narrow the area in which price competition amongst wholesalers and retailers is operative. In view of the extension of this practice, we recommend that the Combines Investigation Commission give careful study to this problem with a view to devising measures to deal with it."

In its second volume, at pp. 256-9, this Report said: "Resale price maintenance has been referred to frequently both in this report and in the evidence as a practice which is responsible for increasing costs of distribution. . . . A few firms . . . admitted establishing resale prices on such products as shirts and shoes . . . . It is evident that the practice is growing and is having a significant effect on the prices which the public has to pay for goods in a number of lines of trade.

. . .In the United States the Miller-Tydings Act has legalized resale price maintenance in interstate commerce. We consider it would be unfortunate for Canadian consumers if any such proposal were to receive legislative encouragement in this country. Indeed positive action to discourage the practice or at least to remove its undesirable features would, we think, be more in the public interest."

The Report then quoted the then Commissioner under the Combines Investigation Act against resale price maintenance, and concluded: "Our examination of the problem of resale price maintenance has necessarily not been complete enough to permit a conclusion as to all the circumstances in which the practice should be declared to be against the public interest. From the examples we have examined, it appears that as a whole the disadvantages to the buying public greatly exceed any possible advantages. In certain circumstances, as, for example, a combination of dealers arranging with a manufacturer to adopt resale price maintenance, or where several manufacturers jointly agree upon such a policy, the Combines Investigation Act in its present form would appear to provide a remedy for undue restriction. A different situation arises where a single manufacturer, acting independently of other manufacturers and without pressure from dealers, requires all dealers to maintain the minimum resale prices which he establishes. Price competition amongst dealers in the sale of these particular goods is thereby seriously limited if not eliminated. In dealing with such a case, the effect on the public would be determined by consideration of many factors, including the volume of the

manufacturers' sales of these goods in relation to the total sales of goods of the same class and kind, the availability of other similar goods which are not subject to such restriction, and the extent to which the customs tariff may permit or prevent imported goods from competing with the price-protected lines. Similar consideration would apply where the practice takes a less definite form and is one of suggestion rather than of insistence.

The Committee will have noted that in a number of cases of resale price maintenance dealt with in reports under the Combines Act, the practice has been the work of an association or group, and, as such, covered by the present terms of the Act. This, however, was not true of some of the cases in the P.A.T.A. Report, nor of the action of Imperial Tobacco, American Optical and Eddy Match. The Congress believes it is not true of various other cases. For these, if the practice is judged undesirable, new legislations, in the terms recommended by the MacQuarrie Committee, would be required.

Is the practice of resale price maintenance by an individual manufacturer undesirable? The Congress thinks it is.

Unmistakably, resale price maintenance limits competition. If the basic assumption of the Combines Investigation Act is correct (and it has apparently been accepted by Parliament and by the electorate, which continues to re-elect the party responsible for it), then anything which limits competition is, on the face of it, at least suspect. The burden of proof that a restrictive practice is desirable rests on those who advocate it. The Congress has examined the arguments of those who advocate or defend resale price maintenance, as presented in the MacQuarrie Report, in the British Statement on Resale Price Maintenance (White Paper of June 1951), and elsewhere, and is not impressed.

The objections to resale price maintenance are excellently summed up in the British Statement: "There is plenty of evidence that the costs of trading vary considerably from one shop to another; indeed it is obvious that this must be so. One shop carries a wide range of stock, runs an expensive delivery service and gives long credit; another concentrates on quick-selling lines and trades on a "cash and carry" basis. Both shops may serve the public well but it is clear that they are providing two different kinds of service and that one costs more than the other. For every £1 of sales he makes, the first shopkeeper may spend 5s. in costs whereas the second spends only 4s.; yet on all goods which are price-maintained both shopkeepers must take the same gross margin of profit to cover these different levels of cost.

"In the Government's view these differences in trading costs should be reflected in differences in prices to the public. Some people prefer to trade at a shop which delivers their goods and allows them credit. It is reasonable that, if this kind of service costs the shopkeeper something extra, they should pay for it in the prices of the goods. Other people are content with a lower standard of service and if it costs less they should pay less. The Government is expressing no view as to whether any one standard of service is 'better' or socially more desirable than another. The Government holds, however, that the public should have a free choice between different standards of shop service at different prices just as they have a free choice between different qualities of goods at different prices. This free choice is at present eliminated in a wide field of trade by the operation of resale price maintenance.

"It is often said that the practice does not prevent traders from competing in the services they give. But this begs the question. It is true that in order to attract more customers a trader may increase the amount and quality of his service. But the potential customers may be comparatively indifferent to extra service, whereas they would be glad of the original amount of service at a lower price. It is this alternative which resale price maintenance stops the trader providing. This has two important consequences. First, the result may be that more service is being provided in shops than people would want to pay for, if

they had the choice of less service and lower prices; clearly we cannot well afford to waste resources on services that are not wanted. Secondly, the result may be to slow down improvements in the efficiency of distribution generally. A trader who by improved methods achieves the kind of service which the public want at low cost should be imitated to the general benefit of his trade; but the incentive to imitate and then outstrip his improvements does not exist unless, by passing on the benefits of his enterprise in lower prices, he can attract customers away from the less enterprising.

"To sum up, the Government sees two main objections to the practice. First and foremost, it has the economic effect of stifling competition and of preventing shopkeepers from making price-reductions which they may be able and willing to make. Secondly, the methods of enforcement described above involve a private system of law and punishment allowing no appeal to the established Courts of Justice." (Summary in *Cartel*, July 1, 1951, pp. 30-31; a publication of the International Co-operative Alliance.)

The British Statement deals with several defences of resale price maintenance:

(1) "Housewives like fixed retail prices because they find it convenient to know in advance how much they will be charged for branded goods". The Statement observes, temperately, that it is "difficult to believe that when housewives learned that goods which had been on sale at (say) a shilling could be obtained in some shops for (say) elevenpence they would prefer to pay the higher price. (It is worth noting, too, that if this argument were right, traders could have nothing to fear from 'price-cutting' since the public would prefer to make their purchases at shops charging the full price)". It did not add, as it might have, that this particular defence of resale price maintenance is akin to the defence of hunting on the ground that "the fox likes it".

(2) Branding and fixed resale prices must go together. The Statement points out this isn't so.

(3) "If manufacturers were to allow their branded goods to be sold at reduced prices, people would suspect that the quality was inferior. This is very doubtful; most branded goods are put up in a standard format. Few people would expect two bicycles of the same make or two copies of the same book or two tins of the same brand of fruit or boot-polish to differ in quality merely because they were sold at different prices in different shops. In any event, . . . they could always pay the higher price if they so desired".

(4) "The prices of many branded goods are not excessive in the 'average' shop. The point, however, is that no single price can be 'fair' for all shops, since the services given and the costs of trading vary from shop to shop. Different qualities of service should vary in price like different qualities of goods".

(5) "Resale prices fixed by manufacturers have in some cases been below what the goods would fetch in the open market in times of scarcity . . . Nothing now proposed by the Government, however" (in this country by the MacQuarrie Committee) "will prevent manufacturers from continuing to fix maximum resale prices".

(6) Resale price maintenance is essential to prevent the "loss leader". "The argument fails, in the Government's view to take account of the differences in conditions between the years of deflation and unemployment in which the practice of resale price maintenance was built up and the present era of full employment and a high level of demand . . . The Government does not believe that in the absence of resale price maintenance extreme forms of price-cutting and other means of forcing sales would be likely in conditions of full employment to become a widespread or general feature of trading.

"Secondly, the Government believes that the argument to a large extent assumes the existence of resale price maintenance and would cease to be valid in its absence. For example, a background of rigidly maintained prices is just what the price-cutter needs to make his 'loss-leader' tactically effective. If it were general for prices to vary somewhat between different kinds of shop, no single price reduction would stand out in a spectacular way. Moreover, where variations in price are normal, it becomes impracticable for traders to respond to a particular price-cut by ceasing to stock the line of goods concerned and pushing some competing brand instead. The assumption is that competing brands will also be reduced in price by some retailers who can afford to sell at smaller margins." (Summary in *Cartel*, July 1, 1951, pp. 31-33.)

The Congress wishes to draw the Committee's attention also to the price-reductions on thousands of articles last summer in New York when the Supreme Court invalidated the "non-signer" clause in state "fair trade" Acts. The total effect on the American cost of living was small, but, again, "Small mercies thankfully received." It is at least possible that, if the MacQuarrie Committee's recommendations are adopted, Canada also may have a considerable number of small price reductions: a few drops of water in a thirsty land.

The Government and Parliament of Canada have apparently set their faces like flint against public control of prices. Yet they have tolerated for years private control of prices by individual firms, "behind closed doors," as the British Statement says, "and without any supervision by the courts or by Parliament." The Congress thinks it is time this paradox was ended. If it can't be ended by imposing public price control in the public interest, let it be ended by stopping, or trying to stop, private price control in the private interest. If we must have "free enterprise," let us have it really free and really enterprising, for retailers and consumers, not just for manufacturers. The Congress reiterates that it is not very sanguine about the effectiveness of attempts to restore competition and make the "free economy" really free. But that seems to be what the people want. Anyhow, they voted for it. Surely it is high time to let them have it, or at least to try.

Respectfully submitted.

HOUSE OF COMMONS

Fifth Session—Twenty-first Parliament
1951

(Second Session)

JOINT COMMITTEE OF THE SENATE AND THE HOUSE OF COMMONS

ON

COMBINES LEGISLATION

Joint Chairmen—The Honourable Senator A. L. Beaubien
Mr. James Sinclair, M.P.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 3

WEDNESDAY, NOVEMBER 21, 1951

WITNESSES:

Mr. E. Swenson, President, Allied Beauty Equipment Manufacturers' and Jobbers' Association, and Mr. M. E. Corlett, Counsel for the Association.

OTTAWA
EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY
1951

MINUTES OF PROCEEDINGS

WEDNESDAY, November 21, 1951.

The Joint Committee of the Senate and the House of Commons on Combines Legislation met at 3.30 o'clock p.m. The Joint Chairmen, the Honourable Senator A. L. Beaubien and Mr. James Sinclair, M.P., were present, the Honourable Senator Beaubien presiding.

Also present:

For the Senate: The Honourable Senators Aseltine, Burchill, Fogo, Hawkins, Horner, Lambert.

For the House of Commons: Messrs. Beaudry, Boucher, Carroll, Carter, Cauchon, Dickey, Fleming, Fulton, Garson, Harkness, Harrison, Jutras, MacInnis, Mott, Murray (*Oxford*), Roberge, Shaw, Stuart (*Charlotte*), Thatcher.

In attendance: Mr. E Swenson, President, Allied Beauty Equipment Manufacturers' and Jobbers' Association, and Mr. M. E. Corlett, Counsel for the Association.

Mr. Corlett was called, tabled a brief on behalf of the Allied Beauty Equipment Manufacturers' and Jobbers' Association, which is printed as *Exhibit A* to this day's Minutes of Proceedings and Evidence, was heard and questioned thereon.

Mr. Swenson was called and questioned.

The witnesses retired.

At 6.20 o'clock p.m., the Committee adjourned until Thursday November 22, at 10.30 o'clock a.m.

A. L. BURGESS,
Clerk of the Committee.

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EVIDENCE

NOVEMBER 21, 1951

3.30 p.m.

The CHAIRMAN: Gentlemen, we have a quorum, if you will come to order. We have here today Mr. M. E. Corlett. May I ask members of the committee who wish to ask questions to kindly raise their hands. That will make it easier for the Chairman of the Committee to see and recognize you.

All right, Mr. Corlett:

Mr. M. E. Corlett, Counsel, Allied Beauty Equipment Manufacturers' and Jobbers' Association, called:

The WITNESS: Mr. Chairman and honourable members, the Allied Beauty Equipment Manufacturers' and Jobbers' Association is a national organization in Canada of manufacturers and distributors of beauty supply products being sold to hair dressing establishments and barber shops throughout Canada. To that extent this association is different from Canadian Toilet Goods or the pharmaceutical association where the products of their members for the most part are sold eventually across the counters to the consuming public.

Now, gentlemen, I am appearing as counsel. We have prepared a brief which was submitted to the clerk of your committee and I believe there were sufficient copies to be distributed, and without wasting the time of the committee—I believe I am precluded from so doing anyway—I do not propose to read it. All the information setting forth the views of this association is there. With me today is Mr. Swenson, Toronto, who this year happens to be the president of this association. He is a manufacturer of beauty supply products and has been in the business for approximately 30 years, and I think that there are many questions of a technical nature which he will be able to answer far better than I could, and I presume that you will direct such technical questions to him.

Now, to merely summarize, if I may, what we set forth in our brief in a nutshell, I would say that the association is opposed to the recommendations of the MacQuarrie committee as set forth in the interim report dated October 1, which dealt solely with this question of resale price maintenance. And when I say that I want to make it clear that anything I have to say or that Mr. Swenson may have to say later will relate strictly to the beauty supply industry. We do not presume to know just what other industries may feel about it; but we feel that this is one of the weaknesses in the committee's report, that the ins and outs of various industries are such that in our opinion it is not possible for one to say that resale price maintenance should be abolished in all industries; or, conversely that it is advantageous or helpful in all industries. All we know is that so far as the beauty supply industry is concerned—and it is made up of approximately 65 manufacturing firms and 75 distributing firms which we know as jobbers—in so far as that industry is concerned, resale price maintenance is necessary in our view for the industry to carry on.

Now, I would like to say, first, that as far as this association is concerned, it is true from what we read in the press that we were aware of the fact that the MacQuarrie committee had been set up in, I believe it was June of 1950.

We knew that on this occasion their terms of reference were far wider than this question of resale price maintenance; but this association was never asked directly by that committee to submit any views that it might have on this question of resale price maintenance or any other matter on which they wanted information. It was not until the speech from the throne was read in parliament that we were aware that the committee had made certain recommendations. In view of the recommendations made in their report we respectfully submit that perhaps the committee might have been better advised to have made sure that they canvassed the opinions of people who were directly concerned with this question. On the strength of the throne speech and subsequent developments in this parliament this brief was prepared.

Now, perhaps I could just briefly summarize the reason why the association is in favour of resale price maintenance. Firstly, we do not take the position that resale price maintenance in so far as it affects this industry has the effect of eliminating competition. The competitive element in the beauty supply industry is very strong. By way of example, I understand that the various manufacturing firms manufacture in Canada at least 25 types of shampoos that have fixed resale prices ranging from $1.25 to $7.50. Now, surely, there is competition; although, it is true each individual firm will have its own resale price maintenance policy. Since it does not take a tremendous amount, by way of capital to go into this type of business, it is very easy for substitute products to appear. If, for instance, a fixed price of some manufactured product got out of line it can be corrected by the appearance on the market of a substitute product.

Secondly, this association favours resale price maintenance because in our opinion it tends to prevent what economists call economic concentration in the industry, which would undoubtedly occur if prices were free. Then we get into the question of loss leaders which the MacQuarrie committee recognized, and as soon as a system of selling loss leaders is started then the small distributor would be bound to be put out of business. I would commend to honourable members extracts from what I consider one of the strongest statements—

Mr. CARROLL: May I ask you a question there?

The WITNESS: Very well.

By Mr. Carroll:

Q. Are not all the members of this beauty supply industry under the one organization? Are they not all controlled by your own organization?—A. I would not say "controlled". There are a few manufacturers and a few distributors who are not members of the association. But I do not think we could say that this association controls them. It could not control the policy of any one single firm.

Q. But you are the loss-leaders, you are the found leaders in making these prices, and that kind of thing?—A. The association, you mean?

Q. Yes.—A. No, sir,

Q. How does it affect you people, then?

Mr. SWENSON: We represent the different members and each member has the right to fix his own price. We do not at any time say yes or no, this is too high or too low.

The CHAIRMAN: Might I suggest to the committee that we shall make a great deal more progress if you will allow this gentleman to make his presentation, and then anybody who has taken notes will have an opportunity of asking questions. I think that procedure would be more preferable.

Mr. CARROLL: All right.

The WITNESS: Mr. Chairman, as I was saying, I wanted to draw to the attention of the committee extracts from an article written by the late Mr. Justice Louis D. Brandeis, of the United States Supreme Court, which appeared in Harper's Weekly back in 1913. Nevertheless, we submit the principles set forth in his argument are as pertinent today as they were then; and, then, as the honourable members know, Mr. Justice Brandeis I think knew as much about the workings of the American economy as certainly as any judge. Certainly he was no lover of big business, as is evidenced by his book "The Curse of Bigness".

The third reason why our association favours resale price maintenance is that in our opinion it lends itself to more orderly merchandising practices at all levels of the trade. Mr. Swenson may elaborate on this later on, but there was a time in this industry, prior to 1940, when the cut-throat practices were so prevalent that particularly the distributors, and to a certain extent the manufacturers themselves, were falling by the wayside, the stronger firms surviving and the weaker passing out of the picture. At the distributor's level I am advised that the situation became so bad that very few of the distributors were making a profit at all, and I presume under our free enterprise economy that unless a firm makes some profit then there is no object in being in business. As a result of resale price maintenance policy being followed particularly in the last ten years by individual firms the picture has changed somewhat.

Now, the fourth reason why we favour resale price maintenance is that it gives the necessary protection to the manufacturer in connection with the sale of his trade-marked or branded products. Firstly, we submit that the establishment of fixed prices creates a certain confidence in the public.

That is a point that is disputed, the MacQuarrie Committee relying, I presume, on the recent British White Paper on the same subject, but it is the opinion of people in this industry that that is the case, human nature being what it is, and to support that contention I would refer—in fact I have done so in the brief—to certain facts in the report of the Royal Commission on Price Spreads, 1935, where the committee—later changed into a commission —came to that conclusion.

Then more recently we know what happened in New York when certain department stores started cutting prices at the same time. While those sales were going on in Macy's and Gimbel's and perhaps others, certain manufacturers of the products concerned were advertising in the New York newspapers saying that the quality of their products had not deteriorated as a result of the slash in prices and, secondly, that they did not believe in that manner of merchandising but that there was nothing that the manufacturer could do about it.

Now, we submit that no rational manufacturers would do that unless there was a reason to believe that the public, whether rightly or wrongly, felt that a sudden slash in prices automatically meant a deterioration in the quality of the product. Secondly, as far as giving the manufacturer protection is concerned, we feel that in many cases the manufacturer acquires a certain property right. After all, where he is selling under a brand name he has to do the promotional work himself, that is, the manufacturer has to do it, involving expenses to him and in due course the distributor will get the benefit.

Now, I might say there that I understand that this particular advertising is not done so much in any general press or general magazines but by the direct mail type of advertising or in trade journals but, nevertheless, the manufacturer has to create the demand for some new products and in this industry because of the competition, new products are coming out all of the time.

Fifthly, although there is the element of the fixing of prices—we do not deny that here and when I say "we" I do not want to create the impression

that the association is saying that this is what will be done by the various member firms but I am speaking of each member of the association who would be doing his own pricing individually but as far as this concept of fixing price is concerned we submit that it is quite consistent with the concept of establishing a fair price. After all, certainly in an industry such as the beauty supply industry, the manufacturer surely must know better than anybody else what the price must be in order that he can make something by way of a profit out of the ultimate sale of his products. If he gets too far out of line he just won't sell that product at all. We were quite impressed in doing our research work in connection with the preparation of this brief—and I would commend it to your attention—with the dissenting judgment of Mr. Justice Oliver Wendell Holmes in the Dr. Miles' Medical Company case. This case was before the United States Supreme Court—true, in 1911, and true, Justice Holmes' judgment was a dissenting judgment, but in view of subsequent legislation both state-wide and federally in the United States on the question of resale price maintenance, I submit that the reasoning behind Holmes' dissent is quite in keeping with and supports our contention that the concept of a fixed price in this industry in any case is quite consistent with the establishment of a fair price.

Now, the members of the committee at their leisure can look at various individual criticisms that we have made and they were honestly reached by members of this association with certain views stated in the report of the MacQuarrie Committee. For instance, the MacQuarrie Committee placed considerable emphasis on this recent British White Paper on resale price maintenance, but we also refer to a report of the Sankey Committee in 1931. They dealt with the same question and they reached the opposite conclusion. Also the MacQuarrie Committee placed emphasis on a book called "Industrial Pricing and Market Practices" by one A. R. Oxenfeldt, while we, rightly or wrongly, place emphasis on a book called "Price Cutting and Price Maintenance" (1932), written by Professors E. R. A. Seligman (Columbia University) and R. A. Love—his co-author—and which states that there is no unanimity of opinion on this question of price maintenance.

We felt that the MacQuarrie Committee surely in so far as it would relate to our industry did not place enough emphasis on the desire for certain services that the public wish, and they quote in the committee report at one point where they deal with British merchandising methods.

Now, certainly there is a vast distinction between the British merchandising method and the North American merchandising method in an industry such as the beauty supply industry. As an example, the MacQuarrie Committee stated, quoting the new British report, that the public would much prefer to dispense with some of the services if it meant a reduction in the cost of the article to them. That might be quite true in some industries for all we know, but certainly we know that as far as the beauty supply industry is concerned the public want and expect service, even though it costs money. We cite the Toni experiment as an illustration—this method of the permanent wave that can be given at home at a saving of $3 or $4 or $5, as compared with the price that a lady would pay by going into a hairdressing establishment.

Admittedly, it was viewed with great concern when the Toni experiment came onto the market several years ago, but the intervening years have proved that in so far as the beauty supply industry is concerned they have not suffered appreciably at all; in other words, people are still interested in going into a shop and paying $3 or $4 or $5 more, knowing they are going to have to pay more but knowing that they are going to get that added service which they won't get if they do it themselves. And we feel that that was the opinion that Professor Curtis had.

You will remember in the tobacco inquiry—that was in 1938—I have cited it and I am not going into it again, but you will remember that Professor Curtis had been retained by the Imperial Tobacco Company to make an economic analysis of resale price maintenance and he came to the conclusion that from an economic point of view—I think he said—resale price maintenance was an anti-social practice, but he qualified his opinion by saying that there were other factors which entered into the picture besides economic considerations when it came to a business reaching a decision as to whether they were going to do this or do that. We have shown that in our brief and I will not go into it further.

Lastly, in our brief we pointed out the trends in American legislation on this subject. After all, this is something that has been debated backwards and forwards in the United States now for some years, and notwithstanding official opposition to resale price maintenance the fact is that many, if not most, of the individual states have their own fair trade laws and in 1937 or 1938 the Miller-Tydings Act was enacted at Washington. This was really a proviso to or an amendment to what was formerly the old Sherman Act and which stated that a combine in restraint of trade was illegal.

Now, the scope of the Miller-Tydings Act has been whittled down somewhat by reason of a recent Supreme Court decision in Washington known as the Schwegmann case. Nevertheless, it is true the statute is still there. It is also true that from information we have obtained from affiliates of our association in the United States steps are afoot to enact new legislation when congress reconvenes in January to take care of the gap in some way or other that was created by the Schwegmann decision.

That is generally the view of this association, and we have set it all out in greater detail in the brief. If there are any questions that the honourable members would care to ask we shall to the best of our ability answer them. Mr. Swenson is the technical man in so far as this association is concerned.

Mr. CARROLL: May I ask a question?

Mr. FULTON: Mr. Chairman, is it not the practice for the committee counsel to ask questions first?

Mr. PHELAN: When I learned there were two speakers to discuss this brief I took the liberty of having a discussion with Mr. Corlett and suggested he make a brief summary of the brief to save time, and then we would call Mr. Swenson and we would examine Mr. Swenson, and if it became necessary to question Mr. Corlett we would do it too. I thought it would save the time of the committee to adopt that practice.

The CHAIRMAN: Is that the wish of the committee?

Mr. THATCHER: I do not follow that. Do you mean that Mr. Swenson has a brief too?

The CHAIRMAN: No, he will just answer the questions.

Mr. CARROLL: If the questions I want to ask are not asked by the learned counsel I will have the opportunity afterwards.

Mr. FLEMING: I will put my questions after Mr. Phelan has put his, Mr. Chairman.

E. Swenson, President, the Allied Beauty Equipment Manufacturers' and Jobbers' Association, called:

By Mr. Phelan:

Q. Mr. Swenson, will you state for the committee what your personal occupation is?—A. Well, personally I am a manufacturer. I manufacture electric hair clippers and sundry items for barber shops and I also manufacture

for the beauty trade in that I supply them with electric hair dryers as well as the different solutions that they use in giving permanent waves.

Q. And you are a member of this association?—A. Yes, sir.

Q. When did this association come into existence?—A. This association came into existence about ten years ago.

Q. By what method?—A. Well, a group of manufacturers and a group of jobbers decided that the conditions under which they were operating had left a sort of a chaotic condition in that there were so many different things that interfered with the smooth running of business and as a result the manufacturers were faced with a group of distributors who were not financially able to carry on and pay their bills. Therefore, it became necessary to have this organization in order to help them and direct them and show them how business should operate. The beauty business is not as old as many other businesses in this country. The beauty business—well, in 1921 there were very, very few beauty shops and in the intervening thirty years, of course, it has grown to 6,000. In the meantime, new shops and jobbers would come in to operate and they did not have sufficient experience and the manufacturers and the experienced jobbers could direct them in the right channels.

Q. Well, to make it short, how did you organize your association—is it incorporated?—A. It is an incorporated organization.

Q. Under the Dominion Companies Act?—A. Yes, sir.

Q. As a non-profit sharing corporation?—A. Yes.

Mr. CORLETT: Pardon me, Mr. Phelan, for the sake of clarity. I think I myself made a mistake when I mentioned that to you this morning, but I checked and it was incorporated on February 21, 1940, under the Ontario Companies Act as a non-profit organization, being a company without share capital.

By Mr. Phelan:

Q. The commodities in which the association is interested and which are dealt with through the association are, I understand, both supplies and equipment for beauty parlours?—A. And barber shops.

Q. Briefly, without enumerating all of them, what character of goods are included in the term "supplies"?—A. "Supplies" is anything that is really usuable, that you buy and use for a permanent wave, for example—a solution. That is a supply, but a permanent wave machine, that is equipment. A permanent wave machine would be used over and over and over again but supplies sufficient for a permanent wave, or a cold wave, come in bottles and are used, and that is "supplies".

Q. What else is included in the term "equipment"?—A. Permanent wave machines, hair dryers and chairs—that is about it.

Q. That is, practically all that the beauty parlours and the barbers need by way of equipment and supplies come through your organization?—A. Certainly 95 per cent.

Q. Now, what comprises the membership of this association? First of all, what is your total membership?—A. Well, we have a total membership of slightly over 100, say, about 105, of which there are 58 jobbers and 50 manufacturers; but combined with that there are 11 who are both jobbers and manufacturers.

Q. I see. Are there any consumers entitled to membership in that organization?—A. No, no consumers.

Q. And with how many consumers does your organization deal? When I say "consumers" I mean barber shops and beauty shops?—A. Well, there are 6,000 beauty shops and they might represent—each have two or three people in them on the average—

Q. I am not interested in the number of people—just the number of concerns?—A. 6,000 or 7,000 beauty shops and 9,000 barber shops.

Q. So that you supply an outlet for about 16,000 concerns across Canada?—A. That is correct.

Q. And what proportion of the total production or consumption of supplies and equipment is within the control of your association?—A. Well, I would think that at least 90 per cent of the equipment and at least 75 per cent of the supplies come from manufacturers who are members of our association.

Q. And are distributed through the member dealers of the association?—A. That is right.

Q. How many manufacturers are there outside the association?—A. Not very many—say two or three.

Q. And how many distributors are there outside the association in all of Canada?—A. Perhaps ten or fifteen.

Q. So that about 95 per cent of the production and distribution is controlled through the association?—A. That is correct.

Q. Can you give us an idea as to the gross value of your distribution in a year?—A. I am sorry that I cannot supply that because the Dominion Bureau of Statistics has not set aside our group as a group that should be handled separately; we are thrown in, I understand, with the toilet goods industry.

Q. Might I make an assumption or a guess? Would I be far wide of the mark if I assumed or guessed that each of your dealers, beauty parlors and barber shops, bought from you, on an average, goods worth $500 a year?—A. That would be pretty high for a barber shop.

Q. I am taking it on an average, supplies and equipment by both beauty parlors and barber shops?—A. It is hard for me to answer that question.

Q. From your personal knowledge would that be a reasonable assumption?—A. Yes.

Q. So on that basis we get a total output controlled by your association in Canada of $8,000,000 a year. Now, when the association came into existence who started it, the dealers or the manufacturers?—A. It was started by five individuals, two were manufacturers and three were jobbers.

Q. And where did the idea originate before the organization became incorporated, from the dealers or the manufacturers?—A. Well, I think a combination of both—some of the more successful jobbers and some of the manufacturers.

Q. There is one question I forgot to ask you, so perhaps I will ask it now. Is my understanding correct that the entire production and distribution controlled by this association is under the price maintenance system?—A. Very nearly all.

Q. What percentage is not? Roughly speaking.—A. Certainly not more than 10 per cent.

Q. So that 90 per cent of this total production and distribution is operating under the price maintenance system?—A. That is correct.

Q. I was interested in ascertaining from you in whose mind the thought originated of having the association. Was it the dealers or the manufacturers or both?—A. Both.

Q. And apparently both agreed it would be a good idea?—A. Yes.

Q. Was the operation of retail price maintenance in effect from the very beginning of your association?—A. No, that was just a gradual development.

Q. Over how long a time?—A. Up until almost presently, it was a constant growth.

Q. So when you started the association in 1940, or whenever it was, do I understand that the larger proportion of your goods was outside the resale price maintenance policy?—A. Yes, sir.

Q. What percentage, when you started in 1941, of your production or distribution was under resale price maintenance?—A. I could only guess.

Q. What would be your judgment?—A. Perhaps half.

Q. And that has advanced now to 90 per cent?—A. That is right.

Q. And when it was started, or subsequently, as the practice has increased, who, in effect determined the retail sale price?—A. Each manufacturer determined that by himself.

Q. Well, when the members meet, as they must have met at meetings of the association and otherwise, what was discussed with respect to prices?—A. prices are never discussed at our meetings.

Q. Never discussed?—A. Never discussed at our meetings. That is left entirely to the manufacturers. At no meeting do we ever come together and say "Let us fix such and such as the minimum price" or "Let us fix such and such as the price of some item". That is always determined individually by each manufacturer.

Q. If a dealer had an objection to a particular price that a manufacturer fixed and wanted some redress or some change in the price, would that not be a good opportunity for discussion and negotiation at those meetings?—A. It could be but it is never done.

Q. What do the members discuss as between themselves? What do the dealers discuss as between themselves when you do meet, or what do the manufacturers and dealers discuss?—A. Well, the dealers would probably discuss fixing rates of commission for salesmen. At the present time they have been shipping almost all their goods to outside points "prepaid". They would like to change that to "collect", but that is difficult to decide: should we or should we not.

Q. Well, now would that be all that the dealers and the trade would discuss at meetings?—A. That would be about all.

Q. And what policies of trade would manufacturers discuss at these meetings?—A. Well, the manufacturers would probably discuss how to control certain deals that they have. For example, they will have a special deal for a certain length of time—I am just taking up a point that was brought up recently—and they discuss when should that deal come off. For example, it is a special deal and it involves a little extra merchandise: should it stop on November 30 or should a dealer be permitted to buy extra and carry on and sell it in December.

Q. Then as I leave the meetings of your association, I understand that there would be no discussion between the dealers and manufacturers as to trade policies?—A. That would be correct.

Q. What about the customers, that is, the barbers and the beauticians? Are they under any control as to their resale prices?—A. Please say that again.

Q. Your customers, the beauty parlors and the barber shops, are they under any control as to their resale prices?—A. None whatsoever. The barbers have an organization of their own and they do get together and appeal to whatever government organization it is that allows them to set a price and then they try to set, say, a charge of 75 cents for a haircut.

Q. I am not speaking of the sale of service. I suppose there would be little of your supplies retailed—they would be used by the beautician and barber?—A. That is right.

Q. So there would be no necessity of imposing any retail price on the consumer?—A. That is correct.

Q. You told us at one point that this method and this association came into existence by reason of chaotic conditions that existed in 1941. What were those chaotic conditions that brought about the association?—A. Well, it was just the condition, as I explained just a minute ago, that there were too many jobbers operating and not knowing how to operate, and as a result they were throwing everybody else out of kilter. They did not know what the business

was all about, because, you see, it has been a new business with all of us; it has only grown really in 20 years, and that period in business life is, comparatively, a short one.

Q. Would you be specific? When you say that these jobbers were throwing business out of kilter, would you be specific? What were they doing to which you took exception?—A. For example, on a hair dryer; they would go out to sell to a shop a new hair dryer, and they would quote almost any kind of price, not knowing anything about the re-sale price of the old hair dryer.

Q. Would the consumer get a higher price?—A. No. But perhaps the consumer would, temporarily, get that advantage.

Q. So that would be a chaotic condition which brought the organization into existence, would it?—A. Yes.

Q. We have the association operating under a system of retail price maintenance. Let me see if I understand some of the consequences of that system. Would it be correct to say that the dealer or jobber was obliged to distribute at a price predetermined by the manufacturer?—A. That is correct.

Q. He has no choice in the matter at all?—A. Yes, he has a choice in that if he takes a shampoo—I sell a shampoo at $5.85 a gallon—he is under no compulsion to take that shampoo. If he wants to buy a $3 shampoo, I will give him the names of 20 other manufacturers who will sell it to him.

Q. But suppose he wants to buy your shampoo, he has to buy it then at your price?—A. That is correct.

Q. And sell it to the consumer at the price which you have determined?—A. Exactly.

Q. And he has no choice of the price?—A. That is right. But he comes to me of his own free will.

Q. You say he comes to you of his own free will. But is it not a fact that he cannot get supplies from you unless he agrees to your terms of resale? Is that correct?—A. Yes. I will not sell him unless he agrees.

Q. You say you will not sell to him unless he agrees; and if there is any resale of the product, he must, in order to get supplies from you, maintain the resale price that you set?—A. That is correct.

Q. He has no choice in that matter at all?—A. No.

Q. And if he agrees to sell it at your predetermined price, what happens should he fail to carry out his agreement? What are the consequences to him?—A. Then he would—I suggest to him, for example: suppose he wants to sell a shampoo at $5, and my shampoo is $5.95; I would suggest to him that he buy a shampoo which he can sell at $5, and I can supply him with the names of 20 manufacturers from whom he can buy.

Q. But suppose he wants to re-sell your shampoo because of the demand for it, and suppose he sells it at less than the predetermined price?—A. Then, I would not sell him anymore.

Q. He is out of the market then, so far as you are concerned?—A. That is correct.

Q. Is there any system of penalties by which the dealer is penalized beyond the fact that he is boycotted with respect to your goods?—A. None whatsoever. He can buy from any other member of the association or he can buy outside of the association.

Q. You speak of a price spread, I think, of between 39 and 40, and you say that the present spread to the consumer has not been more than 15 per cent?—A. That is correct.

Q. That is a correct statement?—A. That is substantially correct.

Q. How do you account for maintaining the price spread at what would appear to be a low level? How do you account for maintaining it at that level?—A. Well, it is one of those things which competition forces you to do. In the intervening 20 years, I am thinking of my electric hair clippers which sold

with practically no increase in price. That was due to the fact that the country was becoming electrified; and it is due now to the fact that the farmers are becoming electrified.

Q. Are you telling me that your production has increased?—A. Yes, that is right.

Q. You say that increased production would explain the small price spread?—A. That is right.

Q. Let me get an example of how it operates. Take a shampoo product which at the factory level would cost the manufacturer $1. What would be the price of that shampoo to the dealer? I notice that you have certain suggested mark-ups of 30 and 50 per cent and also a dealer mark-up of 50 and 40. Let us take it at the 50 to 40 per cent mark-up.—A. The shampoo which would cost me as a manufacturer, $1: I would price that at $2 to the dealer.

Q. You say $2 to the dealer?—A. Yes.

Q. What would it cost the consumer, the beauty operator or the barber? —A. It would probably cost her $3.33.

Q. You are saying that an article which at the factory door costs $1 reaches the consumer at $3.33?—A. Let us assume that we charge a price of $2 for a gallon of shampoo, there is then involved a 25·9 per cent government tax amounting to 52 cents leaving $1.48 which means that I operate on a margin of 48 cents, after putting in an investment for labour and material of $1. And the same way for the jobber with respect to shampoo in gallons, a gallon of shampoo including container weighs 15 pounds and it is going to cost him 15 cents to get that to his door, and it will cost him another 15 cents to deliver it to the hairdresser.

Q. Do you think that shampoo would be any cheaper to the hairdresser under a system of free competition at the consumer level?—A. It could not be any cheaper. It is too cheap now.

Q. Well, who would you say benefits by this system? I suppose there are three people, in your case; the manufacturer, the dealer, and the beauty parlor. Tell me how each one benefits by that system, if there is a benefit? —A. By the benefit of a resale price maintenance?

Q. Yes. First of all, does the manufacturer benefit?—A. Yes.

Q. How?—A. He knows pretty well that he can develop a market; that he can go out and promote his name and build up a business. If he, like myself, opens a business and works at it for 30 years, developing and promoting that name, he wants to know that that name is going to be as good today as it was, or at any time; and you cannot get that effect if you cannot maintain your price.

Q. You have got to maintain your price in order to maintain your reputation?—A. I am sure of that. I am sure that if I did not have a price maintenance policy, if price maintenance was not allowed today, and somebody could take my product and sell it for half price, I would lose over night half of my dealers. I would lost half of my business just because one individual wanted some fleeting momentary gain.

Q. Although it was sold in the same package in which it was sold on the street yesterday, in a package which would be known to the trade?—A. That is right.

Q. Tell me how the dealer would benefit from a system of resale price maintenance?—A. The dealer benefits in a similar way when he goes out and offers these goods to the hairdressers. I am thinking of the Wahl clipper; when he sees that clipper costs $15.50, and provided that he wants one, he will say: yes, I will take it. But if there are four jobbers coming along with four different prices, he has to spend time with four different people in order to determine which one of them is going to sell to him the cheapest. That is all

a waste of time on the part of the dealer, or the dealer-salesman. And there is the same waste of time on the part of the hairdresser just for the purchase of one article.

Q. So you say that the dealer would benefit because it would mean saving time to him?—A. Yes, saving time and money too.

Q. And would the beauty parlor operator and the barber benefit as well, through a saving of time involved in negotiating for supplies and equipment?—A. Yes, and it would apply with respect to these different things which we have pointed out in the brief.

Q. Would you just state where the beauty parlor would benefit by the system of resale price maintenance, and where the barber would benefit, specifically?—A. Specifically? Well, it means that when he is able to buy something with a branded name, immediately he knows, or she knows that it is good. Suppose you take a gallon of shampoo and put it on the table. Even a hairdresser who has had experience would have no idea of what the value of that shampoo is until she has finished using it. Then she knows, and not until then does she know what it is. But, if she buys my product with my branded name, and she knows I have been in business for thirty years, she also knows that the real value is very close to that figure, I am sure.

Q. Do you think that is a benefit that comes from the quality of your goods or a benefit that comes from the resale price maintenance system?—A. It comes from the resale price maintenance system, because without that I could not have stayed in business for thirty years and developed it.

Q. That may be a benefit to the manufacturer, but I do not think you have told me where it is of benefit to the beauty parlour?—A. The beauty parlour has to take a chance. Somebody puts out a gallon of shampoo and says it is worth $3, but it might only be worth $1. If the operator pays $3 she loses $2. Nor does she know she has lost $2 until after she has used the shampoo. If she buys my shampoo—we have been in business thirty years and she trusts me—and she just goes ahead.

The CHAIRMAN: Mr. Beaudry, did you wish to ask any questions?

Mr. BEAUDRY: Does not Mr. Fleming have a prior right?

Mr. FLEMING: I think Mr. Carroll has some questions.

By Mr. Carroll:

Q. The questions I was going to ask were just along the line of what this organization consists of. It is satisfactory to me to know that it consists of the very people who are dealing in this matter. There is, however, just one question I want to ask. Did you say the only shampoo you sell is sold at $5.95?—A. No, I said we have a shampoo at that price.

Q. A shampoo?—A. Yes.

Q. You have different kinds of shampoos?—A. Yes.

Q. What is your cheapest?—A. $3 a gallon.

Q. $3 a gallon?—A. Yes, although I still have some in pound jars that is $2 a pound.

Q. What does it cost you to get that $5.95 shampoo?—A. How much does it cost me?

Q. $1, I understood?—A. No, no, that would be the shampoo we have at $3—which costs $1.

Q. But how is it there is such a spread in the cost to you of shampoos—from $2 your sale is $5.95? You are standing on your reputation of giving splendid shampoos, now why the difference? They are all made of the same material, are they not?—A. Oh, no, it is not made of the same material. I will tell you this. There is exactly the same amount for $5.95 or $6.00 but the

operator will get more than twice as many shampoos as from the shampoo at $3. So, your shampoo is never priced by the gallon—the hairdresser should not do it that way. It is how much per shampoo.

Q. I am not talking about what the hairdresser is charged, but as I understand it you sell your $1 shampoo for $5.95?—A. I did not give you the price of that. I gave you the price of the $3 shampoo. I said that in that priced shampoo I put a dollar's worth of material and labour, and I get $2 for it. Out of the $2 I turn over 52 cents to the government so I get 48 cents. Is that too much of a mark-up?

Q. I am not suggesting that at all, but my difficulty is that you are not supplying the hairdressers then with equal quality of shampoo?—A. I do not follow you.

Q. Well, you are charging some $3, and you are charging some $5.95?—A. Yes, but I did not say the $5.95 shampoo cost me a dollar.

Q. You did not say you did?—A. Oh, no.

Q. But what makes the difference?—A. The difference is entirely in the ingredients you put in there. You have certain ingredients and the more concentrated they are the higher the cost per gallon. The more water you put in the lower the cost per gallon.

Q. Just like liquor?—A. What?

Q. Well, to keep up your reputation why should you not make good shampoos and sell them all for $5.95?—A. Why don't I?

Q. Yes?—A. Because some people insist that all they want to pay is $3 Their initial investment is going to be $3 period. Therefore, we want to accommodate them.

Q. In connection with the reason for the organization of your company, you gave as your first reason the fact that you were not getting paid by the jobbers?—A. That is right.

Q. That is one of the reasons why you did not give in your examination?—A. Yes.

By Mr. Fleming:

Q. Mr. Swenson, you indicated in reply to one question by Mr. Phelan that this association is supplying 7,000 hairdressers and beauty parlours and 9,000 barber shops throughout Canada. Is it the association or the members of the association that do that?—A. I stand corrected. It is only the members. The association has no contact at all with the hairdressers. The association is only connected with the members of the industry and they are only manufacturers and jobbers.

Q. As I understand, the association does not buy or sell—does not trade?—A. Correct.

Q. Then you indicated within the membership of the association and the line of supplies and equipment that the members handle, today the practice of resale price maintenance applies to approximately 90 per cent of such equipment and supplies. Have you any knowledge of the prevalence of the practice of resale price maintenance among the manufacturers or jobbers who are in the same line of business but who are not members of your association?—A. No, I do not know that.

Q. Have you any knowledge at all as to whether the practice of resale price maintenance is carried on by any of them?—A. I think the manufacturers do not follow that.

Q. Can we take that as general?—A. But you see there are only two or three manufacturers outside of the association.

Q. Can we infer that none of them, of the two or three or whatever it may be, practice resale price maintenance?—A. I think you can infer that.

Q. Then you mention in the brief that this is a very competitive business?—A. True.

Q. And you indicated in reply to one of Mr. Phelan's questions that over a period of the last eleven years, from the time your association came into existence, the proportion of supplies and equipment on which resale price maintenance has applied has increased from roughly 50 per cent to roughly 90 per cents?—A. Yes.

Q. What has been the trend within the members of the association as to competition in that period, among the members of the association?—A. Have the number of manufacturers increased?

Q. I am thinking either about the numbers of those engaged or the condition or degrees of competition?—A. Both have increased. The number of manufacturers has increased and the number of jobbers has increased.

It is a very simple thing to become a manufacturer in the beauty business and a very small capital outlay is required. Any business where a small capital outlay is required in a very short time becomes a very competitive business, because a lot of people want to go into business and they turn instinctively to those businesses where a small capital outlay is required. There is no point in trying to be competitive in the automobile business; you cannot do it—but in the beauty business it is a simple thing. Overnight you can be a manufacturer and, there you are—established in business. That makes for very competitive conditions and it is impossible to do anything except work on a small margin.

Q. Just on the matter of numbers, in paragraph 5 of your brief, on page 3, you say:

> ". . . there are today approximately 65 manufacturers of beauty supply products which are distributed to hairdressers by approximately 75 dealer organizations."

You indicate that represents a substantial increase in numbers over the past eleven years?—A. Yes.

Q. Can you indicate the proportion of increase by telling us about how many manufacturers and dealer organizations there were engaged in this business say in 1940, Mr. Swenson?—A. I cannot give you that but I can go back further and say that in 1921 there were practically no beauty shops. In 1951 there are 6,000.

Q. I just wondered if you could give us an indication over the past decade? —A. No, I cannot give you that.

Q. You mention the numbers engaged, but what do you say about the range of products they are selling—that the manufacturers on the one hand are manufacturing and that the dealers on the other hand are handling? Has there been any increase in the range and variety of the products handled?—A. Yes, there is always an increase in the number of products.

Q. Has that been a steady sort of increase?—A. It has been a steady sort of increase.

Q. What has been the trend in the margin of profit in this ten year period? —A. Always downward.

Q. Always downward? Are there any exceptions?—A. I would not know of any. If there are, I have missed something.

Q. Are there any cases in this business where the manufacturer has his own outlets which he actually operates himself?—A. Yes. There is one very large organization that operates their own outlet.

Q. You would call it I suppose, in keeping with common practice, a chain? —A. Cartel, isn't that the word?

Q. Well, I do not know, that is an invidious expression; we had better not call anybody that. I wonder if you would be good enough to indicate how the type of competition which that particular manufacturer offers both to other manufacturers and to other dealers compares with the terms upon which

your manufacturers and dealers can meet him?—A. Well, it is competition that we can meet. I suppose you would think that because you had eliminated one of the group, the distributor, that you could then sell at far less, but he still has to operate a distributor group of his own and in that way we are all very competitive in spite of the fact he manufactures practically all his own material and sells it through his own organization to the hairdressers; but, nevertheless, we are all competitive. Simply because you think you can miss one step—you can't miss that step, there must be a distributor, whether he operates as his own distributor or sells to another.

Q. It is obvious that particular manufacturer is going to establish a price at which his outlet sells the product. If a ban were placed on resale price maintenance and applied to your trade what is going to be the effect upon the terms upon which your manufacturers and dealers on the one hand can meet competition of that kind, and upon a manufacturer following the other plan?—A. Well, it would not change, that would not change the situation. This manufacturer who sells direct to the hairdresser, he would not change his prices. He has a competitive price today and he if anything—I don't know, he might raise it, or he might lower it; but there is nothing in changing the legislation which would change that situation.

Q. Now, what I am thinking about is the possible effect, if any, and I think this may be of interest to the committee—the effect on the terms upon which your manufacturers and dealers operating that resale price maintenance system would meet his competition?—A. I just don't follow that.

Q. Perhaps I can put it a little more clearly then, because I think it is of importance.—A. We have an organization now that is manufacturing and selling direct to the hairdressers. Selling at a certain price today.

Q. You get one individual company that combines the functions of manufacture and distributor.—A. Yes.

Q. On the other hand, you have some 65 manufacturers and 75 jobber organizations who practice resale price maintenance?—A. Yes.

Q. Now, assuming that parliament passes legislation to prohibit the practice of resale price maintenance, it would affect your 65 manufacturers and your 75 dealer organizations and still presumably will not affect the manufacturer who has his own outlets for distributing. What is going to happen to the terms upon which you dealers and manufacturers are able to meet the competition of that manufacturer who does his own distributing?—A. I am of the opinion that if legislation were enacted such as you say that the conditions would remain identical. I think that in our industry we would still maintain resale prices. I mean that there is something that is economic. That is what I mean. You are not going to change your prices because you change your legislation; if you did, then the economic set-up is wrong. If anything, our economic set-up is wrong now; indeed our prices are not high enough. If you were talking about an industry wherein all the prices are too high, then, your legislation might have some effect; but here is an industry where prices are too low.

Q. Mr. Swenson, in fairness to you I offer this for your comment. The inference from your last answer sounded very much as though, assuming that parliament did prohibit the practice of resale price maintenance, that notwithstanding that it would be practiced; that, obviously, is not what is meant in your answer?—A. No. What I meant is that if the manufacturer is now selling an article at a fixed price and if that price is a fair price legislation will never change it; if that same dealer is taking my mark-up or my discount—because I have a discount system—and he is working on that and he finds that to be a fair discount to work on, then he is not going to change it whether there is legislation or not. What I really meant to point out is this: here is

an industry and if there is legislation enacted it will not change the prices because the prices are fair as they are now.

Q. Then, if parliament should pass this legislation it sounds to me as though you are saying it would not have very much effect on prices in your industry?—A. Yes. That is correct.

Q. I think you mentioned in reply to a question by Mr. Phelan, you gave an example of some dealer or distributor proposing to sell below the price stipulated. Have you had occasions in your experience where dealers have tried to sell above the prices you have stipulated, or that other persons engaged in the same line of business have done that?—A. My own personal experience has been wonderful. I have had excellent co-operation from the dealers all the way through, in the 30 years I have never had to cut off any dealer because he did not maintain my price, but there have been times when I have had to caution some of them.

Q. Then, obviously, one infers, by the answer which you gave to Mr. Phelan that you had, or some of your fellow manufacturers had had experience with dealers seeking to sell below stipulated prices?—A. That is right.

Q. Are there any cases where you have ever found distributors desiring to sell above stipulated prices?—A. Yes; well, there have been dealers who wanted to have us put our prices up simply because in any industry in which there has not been a price increase in the last ten years you do run into situations that are difficult. For instance, we have salesmen out on the road. You see, our beauty supply business is not like other retail businesses, where the purchaser comes to the show room and buys. In this business the dealer must send out salesmen, and the road cost for salesmen has been constantly going up, increasing—such things as the cost of operating his car, the cost of hotels, the cost of meals—all that sort of thing has gone up, and yet the salesmen's commission has remained the same; virtually, we have maintained prices below what they should be.

Q. I can understand the margin of percentage being maintained if the volume is increasing. What has been the trend of prices as distinguished from the trend in respect of mark-up?—A. In practice the only increase we have had in our prices has been by the amount of the increase in federal taxes.

Q. Well then, one other question, on page 2 of the brief you direct attention to your desire to maintain a condition of orderly merchandising. That is in paragraph 3. Then you go on to say: "In the past, this industry has suffered severely from cut-throat price practices which were prevalent and which caused numerous bankruptcies and the forcing of many dealers out of business". Have you any statistics bearing on that point, Mr. Swenson?—A. I could dig them up.

Q. I suggest, Mr. Chairman, it would be of interest to the committee to have some statistics on that point. Perhaps Mr. Corlett will be willing to extend his researches on that point. Then, down at the bottom of the same page, we have the statement, "The manufacturer, from past experience, knows that many of its branded articles would be used by dealers as loss-leaders if the manufacturer were to lose control completely over resale prices". What has been the experience in this trade with respect to loss-leaders before the system of resale price maintenance became so widely extended within the trade?—A. I think that it was used quite extensively as a loss-leader to the detriment of the industry as a whole. That is my personal opinion.

Q. You say your opinion. Have you not something concrete, some facts that might assist the committee, Mr. Swenson?

Mr. CORLETT: Yes, I think, Mr. Fleming, we can get this information from our own resources, but, as you will appreciate, we are relying on the governmental services, the Dominion Bureau of Statistics, and they have

chosen to lump this industry with the toilet goods industry. Of course, the new census will not be available until next year and we cannot use that, but I think we can get it.

Mr. FLEMING: I appreciate the difficulties involved, but I just wondered if you keep any statistics within the trade which might help throw some light on these two important points that you mention.

By Mr. Beaudry:

Q. Mr. Swenson, throughout Mr. Phelan's examination the word "control" as applied to your association has been used extensively. Would it not be truer to say that your association is like many other associations in its control purposes and that it could be said to be similar to the Canadian Daily Newspaper Association or the Association of Canadian Advertisers or any kind of association which is a gathering of people who are interested in the same type of business but who actually exercise no control whatever over the operation and sales of their various members?—A. That is exactly it.

Q. Therefore, you do not control anything as an association?—A. That is quite true.

Q. Your association, I believe, is like many others—grouped in order that better trade practices may obtain in order that joint exhibitions may be given, that joint sales promotions might be offered to the public in order that an annual convention perhaps may be held where both customers and manufacturers and all component parts of the distribution system can meet—am I right?—A. That is right. One of our efforts is a hairdressers show. We usually have one in Montreal and one in Toronto. You could not do that unless you had some organization.

Q. So therefore your association does not control any part of the manufacturers' or jobbers' operations?—A. Every manufacturer, every jobber, every member is free to run his business just as he sees fit.

Q. Some point was made of the fact that price maintenance when enforced towards a jobber or a distributor would eventually reflect on the consumer and the consumer price. While you do serve a great many barbers and beauticians, is it not true that a great many barbers and beauticians make up their own preparations or some of their own preparations?—A. They can and do.

Q. Is it your experience that some do?—A. Some do. I would say it is not the general practice.

Q. But it is a practice available normally?—A. It is available at any time.

Q. And therefore the consumer who in this case is a beautician or a barber always has the recourse of making up his own preparations?—A. That is right.

Q. I think Mr. Fleming elicited from you that while fixed prices are varied from time to time the margin has kept either in the same proportion or has gone down?—A. That is right.

Q. You did mention that over a period of some ten or more years—I do not recall—their price increases generally had been held to approximately 15 per cent?—A. Yes.

Q. And one reason for that was the increased production which had obtained over the years?—A. The increased volume.

Q. The increased volume?—A. Yes.

Q. Would you tell me if this increased volume derived its impetus from price maintenance wholly or partly?—A. Well, I think the increased volume was due entirely to the growth in the industry. I do not think that price maintenance or resale price maintenance had anything to do with the increase in volume.

Q. Well, haven't you, if not stated, more or less allowed us to understand that price maintenance has helped the growth of the industry or has helped your industry to grow? I will pick it up from the beginning of operations of your association where you find things in a chaotic state, as you said.—A. But you see, the volume of business that you can procure will be due to the number of people—operators engaged in the business, the number of hairdressers, the number of barbers. That is what increases the volume and added to that the number of new products that manufacturers can bring out.

Q. As far as the cost living—to revert to that for a moment—is concerned, the preparations, I think you used the word "supplies", which are sold to your consumer barbers or hairdressers only represent I would think, according to your brief, approximately 10 per cent or is only a 10 per cent component of the cost to the eventual consumer, the person being under the hands of the hairdresser and the barber and the other 90 per cent of that cost would be made up by labour or by revenue from labour?—A. That is right.

Q. And that therefore any variation of your price would still only affect the consumer in the proportion of 10 per cent?—A. That is right. You must understand—take a barber giving a haircut; he will have to buy an electric hair clipper that will last him years and years, so you will imagine if you just take 10 per cent, that is a generous proportion.

Q. I was speaking of supplies.

By Mr. Thatcher:

Q. Mr. Chairman, there is one part of the report I would like to refer to first. That is on the top of page 3 where the witness was talking about mark-ups. I wonder if he would tell the committee first of all whether this 20 per cent and 50 per cent mark-up is based on cost or on selling? Did I understand from your earlier evidence that it would be on cost?—A. On cost, yes.

Q. That is 20 per cent to 50 per cent on cost?—A. Yes.

Q. And I wonder also if the witness could tell me some of the things which are price maintained in his own business perhaps, and some which are not price maintained? He said 90 per cent were the former. Can you name any specific article?—A. That is not price maintained?

Q. Yes.—A. No, I cannot. I think it would probably be in supplies manufactured by those members who are not, or equipment which might be imported from the United States.

Q. What I am trying to get at is, would you be in a position to tell the committee roughly what your mark-ups would be, first, on the price maintained goods and, secondly, on the ones that are not price maintained?—A. I can only give it on the price maintained. I could not very well come and give you some figures on one of my competitors, who certainly would not supply me with those figures.

Q. Could your association not obtain for the committee some of the articles which are non-price maintained and tell us what the mark-up is so that we can compare them with the other articles?—A. I question if the manufacturer would give it to us. Take you, for example; supposing you were a manufacturer and not a member of this association and I, as the president of the association, came to you and said, "Look, you may make so and so, let me have your costs; the Combines Committee would like to have it." I question if he would give it to me.

Q. In your association is every article that is sold price maintained?—A. No, 90 per cent is. Do you mean the other 10 per cent that is not?

Q. Yes.—A. I can probably find that out for you.

Q. I would very much like to have that information on as many articles as you can find.—A. Fine, we shall do that. I misunderstood you; I thought we were to go to members outside who were not members of the association.

Q. You said a moment ago that there were agreements between the manufacturers and the dealers to maintain prices. Can you tell the committee is that a written agreement usually, or is it a verbal agreement?—A. Verbal in every case I know of.

Q. There is nothing written whatever, so far as your association is concerned?—A. In the thirty years of business that I have had with all kinds of customers I have never had a written agreement on a price to be maintained.

Q. How many different products would these individual companies usually manufacture—many, or do they specialize?—A. Well, on the equipment they would pretty well specialize. On the supplies they might run the whole line of ten different products.

Q. Ten to how many?—A. About ten.

Q. Well, you said a moment ago that if, for instance, someone sold a shampoo under the price which was maintained, you would cut him off. Would you cut him off just for that product or would you cut him off for the whole ten?—A. I would cut him off for the whole line.

Q. In other words—.—A. Now, that is my feeling. As I say, I have never had to do that with anyone.

Q. Of course, you are speaking for your association so I suppose it would be reasonable to assume that most companies would follow the same practice—A. Yes, I think so.

Q. Would not that be a little rough sometimes on the individual dealer, to lose the whole line?—A. I do not think it would be rough at all. Imagine one of my customers, one of my fifty customers starting to get rough with me and I have been working with him on that for thirty years. Do you think that is being rough? He, without any thought, proceeds to cut my business in half, wreck it, and I have worked thirty years for it.

Q. But I can conceive if a dealer was handling, say, ten major products and he was cut out of the whole line for one such practice as you mention, certainly he would have serious financial loss; perhaps it would not put him out of business but it would be serious?—A. It could not be nearly so serious to him as it would be to me—not nearly so serious. I can assure you that he can get by. In no time at all he can go out and get 25 other lines that he can sell just as easily as mine, but my business that I built in thirty years is spoiled in five minutes.

Q. Supposing one manufacturer found it necessary to apply sanctions to a dealer, would other companies in your association be likely to also apply sanctions?—A. They might. There are many in the association who might or they might not.

By Mr. Thatcher:

Q. But they might?—A. They might.

Q. And because of this action on your part his firm could conceivably be put completely out of business, am I right?—A. He will always be cautioned, but if he repeats, it is because he is determined in some way to injure me. I will caution him. Why should he do otherwise? Why should he not follow my suggestion? Here is a fair price and these others want to follow the fair price. Why should he want to wreck my business for some momentary gain of his own? Is that fair? Is that drastic.

Q. Mr. Swenson, I think perhaps I should ask the questions. You said that this policy of price cutting might lead to a dealer being barred from buying products from any company in your association.—A. I will qualify that. There might be one or two others that might follow my lead, but I can assure you that there would be at least ten others who would not follow my lead. Does that answer your question?

Q. Well, such a penalty looks pretty severe to me. You stated that your industry has very severe competition. Mr. Swenson, do you have much foreign competition or is it mostly domestic?—A. Mostly domestic.

Q. Why is it mostly domestic? How is it that you do not have American competition, for instance?—A. Because of the tariff.

Q. What is the extent of the tariff protection which your industry enjoys?—A. I think 20 to 25 per cent.

Q. I believe it is 22½ to 25 per cent. In other words, as far as your industry is concerned, would I not be correct in saying that your are enjoying such protection at the expense of the Canadian consumer? I suggest that much of your competition is already restricted by the tariff.—A. That leaves the impression that our prices start at 22·5 or 25 per cent over those in the United States. I differ with that entirely. I think our prices are comparable with those in the United States. If you take the sales tax and the excise tax off, you will find practically everything in the beauty business is competitive with the United States without any tariff.

Q. I have always been very interested to know how a manufacturer takes the tariff into consideration when he is setting his prices. Could you enlighten me on the subject?—A. Well, in the beauty business as far as supplies are concerned I do not think that the tariff enters into it at all.

Q. Would you object if it was taken off?—A. In the beauty business, as far as supplies are concerned, no, I do not think I would.

Q. You would not object?—A. No.

Q. Well, then, if you would not object could we assume that your prices in this line are 22·5 to 25 per cent lower than the similar American prices today?—A. No, that is not what you said.

Q. Perhaps I did not understand you then.—A. I am assuming what you are trying to say is, rather, if the item is $1.00 in the United States it is $1.25 here. It is probably less than $1.25 here.

Q. How do you take the American tariff into consideration in setting your price—that is what I would like to know.

Mr. CORLETT: I think maybe I could answer this question. You will find that many of the manufacturing establishments here in Canada are subsidiaries or are affiliated with American firms, so, in effect, I suppose the tariff has this one advantage, that it is forcing these firms to set up manufacturing establishments in Canada.

By Mr. Thatcher:

Q. Yes, at the same time it is making the Canadian consumer pay quite a bit more for the same article. I would like to ask the witness now if he does not believe in the principle of competition. I assume you do?—A. Absolutely. There must be competition. There would never be any progress in this industry or any other industry without competition.

Q. And I suppose when you go out to buy your raw materials you like competition in that field. You would prefer to be able to buy in a free market?—A. Yes.

Q. How can you on the one hand want competition on the things you buy, yet come to this committee and say that you should have resale price maintenance to give you a protected price on what you sell?—A. I like competition. I am a manufacturer. I am just buying raw materials, I am not buying branded products.

Q. In other words, would it be fair to say that you believe in competition for everyone else except your own industry?—A. I really do not remember that I made that statement.

Q. You say that you like to go into a competitive market to get your raw materials but you do not wish to compete when you are selling.—A. You are confusing two ideas, raw materials and branded lines.

Q. I am not confusing anything. I simply do not see how your two desires are consistent. I wonder if you would turn to your point 3 on page 2 of your brief for a moment, sir. At the first line you say:

> "The desire of beauty supply manufacturers to continue the policy of resale price maintenance with reference to the sale of trade-marked and branded merchandise is not in order to increase prices but merely to maintain a condition of orderly merchandising."

Would it be fair to assume from that statement that if resale price maintenance was abolished there would not be orderly marketing in your industry?—A. I think that orderly marketing would continue even if you prohibited resale price maintenance in my industry for the simple reason that I think, as I mentioned before, this is an industry where there are no terrific mark-ups. Here is an industry that is just marginal, it is just barely able to get along, it is just barely able to exist on the profits that competition forces us to take, so whether there is resale price maintenance or not there is not going to be a great deal of change. Those prices are going to stay.

Q. Then, could the committee assume that you would not object particularly if resale price maintenance is taken off as it is not going to hurt your industry much?—A. When you speak like that you might be interpreting that I mean the whole industry. Let us put it this way. For my own business it would not make very much difference.

Q. I think you are speaking for your association today. Could you relate your answers—.—A. To the association?

Q Yes. You said you did not think prices would come down much if resale price maintenance came off.—A. Let us put it this way. I do not think that it would make much difference. Nevertheless I would not like to see price maintenance prohibited.

Q. You said a moment ago, in replying to Mr. Phelan, that you put this resale price maintenance on originally because of chaotic conditions in your industry. Can I take it then that some of these chaotic conditions were caused by manufacturers going around cutting prices?—A. I think it would be more due to distributors, who were never correctly able to gauge the costs of selling.

Q. There was a great deal of price cutting?—A. Sure, that would be price cutting.

Q. It was price cutting that brought about the chaotic conditions. Could I not assume then that if resale price maintenance was taken off there would be price cutting again?—A. Yes, that is what I said could happen, and I said I would not like to see that removed.

Q. In other words, as far as people who buy this equipment are concerned, if resale price maintenance was taken off we might expect price decreases in this industry. That is what you said, is it not?—A. Yes, but then you must assume that there can be price decreases that are detrimental to the industry as a whole. If you have some price cutting by jobbers who do not understand and thoroughly know their costs, is it not fair to assume that the industry has to bear that cost? In other words, the distributor now being bankrupt, who bears that cost? It is the manufacturer who sold him.

Q. I think your argument is a good one, but nevertheless as far as this committee is concerned, you would admit that if price resale maintenance is abolished, your prices probably would come down?—A. Yes, but I do not want to give answers which would create false impressions. The impression you want me to give is that prices would come down and that the community would benefit. I refuse to make such a statement.

Q. Would the consumer benefit?—A. The consumer would never benefit in an industry because the loss has to be taken up. When prices are lowered in an industry, somebody has to take care of it, and whoever is in that industry will be the one to bear the loss.

The CHAIRMAN: Now, Mr. Garson.

By Hon. Mr. Garson:

Q. Mr. Swenson you told us that when the association met it never discussed prices, but that it sometimes discussed deals.—A. Yes.

Q. And I understand that the discussions would centre around such things as whether the dealers were to be permitted certain benefits beyond a certain date. What sort of benefits would you have in mind?—A. For example, you may have a deal whereby you buy ten units and you get a dozen.

Q. Yes.—A. That is a special sale; you buy 10 and you get 12; and the manufacturer has that deal on, and he says that it closes on December 1.

Q. And you would discuss together as manufacturers whether you would permit the dealer to have that discount after a certain date?—A. Well, we would discuss just what policy we should follow. The dealer buys those goods and he has them in his stock. Should he continue selling them on that deal price, or should he be allowed to take them into his stock. Those would be things about which it would be nice to have uniformity.

Q. Oh yes, and that would be discussed?—A. Yes.

Q. And the terms which the dealer would get would be established by the manufacturers and decided upon in this meeting?—A. That is right.

Q. And you would make that decision without reference to anybody else?—A. Yes, that is right.

Q. In the fixing of your own prices, would it be very clear that each manufacturer fixed them individually?—A. Yes.

Q. Do I gather that so far as the prices of your goods are concerned, you decide what they shall be, not only what your profits shall be but what the dealers' profits shall be on your goods?—A. That is right, because I have a fixed discount.

Q. You have a fixed discount and you decide that yourself without reference to anyone else?—A. That is right.

Q. And under this arrangement.

Mr. FLEMING: Did you say "profit", or "price"?

Hon. Mr. GARSON: The mark-up for himself and the dealer.

By Mr. Garson:

Q. You have told us about the shampoo which you sold for $2. With respect to that shampoo your manufacturing cost was $1.—A. That is right.

Q. And that shampoo sold for $3?—A. That is right.

Q. And I gather that you had a mark-up on your cost of 50 per cent. Is that right?—A. Yes, that is right.

Q. Because part of that mark-up is represented by taxes?—A. Yes.

Q. And the dealer, I suggest, would have a gross mark-up on his cost of $2; he would have a gross mark-up of another $1, or 50 per cent?—A. That is right.

Q. You told us that these profit mark-ups during the past 10 years had been steadily coming down?—A. No. I said that the prices had been maintained for the last 10 years and that the only increase in prices had been those which were reflected by increases in taxes.

Q. Mark-ups which reflected prices; what I am talking about is the gross profit mark-up. I distinctly understood you to say that during that period of time the profit margin had been steadily coming down under resale price maintenance and I gathered that your argument was that resale price main-

tenance was a beneficial arrangement because under it profit mark-ups were coming down. Now, were they coming down or were they not?—A. Yes, they were coming down because our volume was going up, and our unit profits could be less.

Q. About what percentage per annum on the whole would they come down during that period?—A. That is quite a question to throw at me without a book, you know.

Q. Well, would it be 10 per cent per annum?—A. No, I think it would be very small. 10 per cent is quite good.

Q. Well, let us say 5 per cent?—A. It might be.

Q. In the 10 years, with 5 per cent, that would be 50 per cent, over those 10 years. Is that right?

A. With your arithmetic; when you ask me a question like that, unless I have some books and figures, it is difficult to answer. Had you written and asked me beforehand, I could have produced them.

Q. I do not want to put any figures in your mouth. I asked you about 5 per cent. Would it be 5 per cent?—A. Let us say a small percentage.

Q. You say a small percentage. Well, of course, would it be 3 per cent?—A. It might be.

Q. That would be 30 per cent over the 10 years?—A. It might be.

Q. So your mark-up over 10 years would be 30 per cent higher than the present 50 per cent?—A. According to those figures, that is right.

Q. And for your manufacturing mark-up as well as for the dealers' mark-up?—A. That is right.

Q. I also understood you to say that if this legislation were enacted, prices would remain practically identical, and that prices would not change. Is that because you have got prices down so low that it is not possible for your competitors, even if resale price maintenance were removed, to cut prices any further?—A. It would be difficult to find a more competitive business where prices have been brought down to such a level as that of the beauty manufacturing business.

Q. You say that in your interests it is necessary for the wholesalers to have a 50 per cent mark-up?—A. That is right.

Q. And you say that the dealer should have a 50 per cent mark-up too?—A. That is right.

Q. I understood you to say that one of the justifications for resale price maintenance was that the the dealers could buy your branded line, which they would not be able to do otherwise because then you could not remain in business.—A. Yes. I think I would have been out of business many years ago if I had not had resale price maintenance.

Q. When did you go into business?—A. 30 years ago.

Q. And when did resale price maintenance come into effect?—A. On the first day I went into business.

Q. And your organization came into effect when?—A. About 10 years ago.

Q. About 10 years ago?—A. So I had 20 years start, and all that time I was never concerned with anything else. All that time when I thought of it I shuddered, because I wanted to stay in business.

Q. I understood you to speak of chaotic conditions which obtained within your organization or set-up?—A. That is right.

Q. You were then practising resale price maintenance yourself?—A. Yes.

Q. Then were the chaotic conditions caused by, or, to put it in a more obvious way, were they not caused in fact by the absence of other dealers and other manufacturers engaging in resale price maintenance?—A. That was part of it.

Q. So you managed to survive for a period of 20 years through this chaos, when most of the other people in the business were not practising resale price maintenance which you were practising?—A. That is right.

Q. I suggest to you then that their practising of resale price maintenance would be merely a factor in your business, perhaps, would it not, because all were competitive and you would have to meet those practices?—A. It would help me to have the association include those in the same business, because it would establish a basis on which the jobbers could sell them. The association would then become a profitable one and in that way I could collect my money.

Q. In other words, it was a great advantage to you. It was really more important to you that other people in the business should be practising resale price maintenance than, let us say, that you yourself should be practising it, because if you were practising it, and they were competitive, you would lose business.—A. Yes.

Q. Nevertheless, you managed to survive through following that practice of resale price maintenance for a period of 20 years?—A. That is right.

Hon. Mr. GARSON: That is all.

The CHAIRMAN: Mr. Jutras.

By Mr. Jutras:

Q. Mr. Chairman, following that, did I understand correctly that your main argument is that this practice makes for stability at both your level and the dealer level?—A. Right.

Q. You mentioned a while ago that without this practice you would not be in business. Then, on page 3 you mention that the policy helps to keep small dealers in business. Has your association made a close analysis of that angle to substantiate that statement—that it does keep the small dealer in business, or helps to keep the small dealer in business?—A. No, but it should be obvious that, if some large organization decided to take my item and make it a loss leader, it is bound to affect the business of everyone in the community—and the one that is going to be hurt worst is the small man.

Q. Of course, there can be two sides to that argument. It is the contention of your brief, but I say there does not seem to be much substantiation for that statement—which I would consider to be a very important part of the brief. What is your substantiation for that? Is it just a feeling?—A. It is principally a feeling, but it is principally just plain arithmetic too.

Q. The point that is not quite clear in my mind is this. You mentioned a moment ago that your association came into being in 1941. Up until that time the price maintenance practice was practiced by something in the neighbourhood of 50 per cent of the members of your trade. It was only after 1941 really that the practice became more or less general and it has worked up to 90 per cent in 1951. Would it not be a fair statement to say that it became an important factor in your business shortly after the war, or towards the end of the war?—A. In general I think it has been a factor all the way through.

Q. Well, possibly it has been a factor but I mean a major factor. I would take it that more than 50 per cent of your business people were operating under this system towards the end of the war? And from then on, let us say after the end of the war, it became a major factor?—A. Let us put it that experience has gradually, over the last ten years, shown different manufacturers that everything is better for them and for the industry if they have a list price on their goods—which is virtually price maintenance.

Q. Yes, but take the situation in your association, in your line, in Canada. Since this practice has only been really prevalent after the end of the war or towards the end of the war, what percentage of greater stability is due to the practice of price maintenance and what percentage due to the sellers' market in which you have been operating? Since the end of the war there has been the general economic condition of a sellers' market. No doubt the condition of a sellers' market, which has existed since that time, has been a pretty substantial factor in the greater stability of the small distributors and manufacturers as well?

What I am trying to do is to draw the line between the influence of great benefit due to price maintenance—.—A. I think it has been a very important factor. Does that answer the question, or do you want me to go further.

Q. Well, I do not see, to be quite frank with you, how you can make the statement that it was a very important factor—since the practice has only been prevalent since you have been operating in a sellers' market. It has never been given a chance in a buyers' market, in other words.

I think the effectiveness of the practice toward greater stability would come in a buyers' market and not in a sellers' market. Would you not agree? —A. I just do not know. I cannot follow your thoughts clearly enough to make an answer.

Q. Well, here is the point I am trying to make. You say your experience with price maintenance, and I am talking about your association and the business of your group as a whole—.—A. That is right.

Q. —your experience with the practice of price maintenance is that it makes for greater stability in the small dealer business let us say?—A. That is right.

Q. My point is: what is that statement based on—since your business has never had the practice of price maintenance in a buyers' market, but only in a sellers' market? Without the practice of resale price maintenance stability would have been greater anyway in the case of small dealers, as well as others? —A. I do not think the buyers' or sellers' market has a great deal to do with the situation where a small dealer buys my product. He knows there is a fixed price for it and he knows there is value. He knows that tomorrow nobody will come along and cut that right out from under his feet and put him flat on his back. Do you understand? He might buy $5,000 of my products and have them on his shelves. He knows that he can sell them at the price I have set, but if it was not under a price maintenance system he would not know whether he could sell them tomorrow for $1,000—and there he is out of business. Is that not worth something to a small dealer?

Q. It is not quite the point I was raising but it still comes back to the point of the business of stability. You assume that without the price maintenance system, taking your own case, you would be out of business, and that the dealer would have various types of shampoos that he would not know anything about?—A. That is right.

Q. From past experience we know that even if there was no resale price maintenance there would still be some known standard brands that we could buy. Brands would not change overnight in all of the various lines. I think you are putting it in the extreme.

However, to come back to the present case, is it an accurate statement and a statement that can be proved, to say that the practice of resale price maintenance contributes substantially to the help of the small business dealer? —A. Yes, I think that can be proved.

Q. You have not attempted to do that?—A. No, not as an association.

Q. You would not care to tell us the percentage that is due to general economic conditions and the percentage due to resale price maintenance?— A. No.

Q. That is all.

The CHAIRMAN: May I just offer a suggestion. We have a number of members of the committee who are very anxious to question the witness, so may I be permitted to ask you to make your questions as short as possible in order to give everybody a chance. I think the next on the list is Mr. Shaw.

Mr. MACINNIS: On a point of order there, Mr. Chairman. I am not one who is going to ask any lengthy questions but I think that a suggestion such as that should be made at the beginning of a meeting. I was going to make

it myself when we began here but I let it go. I think you had better leave it over until tomorrow. I am not speaking for myself—I may ask questions but I will be brief.

The CHAIRMAN: I thought we might accomplish something today and tomorrow we might start from the beginning. I did not think that a member would take so long to ask questions, and I did not like to interrupt as that is not very pleasant for the chairman.

Mr. MACINNIS: If I know the members they will not pay any attention to you.

The CHAIRMAN: Mr. Shaw.

By Mr. Shaw:

Q. Mr. Swenson, you indicated to the committee that for twenty years prior to 1941 you were in business as a manufacturer. Is that correct?—A. Yes, correct.

Q. You practiced resale price maintenance during that full twenty years, did you?—A. Correct.

Q. Did your competitors practice that policy during the same period?—A. A good many of them did.

Q. A good many. Would you say a majority of them did?—A. Well, that is an answer which has to be qualified, because in the first 20 years I was located in Winnipeg manufacturing electrical hairclippers, dryers, vibrators and so on. That was just one phase of my business. It was entirely equipment. That was the first 20 years. Then I came down here and expanded my business to include other lines. So, when you ask that question about the first 20 years, it is not the same answer that you would get on what I was doing in the next 10 years.

Q. I infer from what you say that for the 20 years prior to 1941 you did practice resale price maintenance?—A. That is right.

Q. And is it to your own knowledge that many of the other manufacturers and distributors in that field practiced the same policy?—A. That is right.

Q. In 1941 your organization came into being. Were you one of the principle organizers?—A. No.

Q. Were you one of the first members?—A. No.

Q. Did you attend the first meeting that was held?—A. No.

Q. When did you become a member of this organization?—A. Oh, I would say about two years later.

Q. Were you approached by the organization to become a member?—A. Yes.

Q. What was the principal inducement held out to you?—A. Well, they held out to me the prime reasons for the organization.

Q. What were they?—A. To promote closer cooperation between jobber and manufacturer in their efforts to serve the hairdressers and to do all such things as are incidental or conducive to the attainment of the above objects.

Q. Was resale price maintenance mentioned to you when you were approached to become a member of the association?—A. No.

Q. Did it come to your attention after becoming a member of the association that the association as such was concerned with resale price maintenance?—A. As a matter of fact, I do not think it was even thought of very much until just recently.

Q. It has now, though, become one of the principal planks, let us say, of your association?—A. No, I would not say that; no, not as an association.

Q. Mr. Swenson, you indicated that there are now certain manufacturers and jobbers who do not belong to your association. You are a member of the executive of the association, I understand?—A. That is right.

Q. Did you or any member of your executive, of the executive of your association, as such, approach these non-members to become members?—A. Yes, they have been approached.

Q. Have you discussed resale price maintenance with them?—A. No, we never discuss prices in our organization.

Q. In your brief, Mr. Swenson, you have laid great stress on the value of branded goods.—A. Yes.

Q. You have admitted that you manufacture many kinds of goods. Are they sold under the same brand name?—A. No, they have different names; I have my name on all the labels.

Q. What I mean is this, it would be by the name that they would be mostly recognizable; is that correct?—A. It would have to be a combination; as an example, if you have a name like Starlet Cold Wave, the name of the company Rilling-Wahl, would be down at the bottom of the label, because Rilling-Wahl is the name of the manufacturer. Then, we have another cold wave called First Lady Cold Wave, and that too bears the name Rilling-Wahl—it is the Rilling-Wahl that determines it. But you can have many other names. Does that answer your question?

Q. Partially. You confuse me a bit.—A. Or, do I get your point?

Q. Yes, you do sell shampoos of different grades with different labels on them?—A. Yes.

Q. And you sell them in individual containers?—A. Yes.

Q. And the container makes it readily recognizable as a product which you sell?—A. No.

Q. Is there anything on the container to show that?—A. Yes, you have to look for it; the manufacturer's name is Rilling-Whal, you see. Now, do you mean, could you distinguish it readily at a distance of 3 feet and tell from the label whether it was a product of mine or not?

Q. Well, a purchaser would come into the jobber's show room and vice versa, and let us assume the jobber is selling shampoo; can the purchaser readily determine your products—your $3.00 product and your $5.95 product as being a product of your factory?—A. Within certain limits. There may be a line-up of twenty shampoos. You see, you have to look at the bottom of each label to find out the name of the manufacturer.

Q. You do not fear, Mr. Swenson, that by selling a $3 product like that to a $5.95 jobber in each case that you are probably causing your own brand name to deteriorate in value. —A. No, I do not think so.

Q. And yet you do feel that a 10-cent reduction in the price of one of your products would cause a depreciation, let us say, in the value of the brand name?—A. If it was a name brand that the price had been established with. Let us take the Starlet cold wave which is $9.50 a dozen, and the First Lady cold wave is $13.50. Either one of those cut 10 cents would injure me.

Q. You are thoroughly convinced of that?—A. Yes, thoroughly convinced.

Q. Do barbers ever serve as retailers of your products?—A. No.

Q. You understand practically every barber is a retailer in the sense that he sells certain preparations—hair tonics, face lotions, et cetera?—A. Well, you might say this, we as manufacturers wish they were retailers but the volume that they do is so small that you might just as well say they are not retailers.

Q. But are you aware of the fact that they do retail in practically every case?—A. I am aware that they have items for sale and occasionally make a sale but not the way you describe it—they are not retailers.

Q. What control do you as a manufacturer have upon the price which that barber places upon that commodity?—A. Well, if he sells one of my supplies like some of my shampoo I would insist that he sold it at the price that I put on it.

Q. And what would you do if he did not? If it came to your attention that that barber did not sell it at the price which you had specified what would you do?—A. Well, I would first find out who sold it to him.

Q. The jobber, in other words?—A. Yes, and I would point out to the jobber his error.

Q. Now, what do you mean, Mr. Swenson, by "his error"?—A. Well, perhaps that was an unfortunate word—his mistake, his omission.

Q. Well, the dictionary will indicate that mistake and error are the same. What do you mean by his omission?—A. His failure to conform to the price I had set.

Q. And then, Mr. Swenson, what action would you take against him?—A. I do not imagine that I would ever take any action against him.

Q. But you have already indicated that you would caution him?—A. I would caution the dealer.

Q. Now, what form would that caution take?—A. I would caution the dealer and say: "Look, Joe is selling this shampoo at such and such and he should be doing it at such and such" and no doubt the barber would just say: "Well, that is too bad; I am sorry for that".

Q. You are dealing with the jobber, Mr. Swenson?—A. You see, I have no direct connection with the barber.

Q. But you have indicated that you have cautioned him which indicates that you do have a direct connection?—A. I would caution the jobber.

Q. But remember the barber is dependent upon what the jobber does and apparently the jobber is dependent upon what you insist that he do. Now, you caution him and he tells you to jump in the lake—that is a very broad term—you appreciate what I mean; what do you do next?—A. It has never come up but I would imagine that we would not sell him any more.

Q. You would not sell him any more of that product?—A. No.

Q. In other words, you could put him out of business?—A. No, my dear sir, that is the furthest thing from my thought. He can go and buy 25 other products and sell them at any price he wants to.

Q. But so far as your product is concerned you would in effect be putting him out of business; in other words, if he were relying on your products he would be out of business?—A. If that was all he was doing all day long selling my shampoo.

Q. Yes.—A. That is a pretty broad statement.

Q. Well, Mr. Swenson, there is a vital principle involved?—A. But the vital principle reflects back on me. What is he doing to my business? I have worked on my business for 30 years and it has been on a basis of price maintenance. Why should he in five minutes decide that that is all wrong and wreck my business?

Q. That is not what I was trying to get at. What I am trying to get at is what you will do ultimately to the consumer through that policy—that resale price maintenance. Am I right in inferring then that under certain circumstances namely, withdrawing your product from the jobber you will no doubt withdraw it from the consumer?—A. I would not withdraw it from the jobber; I would tell the jobber not to sell Joe any more.

Q. That is exactly what I mean.

By Mr. MacInnis:

Q. Mr. Swenson, looking at this matter specifically from the point of view of the consumer I understand in answer to a question that you are in favour of competition?—A. Yes, I am.

Q. What is the purpose of resale price maintenance—doesn't it limit competition?—A. No, I do not think that it limits competition.

Q. You do not think it limits competition?—A. No, I do not see how it limits competition. I think we were discussing that some place in the brief.

Q. I am not taking the brief for the moment.—A. I know, but those answers would be the answers I would give to you.

Q. No, that would be applied to all your answers this afternoon, but I want to know what is the purpose of resale price maintenance if it is not to limit competition?—A. Well, there are several pages in here that would answer that.

Q. Can't you answer that? You know what is in those pages?—A. Yes.

Q. Can you answer the question very quickly by summarizing it?—A. Well, when you say "does it limit competition"—well, price maintained goods are still subject to competition from similar products. You see, I set a price of $2 for a gallon of shampoo and supposing I set a price of $3 a gallon for that shampoo, why, by tomorrow morning there would be five guys out there selling that for $1.95. They do not bother you if you just sell it for $2.

Q. That is not an answer to the question.—A. Well, that is competition and that is competition whether it is price maintained or not. I maintain a price of $2, but if I tried to maintain a price of $3 I am out of business tomorrow.

Q. Would not there be more competition if you did not have resale price maintenance?—A. I do not see how there should be more competition in the beauty business, and that is the business I am in.

Q. Well, resale price maintenance cannot mean anything to you unless it limits competition in your business?—A. No, it gives me stability; it gives me a feeling of stability. It gives my jobbers a feeling of stability; it gives everyone a feeling of stability.

Q. Why?—A. Because they know that tomorrow that same shampoo is going to cost them $2. They can go out and put a stock in. They know it is going to be maintained but what would they do if they thought that maybe tomorrow it would be $1.50; they would order some piddling order and I would have to make two deliveries, two invoices, two everything, but when they know that it is going to be $2 they are willing to put in a stock and keep that stock and maintain it.

Q. That answer is not satisfactory at all. I have understood from everything that I read, even from your quotation from Justice Brandeis that he refers to unfair competition, and all the arguments you have made in this brief about upholding price maintenance are based on unfair competition, that the purpose of it is to overcome unfair competition, is that not correct?

Mr. CÓRLETT: Perhaps I might answer Mr. MacInnis. I refrained from saying anything because the committee is naturally more interested in hearing from Mr. Swenson, who knows the industry, but my understanding of the Brandeis idea set forth in that article is that if you had a freeing from this resale price maintenance policy many of these jobbers or dealers would be forced to the side. They would be put out of business. These dealer organizations are not all of equal strength. Some are big, some are chain organizations, some are just individual organizations, as I understand it, operating in a certain area, and it was my feeling, from reading the Brandeis article, that if you started slashing prices, which we are certainly of the opinion would happen in this industry, with the less efficient dealers many would just go out of business; that is what happened in the thirties. Now, we cannot produce—I suppose we could if we checked the records, but I do not see how we can go back before 1940, when the mortality rate was very high in this industry. In fact, the mortality rate in this industry is high to-day. I was looking at the Canada Gazette a few weeks ago and I saw that one firm in Hamilton went bankrupt. It may be that resale price maintenance fosters inefficiency, I do not know, but certainly it would cut down the numbers in the industry at the dealer level, and I think that is where the vulnerability exists in this industry today, at the dealer level, more than at the manufacturing level.

Mr. MACINNIS: You maintain that resale price maintenance limits competition at the dealer level?

Mr. CÓRLETT: Limits it?

Mr. MACINNIS: Modify it?

Mr. CÓRLETT: No. To the extent that there would be more dealers, to that extent there would be more competition at the beauty shop and barber shop level.

Mr. THATCHER: But you admit, though, that resale price maintenance does limit competition between various dealers of the same products?

Mr. CÒRLETT: In so far as one manufacturer's product is concerned.

Mr. THATCHER: So that that practice does restrict competition in that way?

Mr. CÒRLETT: To a great extent, but I do not imagine that there is one shampoo in the world that cannot be substituted for another, with all due respect to my principals. I do not think you can say that, because one dealer and, in due course, the beauty operator are restricted as to price, that if they do not fall in line, or even if they are no longer supplied with that manufacturer's products, they cannot turn around and in 24 hours get another shampoo in the same price range from five or ten other manufacturers.

Hon. Mr. GARSON: Which is already price maintained.

By Mr. MacInnis:

Q. Mr. Swenson, you said in answer to another question that you were not sure whether people in the same line that you are in would refuse to supply a dealer who cut prices. Is that correct?—A. I made a statement that there might be others who would follow. You are going back to the statement that I made that I might cut off a dealer if he did not conform, and where I said there might be others who would follow my action but there would be many, many more who would ignore it.

Q. That is merely an opinion. You have said, though, you would cut him off.—A. Both are opinions. If I am entitled to one opinion, I am entitled to the other.

Q. You would cut a dealer off who sold your product at less than the agreed prices, you said. Well, then, other manufacturers might follow and refuse to supply this dealer also. Would not that be reducing competition?—A. It would be if there were not so many involved, but there are so many involved—if there were just three and two refused and that just left him with one, then that is a bad situation, but he still has 10 or 20 sources of supply. Surely that cannot be any harm to him.

Q. Let me quote from page 4 of your brief. The article I am quoting from was taken from *Harper's Weekly* of November 15, 1913, written by Louis O. Brandeis. The article reads:

> When a trade-marked article is advertised to be sold at less than the standard price, it is generally done to attract business to the particular store by the offer of an obviously extraordinary bargain. It is a bait—called by the dealers a "leader" but the cut-price article would more appropriately be termed a "mis-leader", because ordinarily the very purpose of the cut-price is to create a false impression. . . . The evil results of price-cutting are far reaching.

Now, the purpose of resale price maintenance is to prevent price cutting, is that not so?—A. That is right.

Q. Well, then, to that extent the purpose is to eliminate competition. Mr. Beaudry, I think it was, said, and you agreed with him, that a customer, a barber or a beautician, could make up his own preparations.—A. He could, yes.

Q. Where would he get the raw materials for making his own preparations? Would he not have to buy them from you?—A. No, he would go to the same sources of supply as I do.

Q. But he would have to buy them from some manufacturer.—A. You mean some manufacturer in our organization?

Q. In your line of business.—A. No, he could go right outside of our organization. That is all.

By Mr. Harkness:

Q. Mr. Harkness, from the point of view of a man who buys a haircut or a woman who buys a hairdo—you said that only about 10 per cent of the hairdressers' gross income enters into the cost of beauty supplies. That being so, would you agree that a rise or fall in the price of supplies bought by these operators would not be likely to affect the price of a haircut?—A. Practically none.

Q. In other words, as far as your industry is concerned, whether resale price maintenance causes an increase or decrease in prices has no practical effect on the ultimate consumer.—A. That is right.

Q. The point I am making, Mr. Chairman, is that as far as this industry is concerned it seems to me to make no difference to the ultimate consumer whether they have resale price maintenance or whether they do not.

Next, on page 2, paragraph 3, you talk about the chaotic conditions which had prevailed in the industry. Then you say this: "The beauty supply industry adopted a resale price maintenance policy in an endeavour to eliminate these chaotic conditions". I am not clear yet as to when this resale price policy was adopted. I take it it became general in 1941. Am I correct in that?—A. It was one of those things that was just a gradual growth. It was not that the organization got together and said: "Look, we as members insist", or we will take a member in and say, "Now, one of the reasons that we allow you in is that you have a price maintenance". That was never done. It was a case of gradual education to show the manufacturers, to show distributors, to show everyone in the industry how much better everything was for maintaining prices.

Q. My next question was, what was the method by which this was done? —A. Educational.

Q. Who carried on this education?—A. We just carried it on at general meetings, probably stimulated by the executive.

Q. In other words, the association, you say, adopted the policy and then they spread the faith among the members.—A. That is correct.

Q. Well, is that not to some extent a combination amongst the manufacturers and dealers, in order to maintain resale price maintenance?—A. I hope not.

Q. Well, in your evidence, more or less connected with this point, you stated at one stage that:

> "Too many jobbers were operating who did not know how to operate and were throwing the whole industry into chaotic conditions."

Apparently your organization was formed to some extent to prevent these people who did not know how to operate and were causing chaotic conditions to cease operating. Is that correct?—A. Not to cease operating, but to teach them how to operate.

Q. So the effect of the formation of the association was to teach them how to operate; but was not that effect to cause them to cease operating?—A. That is hard to know.

Mr. CORLETT: Mr. Chairman, might I throw some light on that subject?

The CHAIRMAN: Surely.

Mr. HARKNESS: That is just what I am looking for, light.

Mr. CORLETT: I understand that you have been receiving representations from diverse groups. But it must never be forgotten that with this industry, at the dealer level particularly, there are some firms which are merely proprietorships; they are not incorporated companies; and the experience of the association has been—and this applies to firms in industries not related to this one—that these people, through the lack of keeping adequate books of account, just did not know whether they were making money or not. That was particularly true with respect to proprietorships up to 1941. But now the income tax laws make it otherwise because there is a section in the Income Tax Act which requires an operator to keep and maintain books of account which are satisfactory to the income tax authorities. And it might be the case that, if there are no required books of account required to be kept, as is the case with joint stock companies, which is the basis on which some of these dealers operated—they would be just small operators—they would not maintain a set of books and would not know whether or not they were making money. So when they started selling at certain prices, they might be putting themselves that much nearer bankruptcy. That was the real problem with them and it might be that it still exists.

By Mr. Harkness:

Q. Have you any figures as to the number of dealers who went out of business following the formation of the association.—A. That is part of the information which Mr. Corlett has been asked to get.

Mr. CORLETT: We would have to get the membership over the years since 1940. I know of another matter concerning five dealers who have gone out of business within the last 20 months. So there is quite a turn-over at the dealer level in this industry. We would be glad to do what we can in getting the information for you.

By Mr. Harkness:

Q. We are not dealing with retail price maintenance here but with wholesale price maintenance.—A. I think that 90 per cent of it would be that way.

Q. In that item to which resale price maintenance would apply, would be included those small articles which are sold by the dealer to these suppliers?—A. That is right.

Q. So wholesale price maintenance is the policy you have adopted rather than retail price maintenance?—A. That is right.

Q. I was not clear in your answer to Mr. Thatcher as to the basis of these mark-ups which you have dealt with at the top of page 3 of your brief, ranging from 20 per cent to 50 per cent, as far as manufacturers are concerned, and from 33⅓ per cent to 40 per cent with respect to dealers. He asked you whether that mark-up was on the factory cost price or whether it was on your selling price at the time?—A. On the factory cost price in the first instance; and in the second instance, on the dealers' cost price.

By Mr. Carter:

Q. Mr. Swenson, how many meetings does your association have during a year? How often do you meet?—A. About once a month—about ten times a year.

Q. Is that the whole association or just the executive?—A. The whole association. The executive has a meeting on the same day.

Q. The same day?—A. Yes.

Q. At those meetings you discuss policy, do you?—A. Yes, policy.

Q. And do you discuss among yourselves what treatment is to be given to those jobbers or dealers who cut prices?—A. No, we do not discuss that. That is left entirely to the discretion of each individual manufacturer.

Q. That is not mentioned as a topic for discussion?—A. No.

Q. Is there any agreement among your members to boycott any dealer who cuts prices?—A. No, no agreement.

Q. Talking about prices, when you make up your cost prices do you include or do you treat government taxes as cost?—A. Yes, of course I do. In that illustration I gave where I sell a shampoo that costs $1 for $2, I have got 52 cents taxes in there.

Q. Are there any other items of that nature which you regard as cost, as a manufacturer?—A. As a manufacturer I put in all my material and all my labour, and then out of my profit must come all my overhead, my manufacturing expenses, my selling expenses, and my office expenses—out of that 48 cents. Is that an answer to your question?

Q. How many employees do you have?—A. In my business?

Q. Yes.—A. It runs between 25 and 30.

Q. Your firm pays unemployment insurance?—A. That is right.

Q. You regard that as cost too?—A. Yes, that is part of my labour cost.

Q. That is cost of labour?—A. Yes.

Q. I am not quite clear about what you said of the difference between a manufacturer who has his own outlet and a manufacturer who has somebody else as an outlet—who has a jobber as an outlet? If I understood you correctly there was no advantage for a man who has his own outlet, as compared with the person who has not? Is that right?—A. That is substantially right.

Q. When you sell your product to the jobber you have a mark-up and you make a profit on the sale to the jobber?—A. That is right.

Q. When the jobber sells it to the dealer he gets another mark-up. Would not the manufacturer who had his own outlet make two profits—the manufacturer's profit and the jobber's profit?—A. Offhand you would think so, but when it comes down to actual practice that manufacturer, who is presumably selling to the beauty shop cannot do it directly. He must establish a jobbing set-up of his own within his own organization. That costs just as much, and perhaps more than if you have a jobber who knows his own business. This manufacturer is faced with distribution costs. He has got to have salesmen, a sales manager,a place for carrying out that operation, and even if he does it within his own organization nevertheless he has to provide those same mark-ups to take care of the added cost. There is no way that a beauty shop can come right into the shipping room and take out stock. You have to go out and sell it.

Q. But surely a jobber would make a profit?—A. That is correct.

Q. And would not a manufacturer make that profit as an additional profit? A. He might or might not.

Q. It is possible for him to do it?—A. It is possible for him to do it providing he is paying out less wages than the jobber would take out of his business. You see, there is no way of eliminating that jobber; you must have that intermediate step and you must establish somebody in charge and you still have your same accounting, your same salesmen or same persons to provide it. All of it has to be handled the same way.

Q. When you allow a jobber a mark-up isn't that mark-up sufficient to cover those overhead expenses which you have mentioned, and give him a margin of profit out of that?—A. That is right, but the manufacturer cannot eliminate that because he is selling direct, because he has to have that same organization within his organization.

Q. I cannot see how an outside jobber could handle goods at a profit and a manufacturer who is handling it himself as a jobber cannot make the same

profit.—A. Well, you see, supposing his profit is practically his wages, and that is the situation many times—just his wages. If you have to go out and hire somebody within your organization for that, where is your profit gone? It would be all right if you could bring somebody in free. If you can bring that jobber into this organization and say, "You work for free," then he would save there, but the minute he has to go out and pay wages for the same service that the jobber is giving him the jobber would work harder than the man the manufacturer hired.

Q. Does the jobber perform this service more economically than the manufacturer can?—A. In many cases, but I guess he will work harder for himself. He will work harder for himself than any one the manufacturer went and hired —obviously—of course he would.

Q. Do jobbers only usually have one line or do they have lines of other manufacturers as well?—A. They usually have several lines.

Q. You said, I think in answer to Mr. Fleming, that the retail part of your business is insignificant?—A. That is correct.

Q. And at the bottom of page 2 you mention the loss-leader as one of the factors that would come into play and upset your business if this resale price maintenance went through?—A. That is right.

Q. How can the loss-leader affect your business when the retail business is so small?—A. We were thinking of the loss-leader at the distributors' level, not at the consumers' level.

By Hon. Mr. Garson:

Q. You want to attract them into your manufacturing establishment, is that it?—A. I am calling him the jobber. He will sell my product at a set price of $10 to the hairdresser. Now, that hairdresser in turn—say he wants to know—

Q. The theory of a loss-leader as I have always understood it is that you attract a number of people into your store by undercutting one line in order that you may sell other lines. Does the same thing apply between the jobber and the barber?—A. Yes, it would.

Q. You think it would attract all the barbers into the store?—A. Except that the barbers do not go to the store but the dealers' salesmen are selling it and they are the ones that are interested in that.

Q. But the basis is to get him into the store so that he can see other things, whereas the salesman only has a list of a lot of products, and I would not think the mere fact that the price of one or two or more were cut would mean that he would be more inclined to take the other ones that were not cut.

Mr. BEAUDRY: You may want to attract a jobber to your industry to the exclusion of other industries.

The WITNESS: Mr. Garson, I can assure you it works the same way as in retail trade.

The CHAIRMAN: Are you finished, Mr. Carter?

Mr. CARTER: I have one more thing I was going to ask Mr. Swenson—if he could tell us exactly how he, as a manufacturer, would be affected if this legislation was put through.

Br. Mr. Sinclair (Joint Chairman):

Q. Mr. Swenson, I am the Assistant Minister of Finance, so I am interested in your 52 per cent tax on $1. I think in fairness that 52 cents is on your cost plus mark-up with 10 per cent and 25 per cent excise tax on the $1.48, giving you 52 cents, not 52 cents on $1.—A. Did I say that? I said that the selling price of $2 included 52 cents tax. Am I correct in that?

Q. You are correct in that it is based on your selling price.—A. My selling price of $2?

Q. On your selling price of $1.48 you have a 10 per cent sales tax and 25 per cent excise tax, which brings it up to $2, which is 52 cents tax.

The CHAIRMAN: Mr. Stewart has a question.

By Mr. Stuart:

Q. I notice that when you said you sold a shampoo for $3 you gave us a breakdown and that your cost was $1. Now, the shampoo that sells for $5, would you give us the idea of that cost?—A. It would be approximately in that proportion.

Q. Now, you mentioned in one of the statements that you made that your profit would be about 15 per cent, did you not?—A. Fifteen per cent?

Q. Fifteen per cent—was that figure mentioned?—A. The only time 15 per cent was mentioned was that that represents approximately the price increase that has taken place in this industry in the last ten years.

Q. There is just one other question I will ask. I understand that you said that you in no way would be opposed to the tariff restrictions on like articles coming from the United States. Would you include in that the hair clippers that you say that you manufacture, and barber chair equipment?—A. No, I should stick to the supplies.

Q. I thought so.—A. I would stick to the supplies.

The CHAIRMAN: Well, gentlemen, it is past 6 o'clock. We have had a very fruitful afternoon and a very interesting afternoon. Are you through with these gentlemen or do you want them to come back?

Mr. BEAUDRY: Mr. Chairman, I would like to ask one question, which I think has some bearing.

By Mr. Beaudry:

Q. Mr. Swenson, you made various references to a 50 per cent mark-up to the distributor as a follow-up of the example you gave of the normal mark-up as far as shampoo is concerned. That is at first sight a very considerable mark-up for just the process of distribution. Going over the figures you have quoted earlier I find that your figures—I think you quoted approximately $8 million a year—I think this was one of your answers to Mr. Phelan at the beginning of your examination, that is, the group that make up your association would sell approximately $8 million a year?—A. But you understand I cannot give those figures because the Bureau of Statistics does not separate us from the toilet goods so that anything told you it is just a question and then you get an answer and then you multiply it out and it may have no bearing on it at all.

Q. I will assume that that is an approximate figure. You have also mentioned that there are 61 manufacturers who, therefore, would average $130,000 a year. You mentioned that there are 69 jobbers who would average, therefore, $110,000 a year sales, which brings me to this question. You referred earlier to the chaotic conditions as being mostly the inability of distributors to gauge cost of selling, in your own words, which I think would reflect on their risk value as credit?—A. Yes.

Q. Now, I would also assume—and I would like you to tell us yes or no to this—that the average business doing $130,000 worth of business a year could not afford the services of a credit manager?—A. That is correct.

Q. Now that we have come to an average of $110,000 a year sales for each one of those 69 jobbers, would you tell the committee which, if we break it

further down into 13,000 customers which you have pointed out are existing—I think you said 7,000 barbers and 6,000 beauticians—

Mr. PHELAN: 9,000.

By Mr. Beaudry:

Q. The total being therefore 16,000—the 16,000 are being serviced by 69 people which is approximately 170 customers to each jobber. Would you care to tell us—and I think this has quite a deal of bearing as to the relationship between margin and actual profit of the jobber, would you care to tell us the size of the stock, for instance, maintained by the average beautician, if you can tell us?—A. Are we down to a hairdresser?

Q. To a hairdresser, yes—the stock—could you give us the dollar value?—A. I would think it would be just a few hundred dollars.

Q. Would you say $300?—A. Say $300 to $500.

Q. And the cost of these supplies that are being sold, would that not imply also that there must be a fairly high frequency of calls on the customer by the jobber or his employees? A. That is true, yes.

Q. And that each one of these calls is only for a small proportionate amount of the total of $110,000 a year that he would do?—A. That is right.

Q. And that therefore the cost of a call on each one of the consumers is high, or even very high?—A. That is right. Well, high.

Mr. BEAUDRY: Thank you.

The CHAIRMAN: Mr. Murray?

By Mr. Murray:

Q. If this minimum resale price maintenance should be prohibited and articles such as Toni, and other articles of your line should be slashed to a point where there is no money in them, would there be a tendency on the part of the operator to increase the price of other forms of service to the public?—A. Would you mind re-stating that question again? You are going to have the price of Toni cut down to let us say one-half of what it is today?

Q. Yes. Would there be a tendency on the part of the operator to increase the price of her other services in order to compensate for her loss in the other end?—A. She is not involved with Toni. You see, Toni is a competitor with the hairdresser. It was set up to make it possible to save a lady going to a hairdresser and paying from $5, to $6 for a hairdressing. She can go to a drug store and pay only $2 for a Toni.

Q. You have said that if a merchant may have $500 worth of stock on hand. If he is going to take a loss on that merchandise, would there not be a tendency on his part to increase other rates for services which he renders in order to compensate for that loss?—A. After all, the thing boils down to this: the owner of the beauty shop and the operator must earn a living wage.

Mr. MURRAY: Well, I think the tendency would be to increase the cost of her other forms of service.

The CHAIRMAN: Gentlemen, I think we have had a very informative afternoon. I understand that the program for tomorrow includes the Canadian Pharmaceutical Association and the Ontario Retail Druggists Association. We are now adjourned until 10:30 tomorrow morning.

The committee adjourned.

APPENDIX A

BRIEF SUBMITTED BY THE ALLIED BEAUTY EQUIPMENT MANUFACTURERS' & JOBBERS' ASSOCIATION TO THE JOINT COMMITTEE OF BOTH HOUSES OF PARLIAMENT APPOINTED TO CONSIDER THE INTERIM REPORT OF THE COMMITTEE APPOINTED TO STUDY COMBINES LEGISLATION, TABLED IN THE HOUSE OF COMMONS, FRIDAY, OCTOBER 12, 1951; AND TO CONSIDER APPROPRIATE AMENDMENTS TO THE COMBINES INVESTIGATION ACT BASED THEREON.

I. *Introduction*

The Allied Beauty Equipment Manufacturers' and Jobbers' Association wishes to express its appreciation to this Committee for extending to it the privilege of representing its views on this question of resale price maintenance.

This Association is the recognized trade association of manufacturers and distributors in Canada of beauty supply products which are sold to approximately 7,000 hairdressers and beauty parlors and 9,000 barber shops throughout Canada. The Association presently has a membership of slightly in excess of 100 firms.

In the beauty and barber supply industry the products manufactured are usually known to the trade as "Professional products" since they are used by beauticians and barbers in performing a service to their customers or patrons and, generally speaking, such beauty and barber supply manufacturers and dealers do not sell their products for ultimate sale over the counter to the public. In other words, these professional products which are purchased by beauticians and barbers represent a necessary cost of doing business to them.

II. *Facts relating to the Beauty Supply Industry*

1. No attempt has been made to increase prices of beauty supply products to the hairdresser since 1939, except for the addition of increased excise and sales taxes. What other industry in Canada can make this claim? With the exception of the passing on of these Federal taxes, the hairdressers pay no more for their merchandise today than they did before World War II. This curious situation is due to the keen competition that exists in the beauty supply industry both the manufacturing and distributive levels of trade. Because of the increased Federal taxes, it is true that some items of merchandise will cost the hairdresser as much as 30 per cent more than was paid in 1939. On the other hand there are items of merchandise that will cost less today than in 1939. On an overall basis, this Association estimates that there has been an increase in cost of beauty supplies to the hairdressers' shops of approximately 15 per cent which is represented entirely by the increase in Federal excise and sales taxes.

2. Only about 10 per cent of a hairdresser's gross income from business is necessary to pay for the cost of beauty supplies which are obtained from the beauty supply industry.

3. The desire of beauty supply manufacturers to continue the policy of resale price maintenance with reference to the sale of trade-marked and branded merchandise is not in order to increase prices but merely to maintain a condition of orderly merchandising. In the past, this industry has suffered

severely from cut-throat price practices which were prevalent and which caused numerous bankruptcies and the forcing of many dealers out of business. The beauty supply industry adopted a resale price maintenance policy in an endeavour to eliminate these chaotic conditions. It is interesting to note that since 1945, due to the higher cost of doing business, many dealers have urged their manufacturers on occasions to raise their prices. This has been invariably resisted by the manufacturer who is well aware of the competition existing in this industry at the manufacturer's level. Consequently, manufacturers or dealers, or both of them, have had to curtail their own margin of profits since 1945 in order to maintain the prices to the hairdresser at the lower level. The manufacturer, from past experience, knows that many of its branded articles would be used by dealers as loss-leaders if the manufacturer were to lose control completely over resale prices.

4. In the beauty supply industry the manufacturers operate on a percentage mark-up ranging between 20 per cent and 50 per cent and the dealers operate on a percentage mark-up ranging from 33⅓ per cent to 40 per cent. These are historic mark-ups in this industry and we submit that they are not unreasonable, particularly bearing in mind the percentage mark-ups that were revealed in other industries by the Royal Commission on Prices—1949.

5. In Canada, there are today approximately 65 manufacturers of beauty supply products which are distributed to hairdressers by approximately 75 dealer organizations. In this connection, we wish to stress the moderate size of the manufacturing firms and dealers' establishments in this industry.

6. The big problem today which faces this industry is the fact that the dealers are not for the most part, financially secure. However, any effort to increase prices has been resisted to date by the manufacturers due to the keen competition that exists in this industry.

III. *Reasons why the association favours a policy of resale price maintenance*

1. *Resale price maintenance favours competition.*

(*a*) In an industry such as the beauty supply industry, a policy of resale price maintenance does not eliminate competition. In fact very keen competition exists amongst the manufacturers and amongst the dealers. Because this is so, price maintained goods are still subject to competition from similar products in the same industry.

(*b*) Resale price maintenance tends to prevent economic concentration in this industry. This Association is definitely of the opinion that such a policy helps to keep small dealers in business. If the policy of resale price maintenance was abolished we are confident that many beauty items of merchandise would be used as loss-leaders and that this would have the effect of driving many of the dealer organizations out of business. This whole question of whether unlimited price competition will maintain competition generally has been thrashed out many times particularly in the United States. The best view in our opinion on the effect of price cutting, insofar as it affects the consumers was set forth in an article entitled "Cut-throat Prices, the Competition That Kills". This article appeared in Harper's Weekly, November 15th, 1913 and was written by Louis D. Brandeis who, shortly afterwards, became a Justice of the Supreme Court of the United States. A relevant part of this article reads as follows:

> When a trade-marked article is advertised to be sold at less than the standard price, it is generally done to attract business to the particular store by the offer of an obviously extraordinary bargain. It is a bait—called by the dealers a "leader"; but the cut-price article

would more appropriately be termed a "mis-leader", because ordinarily the very purpose of the cut-price is to create a false impression . . ,. The evil results of price-cutting are far reaching. It is sometimes urged that price-cutting of a trade-marked article injures no one; that the producer is not injured, since he received his full price in the original sale to jobber or retailer; that the retailer cannot be harmed, since he has cut the price voluntarily to advance his own interests; that the consumer is surely benefited because he gets the article cheaper. But this reasoning is most superficial and misleading . . . The process of exterminating the small independent retailer already hard pressed by capitalistic combinations would be greatly accelerated by such a movement. Already the displacement of the small independent businessman by the huge corporation with its myriad of employees, its absentee ownership, and its financial control, presents a grave danger to our domocracy. The social loss is great; and there is no economic gain. "But the process of capitalizing free Americans is not an inevitable one. It is not even in accord with the natural law of business. Shall we, under the guise of protecting competition, further foster monopoly by creating immunity for the price-cutters? Americans should be under no illusions as to the value or effect of price-cutting. It has been the most potent weapon of monopoly—a means of killing the small rival to which the great trusts have resorted most frequently. It is so simple, so effective. Far-seeing organized capital secured by this means the co-operation of the short-sighted unorganized consumer to his own undoing. Thoughtless or weak, he yields to the temptation of trifling immediate gain; and, selling his birthright for a mess of potage, becomes himself an instrument of monopoly.

It is important to remember that Mr. Justice Brandeis, of all the American judges, had a greater knowledge of the working of the American economy. Consequently, any opinion of his, we submit, should be treated with the greatest of respect. Furthermore, from perusing his judgments and writings, it can definitely be established that he was no lover of big business. This was well established in his famous book "The Curse of Bigness".

2. Retail price maintenance promotes economic efficiency

(*a*) By prescribing minimum and maximum prices on branded articles, a policy of resale price maintenance has the effect of providing a more stable price structure to the advantage of the manufacturer, dealer and consumer. This is certainly true in the case of the beauty supply industry when one looks back at the chaotic conditions that prevailed in this industry prior to a policy of resale price maintenance being established by individual manufacturers.

(*b*) Resale price maintenance gives the necessary protection to the manufacturer in connection with the sale of trade-marked or branded articles. It creates public confidence in the product. Human nature being what it is, if prices of branded articles vary from recognized prices, the consumers suspect that the quality of the produce has deteriorated. This suspicion is particularly so in the case of branded articles that are used as loss-leaders. The Royal Commission on Price Spreads, 1935, went into this matter in great detail as part of their investigation into price spreads and mass buying practices in Canada. In their report at page 229 they recognized the fact that customers react in this manner when they made the following statements:

"Likewise, a manufacturer, who has built up a wide demand for his products, is injured when these are regularly sold at cut prices.

Because the profit margin is thereby lost on such goods, competitors of the price-cutter lose interest in the goods and push more profitable lines. On the other hand, consumers who tend to connect price with quality are apt to suspect that the quality is deteriorating when well-known mechandise is offered at cut prices. Thus, although the manufacturer may feel an initial stimulus in demand because of the lower prices at which his products are being offered, this may soon be lost as public interest wanes."

More recently, we got a similar psychological reaction on the part of American consumers in New York city when such large retail organizations as Macy's and Gimbels slashed their retail prices on many branded articles. While these sales were in progress, a number of American manufacturers whose branded articles were affected, ran large advertisements in the New York newspapers re-assuring their customers that the quality of their products had not deteriorated and that they, as manufacturers, did not favour ruthless price slashing. Obviously, these manufacturers would not have gone to this expense had they not felt from experience that consumers of branded articles would have reacted in this manner.

(c) Resale price maintenance involves the use of fair prices. In an industry such as the Beauty Supply Industry where competition is great, a manufacturer cannot allow his fixed prices to get out of line, because, otherwise he would lose out to his competitors. Surely a manufacturer in a competitive business such as the beauty supply business who wants to sell his product knows better than anyone else what a fair price is. This was the view that was taken by one of the wisest American judges, namely Mr. Justice Oliver Wendell Holmes of the Supreme Court of the United States. In the case of Dr. Miles Medicine Co. v. Park & Sons Co. (1911, 220 U.S. 373,) the plaintiff had worked out a scheme of resale price maintenance. The scheme had been broken by the defendant company. The majority of the United States Supreme Court held that no price maintenance scheme could be enforced through an injunction. Mr. Justice Holmes dissented and wrote one of his famous dissenting judgments on the effect of competition as a method of fixing a fair price. At page 409 of the report he said in his dissenting judgment the following:

"I think that we greatly exaggerate the value and importance to the public of competition in the production or distribution of an article (here it is only distribution), as fixing a fair price. What really fixes that is the competition of conflicting desires. We, none of us, can have as much as we want of all the things that we want. Therefore, we have to choose. As soon as the price of something that we want goes above the point at which we are willing to give up other things to have that, we cease to buy it and buy something else. Of course, I am speaking of things that we can get along without. There may be necessaries that sooner or later must be dealt with like short rations in a shipwreck, but they are not Dr. Mile's medicines. With regard to things like the latter, it seems to me that the point of most profitable returns marks the equilibrium of social desires and determines the fair price in the only sense in which I can find meaning in those words. The Dr. Mile's Medical Company knows better than we do what will enable it to do the best business. We must assume its retail price to be reasonable, for it is so alleged and the case is here on demurrer; so I see nothing to warrant my assuming that the public will not be served best by the company being allowed to carry out its plan. I cannot

believe that in the long run the public will profit by this Court permitting knaves to cut reasonable prices for some ulterior purpose of their own and thus to impair, if not to destroy, the production and sale of articles which it is assumed to be desirable that the public should be able to get... I think also that the importance of the question and the popularity of what I deem mistaken notions make it my duty to express my view in this dissent."

IV. *Association's criticism of MacQuarrie Committee's views on resale price maintenance*

1. The Committee in its report made the following statement at page 17:

"The direct and immediate effect of resale price maintenance is the elimination of price competition among retailers in price-maintained goods; this is one of the main objectives of the practice. It has been argued that competition is merely transferred from price to service. On this point, we find ourselves in agreement with the British White Paper:

'It is often said that the practice does not prevent traders from competing in the services they give. But this begs the question. It is true that, in order to attract more customers, a trader may increase the amount and quality of his service. But the potential customers may be comparatively indifferent to extra service, whereas they would be glad of the original amount of service at a lower price. It is this alternative which resale price maintenance stops the trader providing.' "

We submit that British methods of marketing products are vastly different from North American methods and this is particularly so in the beauty supply industry. In the beauty supply industry the service factor cannot be ignored. Experience has shown that patrons of beauty salons do expect service. The truth of this is borne out as a result of the "Toni experiment" of a few years ago. This new product was introduced into the American and Canadian markets three or four years ago and was designed to permit the customer to give herself a permanent wave. The cost to the customer was considerably less than what she would have to pay in a beauty salon. When "Toni" was introduced there were considerable misgivings on the part of the beauty supply industry. However, four years' experience has shown that "Toni" has had no appreciable effect on the revenues of beauty salons. We suggest that the reason for this is that patrons of beauty salons expect service and are willing to pay something for it.

Also, we would refer to the Report of the Combines Commissioner dated August 31, 1938 relating to an investigation into an alleged combine in the distribution of Tobacco Products in the Province of Alberta and elsewhere in Canada. At the request of Imperial Tobacco Company of Canada, Professor C. A. Curtis prepared an economic analysis of resale price maintenance in the Canadian Tobacco Industry. This economic analysis is set forth as an appendix to the Combines Commissioner's Report and in Professor Curtis' conclusions he stated that from an economic point of view resale price maintenance was an unbalanced and an anti-social practice. However, he qualified this conclusion by stating that the business policy of any organization is not determined entirely by economic considerations and that other non-economic factors enter into the picture. At page 88, he stated as follows:

"As stated at the outset this survey is concerned only with the economic aspects of resale price maintenance. However, the business policy of any concern is not determined exclusively by economic considerations. Other factors besides the economic ones are bound to be

considered in the determination of policy. The relative importance of these various considerations can only be assessed and decided by the concern itself. All that the present analysis has endeavoured to do is to make clear the economic aspects and effects which are relevant to a careful consideration of the whole problem. The absence or presence of resale price maintenance in the Canadian tobacco trade involves other considerations, which from the viewpoint of the Imperial Tobacco Company, or of the whole industry and trade, may be the deciding factors as long as the matter remains one of business policy and private concern."

In so far as the beauty supply industry is concerned, the question of service given to a customer by a beauty salon is, we submit, one of the business factors which the public expects and which must be taken into consideration when fixing a price.

2. On page 17 of its views, the Committee state as follows:

"The same distributors usually handle the goods of rival manufacturers."

In the beauty supply industry, distributors do not always handle goods of competing manufacturers, some handle exclusive lines only, branded lines for which a demand has been created by the manufacturer with quality guaranteed, fully serviced, and with no end loss to the Dealer or shop which policy we submit more than justify the prices being set by the manufacturer concerned. In fact many lines thus handled have met with popular approval from the shops that would hardly have happened if there had been no control of the outlets through whom the goods were available or the prices at which they were sold.

3. On page 18 of its views, the Committee states as follows:

"Resale price maintenance, to be effective, requires some method of enforcement. If a manufacturer merely indicates a resale price but makes no provision and takes no step to enforce it, then he has no real control over his distributors. However, when measures of enforcement are involved, resale price maintenance establishes a private system of law allowing no appeal to the courts of justice, as it is clearly shown in the British White Paper."

Is this reference to the denial of an appeal to a Court of Justice a fair analogy. After all, a manufacturer and a dealer become parties to a contract. The dealer is not compelled to enter into such a contract if he does not like the price arrangements contained therein. We submit that a manufacturer has certain property rights that should be enforced. In the beauty supply industry, a dealer can quite easily shop around and obtain a dealership for some other manufacturer's product, especially since there is great competition at the manufacturer's level.

4. On page 18 of its views, the Committee states as follows:

"Although precise information is lacking, there is some evidence that resale price maintenance contributes to price stability but that the general level of prices, thus stabilized, is higher than it would be under competitive conditions and production more unstable."

We note that the Committee admits in this Report that they had no precise information to support their contention that resale price maintenance results in a higher level of prices. It would appear as if the Committee has relied to a considerable extent at least upon the opinion of one A. R. Oxenfeldt,

as set forth in his book "Industrial Pricing and Market Practices". What qualifications has Mr. Oxenfeldt and what experience has he had in the merchandising of goods?

5. On page 20 of the Committee's views, the following statement is made:

> "Resale price maintenance, by prohibiting any normal price reduction, affords an effective protection against "loss-leaders" in the field of price-maintained goods. However, the Committee does not think that to withdraw from the retailer the right to make any price reduction is a satisfactory way of preventing unfair and excessive price-cutting. We are of the opinion that more direct and desirable weapons can be found to curb "loss-leaders".

We note that the Committee admits that resale price maintenance agreements represent one way whereby the practice of using branded articles as loss-leaders can be eliminated. Notwithstanding this, the Committee apparently is of the opinion that better methods of coping with this problem can be found. However, we can find no mention of any such alternatives. What views has the Committee on this important subject?

6. On page 20 of its views, the Committee states as follows:

> "Second, high margins do not necessarily mean high profits. High margins merely transfer competition from prices to services and often result in wasteful forms of competition in services thus increasing costs. Moreover, high margins provide a strong inducement to enter into the retail field, so that a too great number of outlets, coupled with the consequent reduction in the individual volume of sales and profits, may result."

Does the Committee feel that the mark-ups are too high on all merchandise governed by resale price maintenance agreements? Insofar as the beauty supply industry is concerned this Association respectfully submits that this is not the case. We do not believe that the percentage mark-ups granted either at the manufacturer's or dealers' levels are too high or are out of line in any way. We note, in this connection, that the Committee fears that the granting of services provides certain wasteful forms of competition. It is our view that, when arguing this point, the Committee should distinguished between essential and no-essential types of articles. The element of waste perhaps does exist in the case of the distribution of milk and bread. However, in the case of distribution of cosmetics, which is in a different category, is the manufacturer not in a better position to decide how much service must be given in order to compete? If the same manufacturer gives too much service, thus permitting his prices to reach too high a level, we submit that in such circumstances he would price himself out of business. Further more, we submit that in an industry as competitive as the beauty supply industry a consumer can decide whether the price is too high or not without having to have anti-resale price maintenance legislation to assist him.

The Committee refers to the fact that there are perhaps too many retail outlets arising from resale price maintenance policies. Who is in the best position to judge on this point? We submit that the prospective retailer is in the best postion to determine whether the demand is sufficient to warrant the establishment of a new retail outlet.

7. On page 20 of its views, the Committee states as follows:

> "Resale price maintenance no doubt helps to protect the reputation of branded goods and facilitates advertising and sales promotion. However, the Committee is not convinced by the argument that the

reputation of branded goods greatly suffers from normal price variations and that people will think quality has deteriorated, if prices are allowed to vary. If the "loss-leader" is taken care of, normal price reductions will not cause serious problems to the manufacturer."

Here the Committee states that they are not convinced by the argument that the reputation of a branded article suffers greatly from price variations. However, we note that the Committee does not produce any concrete evidence to prove their contention. Against this contention, on the other hand, we have the recent experience of manufacturers of branded articles advertising in New York newspaper at the time of the recent price war there. Also, we have the opinion of the Royal Commission on Price Spreads already referred to in this Brief. We respectfully submit that manufacturers are in a better position to know than anybody else the effect of price variations on the subsequent sales of their branded articles.

Insofar as the beauty supply industry is concerned, the manufacturers most certainly would have this fear on their minds of the effect of slashed prices on future sales of their products.

8. On page 20 of its views, the Committee states as follows:

> It is true that advertising becomes more effective if the supplier can maintain a resale price. However, we think that advertising is too powerful a force to need special encouragement and we are not too worried by the slight disadvantage which would ensue if resale price maintenance were prohibited.

The Committee contends that advertising is too powerful a force today. Upon what evidence has the Committee reached this conclusion? Since advertising represents a cost of doing business why would manufacturers, who know their own problems better than anybody else, rely upon it as a method of stimulating sales? Advertising is most certainly a necessity in the beauty supply business.

9. On page 21 in its conclusions and recommendations the Committee makes the following statement:

> As to the 'loss-leader' device, the Committee believes that it is a monopolistic practice which does not promote general welfare and therefore considers that it is not compatible with the public interest. However, we do not believe that it presents any immediate danger; extreme forms of price-cutting are not very likely in this period of inflation and relative scarcity. Moreover, we are convinced that there can be found other effective and more desirable methods of controlling the 'loss-leader' than minimum resale price maintenance.

The Committee states that the "loss-leader" device is not compatible with the public interest. Yet, in our opinion, the Committee does not effectively recommend just how this problem can be coped with other than to cast doubt upon the validity of a present day method that does curb it, namely resale price maintenance. If the problem of curbing of loss-leaders does exist, we respectfully submit that it is of no use to say that because of the present day period of inflation, extreme forms of price cutting are not likely to occur. This inflatory period will not always prevail. Therefore, we are of the opinion that the Committee has adopted a negative approach to this problem.

V. *Resale Price Maintenance Developments in the United Kingdom and The United States*

This whole question of resale price maintenance agreements has been gone into many times before in both the United Kingdom and the United States. With reference to the English experience the MacQuarrie Committee only refers to a

recent British White Paper entitled "A Statement on Resale Price Maintenance". However, the Sankey Committee went into this same matter very thoroughly in 1931 and they had the following comments to make concerning the practice of making resale price maintenance agreements:

> "The position of the consumer in relation to price maintained goods is similar to that of the retailer in so far as he can refuse to buy any particular brand of goods. If a man buys a particular brand at a particular price he thereby shows that in all the circumstances he prefers that article at that price to other branded or unbranded goods. The question whether his preference is well founded, and whether the goods are reasonable in price having regard to costs of production and distribution, is of course open. What appeals to him is the quality of the goods, which he associates with the brand. We were informed that a point which has also told in favour of the brand system in recent years is the careful and hygienic way in which many branded articles are now packed.
>
> Another point which was put to us by several witnesses relates to the psychology of the consumer in relation to price cutting. We were told that where the prices fixed for branded goods are not enforced consumers lose confidence in the quality of the goods, in the reasonableness of the price ordinarily charged or in the good faith of the manufacturer. Conversely, it was stated that consumers are very ready to buy price maintained goods provided they regard the price as reasonable, and that they appreciate the knowledge that they can buy similar goods at the same price wherever they happen to be. The price maintenance system, we were told, tends to promote an atmosphere of harmony between the retailer and his customer and to make selling easy and expeditious".

The same Sankey Committee came to the following conclusions on this subject:

"(*a*) We hold that the ordinary right of freedom to contract ought not to be withdrawn without some compelling reason.

(*b*) We do not regard the price maintenance system as free from disadvantages from the public point of view, but we are not satisfied that if a change in the law were made there is any reason to think that the interests of the public would be better served".

In the United States merchandising methods are more akin to those prevailing in Canada. This question of resale price maintenance has been the subject of books. Probably the most competent study of resale price maintenance which has been made was published by Professors E. R. A. Seligman (Columbia University) and R. A. Love (College of the City of New York) under the title "Price Cutting and Price Maintenance" (1932). On page 267 of this lengthy and unbiased work, the authors made the following statements:

> "So-called cut-throat competition is not true competition; it is brute competition. In the first place, the avowed object of cut-throat competition is to cut the throat of the competitor..... Cut-throat competition is designed to remove the rival entirely from the arena in order that the successful competitor may remain in control. Cut-throat competition results in monopoly. The temporary benefit to the consumer from the reduction in price will in the end be more than outweighed by the evils of monopoly. Cut-throat competition, therefore, is pseudo-competition, not real competition."
>
> "What we have termed pseudo-competition is in common parlance often called unfair competition. The word 'unfair' connotes something immoral, something unethical. In the long run nothing can be morally

right unless it is economically sound; for the roots of both ethics and economics are to be found in social considerations.

We are accordingly led to the conclusion that the evil with which price maintenance seeks to cope, namely, the evil of certain forms of cut prices, has no justification in either economics or ethics."

. . . . . .

"Consumers themselves will in the long run be benefited by the adoption of price maintenance in the sense that, as we have seen, the welfare of the consumer depends ultimately on the prosperity of the producer. And in the second place, there is no such antagonism between manufacturers as a class and retailers as a class. The real conflict is found in the attitude of the few retailers who think that their interests would be jeopardized by the adoption of price maintenance, and whose success at present is being achieved at the cost of other more fair-minded competitors. When we consider that against this comparatively limited class stand the bulk of the retailers, the mass of the manufacturers and the permanent interests of the consumers, we are forced to the conclusion that in principle at least price maintenance is a logical inference from the doctrine of true competition, and that the denial of price maintenance denotes a perpetuation of the pseudo-competition from which modern American life is suffering. Those forms of price cutting which involve the 'leader' policy, the sale below cost, and the necessity of devious methods of securing supplies from others than the producers themselves, however, profitable to the individual, are open to criticism as constituting destructive and not constructive competition, as being economically unsound and therefore ethically unjust. Price cutting of this kind, in short, is a form of unfair competition; price maintenance is a step toward fair competition."

Also this question of resale price maintenance has been investigated in the United States by the Federal Trade Commission and various Congressional Committees from time to time for many years. Notwithstanding the debate that has raged in the United States for considerable years on this subject, it is a fact that most of the states have enacted Fair Trade Laws permitting resale price maintenance agreements. In 1937 at Washington the Sherman Anti-Trust Act was amended by the Miller-Tydings Act, which amendment permitted resale price maintenance agreements in connection with branded merchandise entering into inter-state commerce in States that had Fair Trade Laws. This law took the form of a proviso that was added to Section 1 of the Sherman Act that had originally said that a combine in restraint of trade was illegal. The relevant part of the Miller-Tydings proviso reads as follows:

Provided, That nothing herein contained shall render illegal, contracts or agreements prescribing minimum prices for the resale of a commodity which bears, or the label or container of which bears, the trade mark, brand, or name of the producer or distributor of such commodity and which is in free and open competition with commodities of the same general class produced or distributed by others, when contracts or agreements of that description are lawful as applied to intrastate transactions, under any statute, law, or public policy now or hereafter in effect, in any State, Territory, or the District of Columbia in which such resale is to be made, or to which the commodity is to be transported for such resale, and the making of such contracts or agreements shall not be an unfair method of competition under section 5, as amended

and supplemented, of the act entitled "An act to create a Federal Trade, Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

Within the last few months, the Supreme Court of the United States has interpreted the Miller-Tydings Act in the Schwegmann case which has caused much comment. All that the Schwegmann case decided was that the Miller-Tydings Act does not sanction, as to transactions in interstate commerce, the enforcement of price-fixing under State fair trade laws, against a retailer who has not entered into an agreement prescribing a minimum retail price.

It follows, therefore, that where a retailer has signed a fair trade contract including a provision to maintain a minimum retail price for merchandise, such contract is enforcible against him though the transactions involved are in interstate commerce. Of course, where a State has a fair trade practice act and a retailer has signed such an agreement, it is likewise enforcible against him in intrastate commerce.

The Miller-Tydings Act which recognizes the desirability of resale price maintenance is still part of the law of the United States. The trend of United Stated Federal and State Legislation is in the direction of giving a limited sanction to resale price fixing of branded and trade-marked goods.

VI *Conclusion*

In the beauty supply industry, each manufacturer has a property interest represented by the goodwill in his trade mark or brand which is substantial. Large sums of money have been invested by the manufacturer in creating that goodwill. Naturally the owners of these property rights are anxious to prevent practices which they are convinced are damaging and will decrease the value of their business.

When a beauty supply manufacturer fixes the margin of profit to a dealer on a branded product he must, if he wishes to continue in business, consider the following factors:

(*a*) The margin of profit that will afford the dealer a sufficient inducement to stock and push the sale of his product.

(*b*) The margin of profit must not be so high as to deter the public from purchasing it or to induce them to look out for a substitute which will equally serve their purpose at a lower price.

In an industry such as the beauty supply industry, which has always been faced with the problem of predatory price cutting, these factors provide the necessary protection which will prevent the public from being exploited.

In conclusion, the Association wishes to go on record before this joint Committee as being opposed to the recommendations relating to resale price maintenance contained in the Interim Report of the MacQuarrie Committee dated October 1, 1951. This Association is, of course, not in a position to know how such recommendations will affect other industries. All that we do know is that these recommendations, if implemented by legislation, would definitely have a harmful effect on the beauty supply industry.

All of which is respectfully submitted.

Dated at Ottawa this 19th day of November, A.D. 1951.

ALLIED BEAUTY EQUIPMENT MANUFACTURERS' AND JOBBERS' ASSOCIATION

By its Ottawa Counsel:

M. E. CORLETT,
48, Sparks Street,
Ottawa, Ontario.

HOUSE OF COMMONS

Fifth Session—Twenty-first Parliament

1951

(Second Session)

JOINT COMMITTEE OF THE SENATE AND THE HOUSE OF COMMONS

ON

COMBINES LEGISLATION

Joint Chairmen—The Honourable Senator A. L. Beaubien
Mr. James Sinclair, M.P.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 4

THURSDAY, NOVEMBER 22, 1951

WITNESSES:

Mr. J. W. Preston, Secretary-Manager, Canadian Pharmaceutical Association;

Professor H. J. Fuller, Ontario College of Pharmacy.

OTTAWA
EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY
1951

CORRIGENDUM

Evidence, Tuesday, November 20, 1951:

Page 56, line 13, the figure *$3,301* should read *$2,301.*

MINUTES OF PROCEEDINGS

THURSDAY, November 22, 1951.

The Joint Committee of the Senate and the House of Commons on Combines Legislation met at 10.30 o'clock a.m. The Joint Chairmen, the Honourable Senator A. L. Beaubien and Mr. James Sinclair, M.P., were present, Mr. Sinclair presiding.

Also present:

For the Senate: The Honourable Senators Aseltine, Hawkins, Lambert.

For the House of Commons: Messrs. Beaudry, Boucher, Carroll, Carter, Cauchon, Dickey, Fleming, Fulton, Garson, Harrison, Hees, Jutras, MacInnis, Mott, Roberge, Shaw, Stuart (*Charlotte*), Thatcher.

In attendance: Mr. J. W. Preston, Secretary-Manager, Canadian Pharmaceutical Association; Professor H. J. Fuller, Ontario College of Pharmacy.

At the request of Mr. Carroll, the Clerk was ordered to procure from the Allied Beauty Equipment Manufacturers' and Jobbers' Association its Act of Incorporation; any by-laws made and passed on by the proper authorities in Ontario, and the Minutes of all meetings and financial statements since the inception of the Association.

Mr. Preston was called, filed briefs on behalf of the Canadian Pharmaceutical Association and the Ontario Retail Druggists Association, which are printed as *Appendices A* and *B* to this day's Minutes of Proceedings and Evidence, was heard and questioned thereon.

Professor Fuller was called and questioned.

The witnesses retired.

At 1.00 o'clock p.m., the Committee adjourned until Friday, November 23 at 10.30 o'clock a.m.

A. L. BURGESS,
Clerk of the Committee.

96256—1½

EVIDENCE

NOVEMBER 22, 1951.

10:30 a.m.

The CHAIRMAN: Gentlemen, we have a quorum. Come to order, please.

Mr. CARROLL: Mr. Chairman, there was some doubt in the minds of some people yesterday as to just what the real business of the organization we had before us was and I am going to ask counsel if he would be able to procure for the committee the Act of Incorporation, which no doubt is easy, and any by-laws that were made and certified to by the proper authorities in Ontario; and then, the minutes of their meetings; and, also, their financial statement. I am asking this not only in the interest of this organization but also in the interest of those who may happen to be in opposition to the organization; because there were certain statements made yesterday which some people think were rather, if not exaggerated, at least not entirely susceptible of proof.

The CHAIRMAN: I will ask Mr. Phelan to take care of that for you.

Mr. BEAUDRY: Mr. Chairman, on a matter of privilege. May I ask that the record be corrected at page 56? In quoting the figures from Department of Income Tax on Tuesday I quoted a figure of 2301 and the record makes it read 3301.

The CHAIRMAN: That will be corrected Mr. Beaudry.

Mr. THATCHER: On a point of order, Mr. Chairman, I think the desire of the chairman to get all these briefs in as quickly as possible is commendable; but I must say that I simply cannot absorb them quite as rapidly as they are being put before us. On Tuesday we had the brief of the Canadian Congress of Labor, yesterday we had the brief of the Allied Beauticians Association, and today we have two more briefs, 113 pages in length. Personally, I don't see how we can read these briefs let alone absorb them in such a short time. I suggest that with our other Parliamentary work it is physically impossible for us to give the evidence the attention it deserves. The people who come before us have spent a lot of time, effort and money in preparing these briefs and I submit they have a right to be properly heard. I think we may as well realize right now, that if we are to do this job properly, and arrive at a proper decision, we cannot do it in the few days remaining between now and December 15. It would be better to bring in an interim report. I suggest that when we sit tomorrow, instead of hearing another brief, we finish the one that we have before us today, and bring back Mr. MacDonald for a while.

And there is another thing, Mr. Chairman. I want to object again, if I may, to the 2-1/2 and 3 hour sittings—which we have been having. That period is too long for a committee to sit, particularly with all the other committees which are meeting and with all the other work that we have to do. Therefore, I appeal to you to try to stop this undue haste. Surely we should not jam through briefs at the rate we have been doing.

The CHAIRMAN: Mr. Thatcher, I must say that I too have found difficulty in keeping up with House work and reading these briefs at the same time. As far as tomorrow is concerned, since we have already arranged to have the Canadian Retail Federation appear before us, I think we will have to go on with that. It would be unfair at this moment to change that appointment. I think, perhaps, we should have the steering committee meet tomorrow so that

we can discuss the work coming before us. I suggest that we can do that better tomorrow morning than just at the moment, when our plans have already been made for hearing these people.

In fairness to the retail merchants, may I say that they are expecting to be here tomorrow morning and they have made their plans accordingly, since we told them to be here; so I think we should hear them tomorrow morning; and then I think consideration should be given to what we are to do in the days ahead of us and perhaps have the Combines Commissioner back the first of next week.

Mr. THATCHER: I understand that the druggists and the pharmaceutical people are appearing before us today; I suppose if we are not finished with them today that they would come before us again tomorrow?

The CHAIRMAN: In that matter I am entirely in the hands of the committee. We want to do a good job and get through the work as best we can. Do members find that sitting to one o'clock is too long?

Mr. BEAUDRY: Let us determine that, Mr. Chairman, at the end of this schedule which you now have before you. In the meantime, we might dispose of this matter of our hours of sitting and see how the members feel about how long they should sit.

The CHAIRMAN: Yes, let us agree on that now. Are the members in favour of sitting until 1 o'clock? Do the members find 10.30 to 1 o'clock too long?

Some Hon. MEMBERS: No.

The CHAIRMAN: As I say, in that matter I am in the hands of the committee. I am not going to put it to a vote, but I would ask for an informal show of hands. Those in favour of sitting from 10.30 to 1 o'clock?

Those in favour of sitting from 10.30 to 12.30?

Our hours until further notice, then, will be from 10.30 to 1 o'clock.

Mr. THATCHER: Could it be two and a half only?

The CHAIRMAN: We will arrange to stop sharp at 1 o'clock.

Hon. Mr. BEAUBIEN (The Joint Chairman): I might say that yesterday as chairman I sought several times to stop the committee at 6 o'clock but I did not get very much support from the members who wanted to keep asking questions.

Mr. FLEMING: Yes, and there were some who wanted to ask more questions but were not able to do it. Will it be possible for us to have these people before us again, Mr. Chairman?

The CHAIRMAN: At the end of this meeting we will be able to decide what should be done. This is a very important branch of the inquiry, as far as their subject is concerned; we can decide whether we should have these witnesses back tomorrow, or whether they should come back on another occasion.

Mr. SHAW: On a point of order, Mr. Chairman, I just want to make this observation: these things are being thrown at us too fast; we just have not got the time to give them the consideration they deserve. I hope we will be able to give some thought to that.

The CHAIRMAN: Thank you, we will. Mr. Burgess points out that tomorrow's brief was distributed to members on Tuesday.

Mr. FULTON: And we are going to deal with them tomorrow?

The CHAIRMAN: Yes, tomorrow we will have the retail merchants. Today we have two groups coming before us, the Canadian Pharmaceutical Association, and also the Ontario Retail Druggists Association.

Mr. FLEMING: Just a moment, Mr. Chairman; is counsel for the committee going to secure for us the information requested by Mr. Carroll just a moment ago?

The CHAIRMAN: Yes, how about that, Mr. Phelan?

Mr. PHELAN: Yes, I will produce that for the benefit of the committee.

The CHAIRMAN: Would it be useful to have these briefs before the committee as we proceed?

Mr. FLEMING: I think we had better wait and see as we go along. In some cases we might want to have the witnesses back for further examination.

Mr. BEAUDRY: Might I suggest that we ask counsel—and that we help him, if necessary, as members of the committee—if, in connection with each witness, he would establish some fundamental facts concerning the industry in which he is interested. I think it would facilitate the work of the committee if we would have before us the basic facts respecting the industry or organization concerned. I do not wish to labour the point, but each of us might proceed in the way of examination and in that way we might arrive at certain conclusions which might possibly be erroneous; therefore, I suggest that we might adopt a procedure of that kind with a view to facilitating our work. Possibly we might institute that practice this morning.

The CHAIRMAN: I think counsel in his opening questions might bring out the facts about each association: its location, membership, activities, and so on, before starting with the actual detailed questioning.

Now, gentlemen, we have two groups here this morning: the Canadian Pharmaceutical Association and also the Ontario Retail Druggists Association. The second of these associations (the Ontario Retail Druggists Association) have said that they are willing to stand by the brief submitted by the Canadian Pharmaceutical Association, although they did file a small brief of their own.

Mr. FULTON: Will those briefs be printed in the record?

The CHAIRMAN: All the briefs that have been received up to date have been printed in the record as an appendix.

Mr. FULTON: Have you received any which you do not consider worth printing?

The CHAIRMAN: We have as yet received no brief which we think is not worthy of being printed as an appendix.

Mr. FULTON: These briefs will be printed as an appendix to our proceedings of this day?

The CHAIRMAN: Yes. Now, gentlemen, we have Mr. Preston and Professor Fuller as witnesses here.

Mr. PHELAN: Mr. Preston only is to appear, I believe.

The CHAIRMAN: Mr. Preston, will you come over here, please?

Mr. Preston, the procedure here has been for the witness to give a short summary of the brief which has been presented and read, then our counsel will ask you the opening questions and then you will be in the hands of the individual members of the committee.

J. W. Preston, Secretary, Canadian Pharmaceutical Association, called:

The WITNESS: Mr. Chairman, learned counsel and gentlemen of the committee: needless to say, it is a pleasure for us to be present this morning and to have this opportunity of presenting our views on the proposed legislation. We represent the Canadian Pharmaceutical Association. Our total membership is 4,236, and comprises every retail drug store owner practicing as a retail druggist in the dominion of Canada.

Price maintenance has been an established practice for the past 25 years and we think has been an influence for good on the economy of our country.

It has not in any way been a factor in inflation, and we do not think if it is continued it will affect the cost of living index at all. I fear that there is some confusion in the minds of some people on the phrases "price fixing" and "price maintenance". We would not for a moment argue on what the MacQuarrie committee calls horizontal price fixing. That is illegal in Canada, we are glad to say. Price maintenance is a safe-guard of every independent retail operator against certain unfair trade practices of the larger operators. Resale price maintenance is the only effective medium to combat the loss-leader practice; or, as someone has said, facetiously, the misleader practice.

Similar words are to be found in the MacQuarrie report, although the report agrees that the iniquitous device of the loss-leader is very bad, they do not suggest any remedy. They suggest only that price maintenance be made illegal without in any way attempting to suggest a remedy for it except to say that probably at some later date in some far off promised land they may find a remedy.

Price maintenance has been in effect for, as I say, twenty-five years. The loss-leader device is not a new device; it has been in practice particularly in the province of Ontario since the turn of the century, and the only effective means that has been found so far to curb it is price maintenance as we know it today.

We maintain that without price maintenance the loss-leader would be on our doorstep tomorrow and chaotic conditions similar to those in the 1920's would result. This would operate to the detriment and the undoing of the small independents. Together the larger operators can afford to sell all price maintained nationally advertised articles at loss-leader prices even below cost, and in practice perhaps over the years secure a monopoly on the sale of all nationally advertised products. We do not like monopolies; they are bad for the country, whereas the independent merchant is the backbone of every village, town and hamlet. Surely the government will do nothing to hurt him.

Mr. BEAUDRY: Mr. Chairman, you prefer that we have counsel question before we question the witness on his statements?

The CHAIRMAN: Yes.

By Mr. Phelan:

Q. Mr. Preston, what about your background? You were a practising druggist?—A. Yes, I have been in the retail drug business since November 1, 1908. All through my life that is the only business that I have practised and know anything about; I do not know anything about any other business but the retail drug business.

Q. And your present situation?—A. Secretary-manager of the Canadian Pharmaceutical Association.

Q. How long have you occupied that position?—A. Secretary-treasurer since 1942, and then appointed manager two years ago.

Q. And your organization is incorporated?—A. 1907.

Q. Under the Ontario Companies Act?—A. Canada Companies Act.

Q. And you have heard the request of the committee today that you should make available to the committee the charter of incorporation, the by-laws of your organization and minutes of your organization and financial statements of your organization—how many years?

Mr. CARROLL: It had no particular reference to this company. I was asking for yesterday's, and of course if it applies to yesterday it will apply to all.

Mr. FLEMING: Well, Mr. Chairman, there is a point there. Here is an organization which has been in existence for forty-five years. Are you going

to make them produce all their minute books and all their financial statements? We are flooded now with material. Are we going to deluge ourselves with it?

Mr. CARROLL: I have no interest at all in this company.

The CHAIRMAN: Certainly my understanding and Mr. Fleming's understanding was that where we thought it desirable, where we were not certain of the set-up, we would have a right to ask for that information.

Mr. CARROLL: The only reason I asked for it was that yesterday there were a good many people here—and I am not suggesting anything at all—who thought that the witnesses did not just give a fair indication of what their business consisted of.

Mr. PHELAN: I misunderstood the point of the hon. member. I thought it was to be the practice. Shall we defer the production of these documents in this case until the committee asks for them?

Mr. FLEMING: May I make a suggestion on that? I think that is a matter which might well be considered by the steering committee with counsel because, while in some cases it might be of interest, yet if we adopt it as a practice we are simply going to be putting witnesses to a lot of trouble and miring ourselves in something that may be of no use to us.

Mr. PHELAN: I misunderstood that. Shall we defer that?

Mr. FLEMING: The way to do this would be for Mr. Phelan to look at these briefs in advance and if there is anything which needs to be produced he can ask for it.

Hon. Mr. GARSON: I do suggest, Mr. Chairman, that in so far as the minutes of these particular associations are concerned, that since one of the important questions we are concerned with is what they do at these meetings —we heard yesterday they just sit around and talk about deals, never mention prices at all—that the minutes might be something which would be of interest in most of the cases of trade associations but not necessarily all this other mass of material.

Mr. BEAUDRY: Could we be satisfied by taking a span of, say, two years in the minutes?

Hon. Mr. GARSON: Not necessarily. I think we might fix in our own minds as we go through different associations those minutes which from the evidence given appear to be material to the issue.

The WITNESS: We would be happy to cooperate in any particular at all.

The CHAIRMAN: We will let that stand until we have heard more evidence and have decided it in the steering committee.

By Mr. Phelan:

Q. Mr. Preston, we heard that your membership was 4,236. It is a national organization, of course?—A. Oh, yes.

Q. 4,236?—A. Except the province of Newfoundland.

Q. And all the members are druggists?—A. Yes.

Q. Are there any manufacturers or jobbers included in the membership? —A. No, all retail druggists.

Q. Well, what about druggists who work for chain stores and department stores?—A. Only the registered store manager is a member of the association.

Q. The registered store manager?—A. Yes.

Q. So that in the case of the chain store and department store the registered store manager is the representative member in your association?—A. Right, that is by the Pharmacy Acts of the different provinces.

Q. Then, your association was founded first in what year?—A. 1907.

Q. And did it function between 1907 and 1927?—A. There has never been any suspension.

Q. Was it a part of the Proprietary Articles Trade Association that went out of existence in 1927?—A. No, not as an association, that I know of.

Q. Well, was there common membership in the two organizations? I observe in your brief on page 5 you say:

> "Retail price maintenance has been operating in this country since 1910, and to a much fuller degree in our retail group since 1927."

I wondered what the significance of the year 1927 was in connection with the Proprietary Articles Trade Association against which the trades commissioner had reported unfavourably and which disbanded. Was there a connection between the two prior to 1927?—A. Well, the retail drug business had become in such a chaotic condition due to price leadering and selling at all kinds of prices that many of our members were being forced out of business—they went bankrupt—and Commissioner O'Connor in his report dealing with the Proprietary Articles Trade Association said—and we quote it in our brief—that many of the retail druggists were on the verge of bankruptcy and it applied also to the wholesale distributors—they were in such a precarious position that they felt something should be done or had to be done, so they attempted to form in Canada the P.A.T.A. after the manner that the P.A.T.A. operates in England. There was an investigation and the P.A.T.A. as an organization never came into being. It was declared illegal in Canada under the Combines Investigation Act—I should not say it was declared illegal because there was never a case, but after the investigation on the advice of the commissioner of the Combines Investigation Act, as I understand it, the drug industry withdrew and the organization ceased to exist, and it was never really formed.

Q. That is hardly an answer to my question. After it was formed or in the course of being formed what part did your members have in that association?—A. Our retail druggists?

Q. Yes.—A. We had quite an active part in it.

Q. And that was an association of dealers and manufacturers?—A. Manufacturers, wholsalers and retailers.

Q. And then you had existed as an organization of retailers until the proposed P.A.T.A., which was an organization of both?—A. But we as an organization had not anything to do with the P.A.T.A. Our association is composed of retail druggists. The Canadian Pharmaceutical Association did not take an active part in the P.A.T.A., but the members of our association, which is all the druggists, took an active part.

Q. I understand the situation—you took an active part and then when that organization was reported on adversely by the combines commissioner you continued to carry on under your own association?—A. Oh, yes.

Q. And have done so ever since?—A. Oh, yes.

Q. Now, what are the activities of your association in the area of sale and distribution?—A. Well, we do not have anything to do with sale and distribution as an association.

Q. Or price?—A. Or price, as an association.

Q. May I take that as final that the association has nothing whatever to do with sale, distribution or price?—A. Yes.

Q. Then, just what has it to do with?—A. Well, it was originally formed in 1907 with the idea of improving the drug business, and making the pharmacists better pharmacists. It was an educational and scientific body to begin with and in the government here in Ottawa our main business in Ottawa is with the Department of National Health and Welfare because we are endeavouring to give the best health services that it is possible for us to give. In order to do that we felt if we had a national organization we could better co-operate

with the dominion government federally and they could better co-operate with us; in other words, we could be an organization whereby federal legislation could be disseminated through us to our members.

Q. There are provincial organizations as well?—A. Yes, our by-laws—I am sorry we have not a copy here—but we really are a co-ordinating body. The provincial associations operate provincially under the different Pharmacy Acts. We are composed of the provincial statutory bodies; they are the members that belong to our organization and their members are by virtue of that Act members of our organization.

Q. Is the Board of Commercial Interests a committee of your organization?—A. Yes.

Q. It functions within the organization?—A. Yes.

Q. I shall have something to say about it later. Now, let me come to the problem of volume and distribution. Could you tell me the sales volume at the customer level of the commodities within your trade organization for the year 1950?—A. I think we have them in the brief. It is $229 million and something.

Q. Can you break down that gross volume into two classes for me—individual druggists, departmental stores and chain stores?—A. I have not any accurate figures but I am sure those figures would be available from the Bureau of Statistics.

Q. From your knowledge of the association can you give the committee a rough idea of the breakdown?—A. Well, I would think probably the chain and department stores would represent 25 per cent—that is only a guess.

Q. And the individual 75 per cent?—A. Yes.

Q. Would you, for the benefit of the committee, give another breakdown of that gross volume into proprietary articles—prescriptions, cosmetics and news-stand?—A. Well, we say that the prescription department accounts for 22 per cent. I have not any other figures. The news-stand would be negligible.

Q. Cosmetics?—A. I have not very much idea—say 15 per cent.

Q. And proprietary would be the balance of the 100 per cent, would it?—A. Well, there are sundries—tobaccos, ice cream—

Q. I rather hoped that they might be included in your news-stand activity. Instead of the news-stand let us call it sundries. What would sundries run?—A. They might be 10 per cent.

Mr. FLEMING: Does that include the lunch counter?

By Mr. Fulton:

Q. Could we get those figures again so we can get them down?—A. I have no figures; I am just thinking in terms of my own store and, of course,—and I say this humbly—I did not sell newspapers or anything like that; I ran what we considered a drug store and I do not know anything about newspapers.

By Mr. Phelan:

Q. Well, from your experience with the trade your estimate would be sundries 10 per cent, cosmetics 15 per cent and prescriptions 22 per cent?—A. Yes, that is sure.

Q. And then I take it that the balance of 53 per cent would be proprietary medicines?—A. Well, patent medicines—I am not sure about that; I did not anticipate that question, but I would not think the patent medicines would be quite that high.

Q. Would patent and proprietary articles run that high?—A. No, I would think that nationally advertised price maintained articles would run about 50 per cent, but that would include a lot of cosmetics. I would say probably 35 per cent would be patent medicines. I do not think we have the sundries

big enough at 10 per cent because there are a lot of sundries—kodaks, kodak supplies—and in your classification your sundries might be a lot bigger than 10 per cent. It could be up to 20 per cent or 25 per cent. I think about 35 per cent in patent medicines. I still think we are high on the patent medicines. I think 25 per cent would be the limit on that. That is the way we understand patent medicines.

Q. Then you have patent medicines 25 per cent, prescriptions 22 per cent—A. That is 47.

Q. Sundries 10 per cent, and that is 57—cosmetics 15 per cent—.—A. I would put sundries up to 20 per cent and the balance in cosmetics.

Q. 25 and 22 and 20, and the cosmetics how much?—A. The balance.

Q. What do you mean, "the balance"? —A. Up to 100.

Q. And on the price maintained articles what is your division of the total—50-50?—A. I would think the volume would be 50 per cent.

Q. You are speaking of price volume not article volume?—A. No, price volume.

Q. Price volume would be 50 per cent?—A. Article volume very small, maybe down to 10 or more.

Q. The article volume, 10 per cent; price volume, 50 per cent?—A. Yes I think that is about the figure.

Q. Does the trade consist of manufacturers, jobbers and dealers?—A. Manufacturers, jobbers and dealers, yes.

Q. Are there any manufacturer jobbers in the drug industry?—A. They are part of the drug industry.

Q. Manufacturer jobbers—those that do their own jobbing.—A. I do not quite understand your question. Does the manufacturer sell directly or through a jobber? Both.

Q. What percentage would be sold directly and what percentage to jobbers? —A. I have not any idea.

Q. Would you tell the committee as between the manufacturer and the jobber and the dealer what margins prevail generally or specifically in the trade?—A. I think the jobber might work on 15 per cent.

Q. And the dealer?—A. We try to get an average of 33⅓ per cent.

Q. An average of 33⅓ per cent for the dealer?

The CHAIRMAN: On cost or on selling price?

The WITNESS: On selling price.

By Mr. Phelan:

Q. All these mark-ups are on the selling price?—A. Yes, all on selling price.

Q. 33⅓ per cent for the dealer, 15 per cent for the jobber; and do you know in a general way what the manufacturer has?—A. I have not any idea.

Q. What services do you supply for the mark-up you get?—A. Well, a complete distributive service.

Q. Let us turn our thoughts for a minute to the subject of resale price maintenance. Would you again define that practice, tell us what you understand by it?

Mr. FULTON: I am sorry to appear technical, but I think there is apt to be some confusion in the record, if not in our minds, resulting from the use of these terms. I think we should be uniform in our terms. I believe Mr. Phelan is using the term retail price maintenance. Are we not speaking of resale price maintenance?

Mr. PHELAN: I thank you. If is resale price maintenance.

Mr. FLEMING: And there was another reason yesterday because we were not in the retail field at all.

Mr. PHELAN: It is entirely my mistake. It is resale price maintenance, not retail.

The WITNESS: "Customary definitions of resale price maintenance:

> Resale price maintenance 'designates a system whereby the manufacturer endeavours to keep at a level prescribed by him the price of his product charged by retailers and other distributors.'
> '... resale price maintenance—by which the manufacturer or owner of a trade-marked product may dictate the price below which it may not be resold by distributors.'
> 'that price policy under which the manufacturer of a branded product establishes the price (or the minimum price) at which such product shall be resold to the consumer.' "

By Mr. Phelan:

Q. And so far as that practice is followed in your trade, are there any methods or penalties by which it is enforced?—A. No, sir, not that I know of.

Q. So, is it without penalty if a dealer sees fit to depart from the manufacturer's specified price? What is the result if the dealer departs from the manufacturer's specified price? Is he at full liberty to do so?—A. Is the retailer at full liberty to depart?

Q. Yes?—A. He can depart, yes.

Q. Is he at full liberty to depart? I put it a little differently. Is he at full liberty to depart?—A. Yes, I would say he is at liberty to depart.

Q. And what is the result to him if he does depart?—A. Well, in a couple of instances, sometimes a manufacturer—and there have been two instances that I can think of in the last half century in Canada, two instances where a retailer has refused, if that is what you mean, departed from the resale price maintenance and the manufacturer has stopped supplying him with merchandise. The recent case, of course, and the one I suppose that members of the committee are familiar with, is the Montreal Pharmacy attempting to get an injunction against the Charles E. Frosst Company, which the judge ruled out.

Q. If it became a common practice to depart from the resale price, would you anticipate the same results to be applied, or the same results to follow—the manufacturer would stop dealing with this dealer?—A. I would think so.

Q. Then I am not sure that I have got the answer to the question from the information you have given me. I would like to know what proportion of the total volume of your business is subject to resale price maintenance?—A. I would think 50 per cent or more in volume.

Q. Do you know of the Canadian Pharmaceutical Journal?—A. Yes, sir.

Q. Is it associated with your organization in any way?—A. Yes, we publish it.

Q. I see in an issue dated November 1, 1951 this item:

> "From the time the speech from the throne was published and the newspaper stories started to appear, every druggist in Canada could see the disastrous results of any legislation for him: over 60% of his volume is done on price maintained products."

So, over 60 per cent of his volume is done on price maintained products?—A. I said 50 per cent, the article says 60 per cent. My figure was close. I have not any figures before me.

Q. To give an idea of the widespread instances of the practice, on page 4 of your brief you say this:

> "It is our contention that the principle of resale price maintenance is so woven into the fabric of our economy that any move to declare

the practice illegal should not be made hastily, nor without scientific investigation."

Is that correct?—A. That is correct.

Q. You have already stated in your opening address what the purpose of this system was: it was to safeguard the dealer, as you put it, against unfair practices by large operators?—A. Yes.

Q. And the protection of the manufacturer, then, would be a basic purpose in putting this practice into force?—A. Yes.

Q. As well as the dealer? Well, if the practice is put into force to meet unfair competition and unfair practices, and if these practices should be corrected what would be your judgment on this point? In the interest of all the people in Canada, who should correct the bad conditions, the trade or the parliament of the people?—A. Well, I am a Canadian citizen and I believe in democracy, so I naturally believe in the government, but I might supplement that remark by saying that it would be a good thing if the government set up a fair trade board, so if the government or the consumer felt there was an unusually high price, or an unfair high price, then that consumer or government official could bring it to the attention of this board that we would set up, and that would be a very fine way of establishing the running of the minimum price Act.

Q. Then, do you agree with my basic idea that if there are bad practices, or bad conditions, the remedy should not be in the hands of the trade itself? Do you agree with that basic idea?—A. Yes, I think I will agree, because, as I said before, I believe in our way of life. The government are the people, after all.

Q. Now you have told the committee you have a board of commercial interests which operates in your association. What is the function of that board?—A. The function of the board of commercial interests is to try to teach our members to be up-to-date merchandisers as well as up-to-date operators, to have their stores clean and up to date, in fact to be modern; to teach them modern merchandising methods so they will be in a better position to compete with all and sundry, particularly at the moment when the chain food stores are starting to handle a lot of drug store products; we are trying to teach our druggists that if they are going to compete they must compete on a very modern and up-to-date basis.

Q. I notice you have not mentioned in that survey any interest in matters of price. Have they any interest in matters of price?—A. No, they have not.

Q. No?—A. No.

Q. Have they taken any part in seeking higher margins for the dealers? —A. No, not as a board.

Q. Not as a board. Why do you qualify the answer?—A. Well, only in the case of a product which came on the market that showed a negligible, a very small, not a livable gross, they might suggest to the manufacturer that if he expects to enlist the co-operation of the retailer he had better give him a living profit.

Q. Probably I am attributing my thoughts to the wrong committee within your organization. What about the Canadian Pharmaceutical Council? What is it composed of?—A. The Pharmaceutical Association Council is composed of members from each provincial statutory body. They are appointed by the provincial statutory body.

Q. Has that council anything to do with prices?—A. No.

Q. I see an article in the "Western Druggist" of August, 1950, and I want you to tell me if you agree with it, or not. It speaks of the appointment by

the Canadian Pharmaceutical Council of an advisory merchandising committee to the executive manager as proving to be a very wise move.

> "The appointment by the C. Ph. A. Council, while in session in Saskatoon last August, of an advisory merchandising committee to the Executive Manager of the B.C.I. has proven to be a very wise move."

And it goes on to say:

> "The increased profit margin on Minards Liniment and Bromo Seltzer which are being announced or have been announced this very month are concrete examples of direct financial benefit to our members and demonstrates the effectiveness of the work of the B.C.I."

What is the B.C.I.?—A. Board of Commercial Interests.

Q. Shall I read that to you again:

> "The increased profit margin on Minards Liniment and Bromo Seltzer which are being announced or have been announced this very month are concrete examples of direct financial benefit to our members and demonstrates the effectiveness of the work of the B.C.I."

Is that consistent with what you told the committee?—A. Yes. I told you if they do not give a fair living profit we suggest to them that they up the gross.

Q. I thought you said a few minutes ago that the Board of Commercial Interests has no interest in price structure?—A. They have no interest in price structure.

Q. Or price margins, you told me that.—A. No, I did not say that. I said a minute ago they had.

Q. I did not understand because when I asked you to describe the activities of this committee you mentioned everything except price, I think.—A. I think I answered your question.

Q. Is it correct that one of the activities of this association is to up the margins of profit to the dealer?—A. No, I would not say that.

Q. Well, then, how do you account for this item I have read to you? —A. Except if the manufacturer does not give a living profit, we think that he would be wise, in order to get the co-operation of the dealer, to give a living profit.

Q. We have a concrete example of this illustrated in this article. Is the article correct? Has the B.C.I. anything to do with these profit mark-ups?

Mr. MACINNIS: We may yet hear of trade unions which are not interested in wages!

By Mr. Phelan:

Q. Are increased margins reflected in the price to the consumer?—A. Yes, their price would be advanced.

Q. They are reflected in the price to the consumer. So we have got that far.—A. Not in every case. Sometimes the manufacturer would reduce his price instead of upping the price to the consumer.

Q. I have some further publicity here that you may identify. The Canadian Pharmaceutical Journal is your publication?—A. That is right.

Q. Issue of September 15, 1951. There is an item here which is headed:

> "Handling complaints of price cutting. Case No. 1 was a complaint from the Saskatchewan Retail Druggists Assn. against a retail drug firm in Winnipeg selling direct to physicians in Saskatchewan, at the same discount given to the retail drug trade. This complaint involved one manufacturer's line, and the manner of selling to physicians was contrary to company policy.

"We obtained full co-operation from the manufacturer in correcting this situation. We also, while in Winnipeg, took the complaint up with the retail drug company concerned, and obtained assurance that grounds for complaint would not again occur."

Is that a correct report of that particular activity?—A. I do not remember the activity.

Q. Well, it is not so long ago; it is during your period as secetary-manager, September, 1951. Would you question the accuracy of this report at all, or the report of the activity?—A. If it is in our journal I would not question it.

Q. So, we may assume, then, it is correct?—A. Yes.

Q. All right, then. That is case No. 1.

"Case No. 2, from the Manitoba Retail Druggists Association in regard to retail outlets in Winnipeg, one of which was a large drug outlet, not bringing prices into line with the new suggested minimum prices. The Manitoba Retail Druggists Association worked diligently on this problem, principally locally. We co-operated with them by promptly contacting manufacturers whose lines were involved.

"We have on file letters from the manufacturers we wrote, assuring us they have been successful in having up-to-date minimum prices established in Winnipeg on their lines. Mr. Howard Brown, no doubt, can inform us if these statements by manufacturers are correct."

Does that correctly report the occurrence within your knowledge?—A. Yes, and I can supplement those remarks. Under price maintenance—it is a violation and that is why we object to it.

Q. That is why you object to it?—A. They were selling some things below minimum prices.

Q. You are taking common association practice to keep prices up to the minimum?—A. We are referring it—

Q. I say were you?—A. No, we were referring it to the manufacturer.

Q. Not only referring it to the manufacturer but you were bringing important pressure to bear upon the manufacturer?—A. No, we were asking him—

Q. You were asking him?—A. We were drawing it to his attention.

Q. It was the voice of 4,200 members asking him?—A. Yes.

Q. That would be quite a volume of requests on this poor manufacturer?—A. It was the manufacturer who set the prices in the first place.

Q. All right, the manufacturer set it in the first place but he is under pressure to unset it?—A. No, if he does not want to we would not do anything about it except draw it to his attention.

Q. Except what?—A. Draw to his attention the fact that somebody had been selling below his price.

Q. You were drawing it to his attention forcibly. Did he correct the situation?—A. I do not remember the particular case.

Q. You would probably know it if he had not corrected it? What would be your conclusion—that he corrected the situation as a result of your common voices?—A. I would think so, yes.

Q. Here is case number 3, which is of a somewhat different type.

"Case No. 3 was a complaint from Associated Pharmacies, Saint John, N.B., against the Nestle's Food Co. who have no policy of price stabilization and allow Lactogen to be sold through mail order catelogues and mail order offices at very reduced prices.

"We have had three interviews with Mr. Grout of the Nestles Co. He will not agree so far to stabilize retail prices on Lactogen. The best we have been able to obtain from him is a promise they will do their best to have mail order catalogue prices advanced to regular prices."

Here is the case where the common voice of 4,200 members is bringing pressure upon a manufacturer to join the resale price maintenance group?—A. I would not say that is pressure at all.

Q. Well the object of the interview then, the object of the suggestion is to have him join the resale price maintenance group—a man who is outside of resale price maintenance?—A. I do not think there is any pressure there. They may have suggested to him that it would be in his interests.

Q. To do what? In his interests to do what? To come into the resale price maintenance group?—A. That is right.

Q. Into the resale price maintenance group?—A. That is right.

Q. Well, let me see if there are some more. Here is the Western Druggist. We have had that publication before. It was identified. This is for July of 1947.

The CHAIRMAN: I do not think we have identified the Western Druggist.

Mr. PHELAN: Yes, the Western Druggist was the first one I mentioned.

By Mr. Phelan:

Q. What about the Western Druggist? What connection has it with your association?—A. Well, it has not anything to do with our association. It is a trade paper. It covers the four western provinces—but officially it has not anything to do with our association.

Q. It is fairly accurate in its reports of your activities?—A. I would expect it to be.

Q. Because we have already dealt with that one activity in the western provinces and that was the case in 1950 where we find the B.C.I. is taking some steps to get an increase in the margin of profit. I have already read that to you?—A. That is right.

Q. We have another one. This is for July 1947 and let me see what this is. It says "second session". It is apparently a report of a meeting of some association. Which would it be—in July of 1949?

> The manager stated that he had previously protested about catalogues. He said that this had been brought to the attention of the Canadian association,

Would this be the manager of— —A. Of the British Columbia association.

Q. British Columbia, I see.—A. Or some western association.

Q. The British Columbia manager reports that:

> Following a discussion of a resolution of a previous meeting the council had contacted the Canadian Pharmaceutical Association on the desire expressed in British Columbia to secure a uniform 40 per cent discount on drug lines.

Now, what do you know about negotiations between you and the British Columbia branch to secure a uniform 40 per cent discount on drug lines?—A. Well, there was no co-operation between the two.

Q. I will just put the question a little bit differently. He says that the reports in regard to the desire expressed in British Columbia—no—he said: that the association had contacted the Canadian association in regard to the desire expressed to secure a uniform 40 per cent—now what was the contact? Tell us about it? You are the secretary-manager and you would know about it? —A. The British Columbia association members, I would think, had a meeting and some of them suggested we should get 40 per cent on drug products.

Q. Yes?—A. So the manager there, I presume, is writing a letter to us to suggest—

Q. No, he is not.——A. —that some of their members suggested that they needed 40 per cent.

Q. No, it is a little different from that. He reports that he has contacted your association?—A. Yes, written our association.

Q. Well, maybe "written". Now, what action did your association take in that matter, if you know?—A. Well, I do not remember 1947. Again I say that in discussing new products that come on the market we urge the manufacturer to give our members a living mark-up.

Q. Mr. Preston, will you please direct your mind to my question. Have you any knowledge or recollection of this contract?—A. No.

Q. Have you no knowledge of your association co-operating with the Manitoba association to get this result?

The CHAIRMAN: The British Columbia association.

By Mr. Phelan:

Q. —with the British Columbia association to get these results? Have you any recollection of that?—A. No, I have not.

Q. Let us read the rest of the statement: "After extensive discussion it was regularly moved and seconded that the British Columbia Pharmaceutical Association and the Canadian Pharmaceutical Association continue efforts to secure a minimum of 40 per cent discount on all pharmaceuticals and also to urge the manufacturers to eliminate dual price policy".

Does that bring anything to your memory?—A. We have always urged pharmaceutical manufacturers to give us a living profit.

Q. That does not anwser the specific question, you know—"efforts to secure a minimum of 40 per cent discount—". Did you co-operate in that effort as an association?—A. Yes, as an association.

By Mr. Thatcher:

Q. Is that 40 per cent of selling price?—A. 40 per cent of selling.

Q. 66⅔ per cent on cost?—A. All my answers are on selling price.

By Mr. Phelan:

Q. Then, I have in my hand the Western Druggist for October of 1950. There was a meeting at St. John, was it the provincial association or the Canadian association?—A. We had our convention in St. John in September of 1950.

Q. In 1950. This is a report of the St. John Convention of 1950:

> Among other important resolutions passed was one calling on the board of commercial interests—

I think we have met the board before, have we not?—A. That is right.

> Q. "Calling on the board of commercial interests to contact all manufacturers for an upward revision of gross profits, and another instructed the B.C.I. to seek an upward revision of gross percentage profits on cosmetics and patent medicines."

Does that faithfully report one of the activities of your convention at that meeting?—A. Yes and once again I say we want a living profit.

Q. Please, please, does that faithfully report—.—A. Yes it does.

Mr. FULTON: He had already said yes.

By Mr. Phelan:

Q. Then, in the Canadian Pharmaceutical Journal of May, 1949—this is apparently an editorial as it is headed "From the Secretary's Desk"?—A. I wrote that.

Q. You wrote it?—A. If it is "From the Secretary's Desk".

Q. It is "From the Secretary's Desk". Let me read this:

"If in establishing a policy of distribution for his products a manufacturer or manufacturer's agent fails to provide an adequate margin of profit for the retail distributor, that manufacturer could hardly expect the retailer to be other than apathetic or disinterested in the sale of the product.—A. I believe that absolutely.

Q. "Again the manufacturer or distributor who has enjoyed the confidence and co-operation of the retail druggist, who in the first instance assisted him in marketing his product, suddenly forgets his first love and attempts to woo the affections and loyalty of another type of retail outlet he should not be surprised if the druggist questions not only the manufacturer's judgment but also the sincerity of his past promises and commitments. The natural thing for the retailer to do in such a situation is to remain loyal to the people, who by their actions, even more than their words remain loyal to him".

I take it you were speaking there not as an individual druggist but as secretary of an association of 4,200 druggists?—A. Right.

Q. That is correct.—A. That was written at the time of the—

Q. That was—

Mr. FULTON: I would be interested in hearing the witness complete the answer to the last question.

Mr. PHELAN: I beg your pardon?

The WITNESS: That was written at the time the large food chains started to sell what were formerly recognized as drug store products. That was written in defiance of that practice. We think, and I still think that if a manufacturer who had been selling his products to us and with whom we had been co-operating to sell direct to the consumer—and giving him a lot of co-operation—decides to leave us and go to the food chain, being a third generation Canadian I believe I have the right to stop selling his product. If he wants to go to the food chain, let him go, but I am not going to sell his product.

That is the reason that article was written. That is a fighting speech.

By Mr. Phelan:

Q. I am more concerned in the association activity than I am in the views of an individual.—A. Yes, but I say that in that editorial I was trying to arouse our members to do what I would do as an individual.

Q. And I see you are telling the manufacturer here, on behalf of the association: "that it is only ordinary common good sense for him to purchase his supplies from the manufacturer who by his policy says that he is eager and anxious to secure the druggist's good will and co-operation, as well as his business".—A. Yes, sir. And any red-blooded Canadian would do the same thing as I did there.

Hon. Mr. GARSON: Especially if he had 4,000 others with him?

The WITNESS: Yes, sir, all good Canadians.

By Mr. Phelan:

Q. Now I notice just one or two more things, then I will be through with this matter. I have already taken more time than I intended.

Would I be wrong in suggesting, from these documents or papers that I have read, that there was an organized effort on the part of your association to keep prices up?—A. An organized effort on the part of our association to keep prices in line so we could make a fair margin of profit.

Q. And if, in your opinion, it was necessary to make a fair margin of profit, the conclusion would be it was to keep prices up?—A. That is price maintenance.

Q. That is price maintenance?

Mr. THATCHER: To keep prices up?

Mr. BEAUDRY: No interjections.

The CHAIRMAN: You can repeat your answer if you think it was misunderstood.

The WITNESS: No.

By Mr. Beaudry:

Q. I am sorry, I did not quite catch your name, sir?—A. Preston.

Q. Mr. Preston, your association I would take it, and I will ask you and you can tell me yes or no, is a closed corporation like the Canadian Bar Association or the Canadian Medical Association, is it?—A. Yes, sir, I would presume so although I am not familiar with them.

Q. Well, I will explain that. The members of your association must have definite qualifications before they can ever become part of the trade which you represent as an association, or before they can become members of your association? Yes or no?—A. Graduate pharmacists.

Q. Graduate pharmacists; and do you consider that the members of your association are salesmen of commodities or salesmen of services, or a combination of both?—A. A combination; service is what we stress.

Q. Service is what you stress; and therefore, when we deal with a druggist or with a group of druggists, this committee should, in your opinion, or should it not, consider or treat your profession as a combination of sales and services, the sale of commodities?—A. Well, if you want to consider retail pharmacists, you must consider them both as professional men and as merchants, because they are both.

Q. Thank you.—A. It is very difficult to strike a line of demarcation between the services, where the professional services end and the commercial services begin. You see, they run into each other.

Q. Is the position of the average retail druggist any different from that of a doctor, especially a country doctor, who sells or re-sells pharmaceuticals?—A. No, not a bit.

Q. If counsel would be kind enough to hand me the quotations he used, I would appreciate it.

Mr. PHELAN: I am sorry, but the reporter has just carried them away. However, I will get them back for you.

The CHAIRMAN: On this matter, in attempting to be fair, I hope that members will realize there are many who wish to speak. I have a list of 7 members already. So perhaps they will not ask all their questions in the first instance but might perhaps ask a few and then return to them later on.

Mr. BEAUDRY: Yes, Mr. Chairman, but I wonder if you would permit me to establish a point?

The CHAIRMAN: Surely.

By Mr. Beaudry:

Q. You have quoted your sources of income from various categories of goods. I wonder if you would be kind enough to tell this committee how you break down the various denominations of products which you normally sell in a drug store. I assume that you would break them down as between cosmetics, proprieties, prescriptions, the news stand, tobacco, chocolates, beauty preparations, and various kinds of patent medicines. Some of these might be included

perhaps under one heading according to your own trade terms. So I wonder if you would be good enough to list them for us.—A. I would say, prescriptions; toilet goods, that is cosmetics.

Q. Do you call them cosmetics or toilet goods?—A. Cosmetics; that includes tooth paste, hair preparations, beauty aids, and things in that line; and then there are patent medicines. Some stores do a big business in Kodak supplies. That would be included under sundries. Kodaks, sick room supplies; that is another item. Sundries, that would include such things as the news stand, "pop", and newspapers.

Q. Under what category would soaps come?—A. They would come under cosmetics.

Q. And proprieties, have you not overlooked them?—A. Proprieties, I think that would mean patents and proprieties; they would come together. You see, it is the Patent and Propriety Medicine Act.

Q. In all these lines, would you tell us if all goods are price maintained, or if in each one of these lines some goods are price maintained and others are not?—A. Some are, and some are not.

Q. Is that a general answer covering all lines, or to put it more exactly, for instance, in a news stand, newspapers and magazines would obviously all be price maintained, would they not?—A. That is right, they would be all price maintained.

Q. And would chocolates come under the same heading and be all price maintained?—A. No. The chocolates which are price maintained would be those which are manufactured by recognized large manufacturers.

Q. Without trying to put an answer on your lips, will you tell me please if any of these lines—if in almost every case there is a category of price maintained goods and another category of not price maintained goods?—A. Yes, in all of them.

Q. You say in all of them. Is that a true statement?—A. Yes, that is quite true.

Q. Please tell us if the people who call at your store to sell their wares or goods to you—let me be more specific: do the people who call on you break themselves up between manufacturers or direct manufacturers' representatives, and jobbers who would represent not one manufacturer, but who would have on hand goods of many manufacturers? Give me an answer to the first one. Do you have direct manufacturers' representatives or salesmen calling on you to sell?—A. Yes sir.

Q. And do you have jobbers calling on you to sell goods which are manufactured by various manufacturers?—A. Yes.

Q. Is there a third, or are there more categories of salesmen calling on you?—A. There is the pharmaceutical manufacturer, the drug man; and then there is the wholesale distributor; that would be only two; the manufacturer drug representative, and the distributor of many lines.

Q. And the difference between them would be that in one case one man comes in selling only one brand of wares?—A. One firm's products.

Q. While another man comes in selling the products of a great many firms? —A. That is right.

Q. You have stated that in all commodities classified generally under the headings we have already mentioned, there are price maintained and not price maintained goods?—A. Yes.

Q. You have listed the margins or the percentage of products in appendix 2 of your brief on price maintained goods. Would you care to tell the committee the percentage of profits on some of the goods on which price is not maintained? And I would prefer it if you would give us some definite instances?—A. Would you mind repeating your question? I was trying to think of an answer and I forgot the question.

Q. You have stated under the heading of cosmetics: you have two types of goods for sale, one in which the prices are maintained, or groups of goods, and another group in which prices are not maintained by the manufacturer at the retail level. You have stated in this brief, in appendix 2, the margin or percentage of profit on the price-maintained goods. Now, would you care to tell me what are the margins of profit on some goods that are not subject to price maintenance by the manufacturer at retail levels, and tell me what these margins are, and the goods on which the margin is applied?—A. There are some goods, of course—that is an answer to the consumer; there are some goods which are not price maintained, and on which the margin is higher than it is on price maintained goods, because it is the only way you can balance over, in order to get an overall picture, a general profit picture.

Q. Would you then say that on all goods, or generally speaking—I won't restrict you to "all", but that broadly speaking, on goods where re-sale price is not maintained, the margin or gross profit to the retailer is higher than it is in the case of price maintained goods?—A. Yes, sometimes it could be.

Q. Let us not say: "it could be".

The CHAIRMAN: Let the witness finish his answer, please.

The WITNESS: I would say generally that the price could be higher, much higher.

By Mr. Beaudry:

Q. What does that word "could" mean?—A. The leader can set his own price.

Q. I quite appreciate that.—A. And if he can take it that his mark-up could stand a good price, he would put it up high.

Q. But I asked you if, in your experience as general manager and secretary of your association, it is to your knowledge that the price of goods on which price maintenance is not exacted by the manufacturer to the retailer is higher than it is on price maintained goods?—A. Yes; as association secretary I do not know; but when I was in business, I would say definitely, yes, that the price is higher on things, on maintained items.

Q. Therefore, you would logically answer my next question which is: which are more profitable, price maintained or non price maintained goods?—A. Non price maintained goods.

Q. My question is: which is more profitable?

Mr. FLEMING: Profitable to whom?

Mr. BEAUDRY: Profitable to the retailer, naturally.

The CHAIRMAN: You have answered yes.

The WITNESS: In two different classes, is that what you mean?

Mr. BEAUDRY: I think I have had my answer, Mr. Chairman.

The CHAIRMAN: Now, Mr. Hees.

Mr. BEAUDRY: But I am not finished yet, Mr. Chairman.

The CHAIRMAN: You have been questioning for 15 minutes now, and I think you have repeated questions which were asked by counsel upon four or five occasions. I think we might come back to you after we have had a round of the members.

Mr. BEAUDRY: Although I defer to your wishes, let me say that I appreciate that it takes a lot of time. Our counsel has been trying to establish a line of thought from a series of answers. I am humbly submitting that some answers or further questions to those same answers might crystallize a different type of thought, or bring out a different set of facts. I do not think we can say in fairness to the witness or in fairness to the people of the country who are

interested in finding out what is what about this, that we are going to let the element of time enter into the question as to whether one side should be presented and not the other side.

The CHAIRMAN: I entirely agree, but please remember that we have 36 members here, all of whom can raise points. So I think that a member should, if he cares to, raise one point in opening, and then retire, and then return to his questions at a later time. Therefore, I shall return to you, Mr. Beaudry, after other members of the committee have made their points and I hope they will set a good example by being brief and concise.

Mr. BEAUDRY: I yield to your judgment, Mr. Chairman.

The CHAIRMAN: Now, Mr. Hees.

By Mr. Hees:

Q. I understand that in your opening remarks, Mr. Preston, you said that the principal enemy of the small retailer is the loss-leader, and that the only defense which the small retailer has against the loss-leader is retail price maintenance.—A. Yes.

Q. If the loss-leader were eliminated, would I be right in saying that the principal advantage which the large retailer has over the small retailer would then be removed?—A. Yes sir.

Q. Then, at what margin of profit does an article being offered for sale cease to be an article selling at a fair competitive price and become a loss-leader?—A. Of course, that is a big question. It all depends on the terms. Do you want me to answer what a loss-leader is, or do you want to establish what a loss-leader is and then ask me my opinion.

Q. I would like to know what a loss-leader is and I think any such answer should indicate the margin of profit or lack of profit at which an article becomes a loss-leader. It is a term which has been used a great deal.—A. In practice in the retail drug business, a loss-leader is only a loss-leader when it is sold below cost. Loss means loss. It can't mean profit. It is a leader which he sells at a loss. And the difficulty is that the larger operator buys for less than the small operator, often as much as 10 per cent less. He buys in tremendous quantities. Let us say an article was supposed to sell for $1.00 and the independent sold that as a loss-leader for 99 cents, he would be losing one cent; but the large operator can buy that for 10 less; he would get it for 90 cents and he might sell it for 89 cents, which would mean that he would be selling it for 10 cents less than the independent, but he would be only losing one cent. He would beat the independent by 10 cents.

Q. Well then, I take it you consider it a loss-leader if you sell it below the price at which it was laid down in your store?—A. Right, that is a loss-leader.

Q. Without taking into consideration your overhead or your margin of profits and that sort of thing?—A. No. That is right. The loss-leader in the drug business has been a thing sold at crazy prices. For example, I have sold Baby's Own Soap which sold normally for 10 cents, and when we opened our stores we sold it at 1 cent—we started off at 5 cents and the independent druggist thought he could beat us and he cut the price to 4 cents; then we brought it down to 3 cents and he sold it at 2 cents, and, finally, we sold it at 1 cent, and we did that—I say "we", I mean the chain store—"we" put that independent druggist right out of business, and he was a good solid citizen, a member of the city council in the city of Toronto. That is loss-leader.

Q. Well then, do I take it that in your opinion the important thing to protect the small retailer would be a law prohibiting loss-leaders?—A. That is the curse of merchandising, when you do not have price maintenance.

Q. Then, Mr. Preston, if a law were brought in prohibiting dealers from selling goods below the cost at which they are laid down in the selling establishment, would it be necessary to have resale price maintenance at all; would that contribute to the continuance in business of the small man if that were removed?—A. Well, you are just begging the question.

Q. No, it is a very honest question.—A. If you establish legislation you would not have to pay minimum prices—if you establish prices on a product to prevent it from being sold as a loss-leader, wouldn't that be a minimum price?

The CHAIRMAN: I think in fairness we should go back to Mr. Hees' earlier question on this matter of prices on loss-leaders. You made a reference to a fair margin of profit.

The WITNESS: Well, I don't quite appreciate everybody laughing at this.

The CHAIRMAN: May I assure you that no reflection was intended on yourself, sir. They were laughing about something else.

The WITNESS: That is fine, when we can laugh at each other.

Mr. HEES: At times we are a very informal group.

By Mr. Hees:

Q. What would be your answer to that, do you suggest some sort of a board?—A. The answer to that, I think, is, as we suggest in the brief, a board. I think that if you had a board through which you could establish fair prices the independent druggist should be satisfied. If you could say that certain loss-leaders, or certain prices are, say fair prices—I think that is the answer.

Q. In other words, such a board would say what is a fair average margin, or price, below which it would be illegal to sell?—A. Yes, keeping the consumer and distributor in mind, both; keeping the druggist in mind and keeping the consumer in mind; a competent board which would arrive at a fair price.

The CHAIRMAN: Mr. Thatcher, you are next.

Mr. HEES: Thank you, very much.

By Mr. Thatcher:

Q. I was interested in one answer you made to Mr. Beaudry. You said that generally speaking your mark-ups on non-price maintained articles were higher than they were on priced-maintained merchandise. That is a correct statement, that is what you said?—A. Generally speaking, I said it could be.

Q. You said that the mark-up was higher. Could the committee not take it from that answer that if price maintenance was taken off in the drug business, prices would go up?—A. Prices on non-maintained items would go up, certainly, because you have got to make a living and if you don't get it on price maintained articles then you are going to get it on articles on which the price is not maintained. If you lose on the bananas you get it on the grapes.

Q. And if it goes up why are you concerned with the government taking price maintenance off? You would be better off.—A. No, no; the consumer would not know what he was paying for stuff.

Q. You are just worrying about the consumer; you are not worrying about your own business?—A. We worry about both. We have to make a living; and, more than that, we are there to give a service. We are a community institution. I do not think there is any group of men in Canada who have a greater degree of respect from the community than the druggists. I don't know of any individual in the community who is better thought of. When I was in business in Toronto, I was certainly interested in my customers; and, I am sure, that they knew I was not gouging them on my prices, whether

they were minimum prices or not; because, for one thing, I was not driving a Cadillac car, so they knew that I was not making a lot of money; certainly not in the way a fellow would who could retire with a couple of hundred thousand in the bank.

Q. If I understood you correctly, you said that the abolition of resale price maintenance was not going to hurt the retail druggist as far as price is concerned—did you say that?—A. I did not say that, the abolition of price maintenance will ruin the independent druggist.

Q. All right, I will leave it at that, then. You make the statement on page 9 of your brief: "If the government makes price maintenance illegal it would be, in effect, passing discriminatory legislation; legislative for the benefit of the larger operator and to the detriment of the small". I wonder if you would care to enlarge on that statement.—A. Well, the large operator could take in any number of price maintained items that he might want to and price them on a low level. In Toronto in the old days we had the chain store operator and the department store operator taking certain loss-leaders, and they had a monopoly on those items, nobody else sold them because they sold them at such ridiculously low prices that the public went to them and to them only to buy.

Q. Who do you mean by large operators?—A. The department and chain stores, and now the food chain store operators. We have never had that experience yet with price maintenance, but I can visualize this situation, that if the department stores started to cut prices on nationally advertised articles that the chain food stores would be in there fast.

Q. And you contend that some small retailers would be put out of business if such a practice developed?—A. That is right.

Q. I can't follow your argument, particularly in view of what is happening with the grocery stores. In the grocery business there is no resale price maintenance, yet you have hundreds of grocery stores all over the country doing a good business.—A. Well, sir, we have a personal example here, I will ask Professor Fuller to answer that for you.

Professor FULLER: Mr. Chairman, I would like to answer that in this way. I was in business in Brantford some years ago—

Mr. FULTON: For the record, could we have some particulars about Professor Fuller, please? Would you qualify him, please?

The WITNESS: Professor Fuller is head of the pharmaceutical administration division of the Ontario College of Pharmacy. He is a graduate of the Ontario College of Pharmacy. Some years ago he was in business for himself. He is professor of pharmaceutical administration at the Ontario College of Pharmacy.

Professor FULLER: In 1923 to 1927 I was in the retail drug business in the city of Brantford, Ontario. I was doing very well until the big chain stores came and opened up just around the corner from where I was, in June of 1927. They opened up on the main street and I was near the corner at 191 Colborne Street, and the immediate result was that I was forced out of business. I had the sheriff, the bailiff, and the representative of the referee in bankruptcy all in the store at the same time. I just could not meet the competition put up by these big chain operators.

Mr. THATCHER: And the result of that was that you went out of business?

Professor FULLER: Absolutely.

By Mr. Thatcher:

Q. Out of the 4,200 druggists in your organization can you tell us how many of them would be in the small rural towns?—A. Quite a number—I do not know. In British Columbia there are about 400 druggists. Saskatchewan

has the most smaller towns, of course—and about 350 druggists, I think, in Alberta, 350 in Saskatchewan, about the same number in Manitoba, 2,100 some odd in Ontario, 600 in Quebec. I think New Brunswick has about 175, Nova Scotia a few more, and Prince Edward Island 28.

Q. Now, who would put them out of business? They have no competition. In a small town there is only one druggist. —A. The mail order house, which is the same thing—the mail order house and the department store would be the same competition as that of a large store in an urban centre.

Q. You said a moment ago in answer to Mr. Phelan, I think, that your association approached the manufacturer in some cases to get him to change his price structure. Did you ever approach the manufacturer of some drug product and ask him not to sell to, say, food stores?—A. Yes, we did.

Q. In other words, you try to maintain prices and you also try to restrict your competition from other lines of business?—A. Well, you have, for instance, the article—I do not like to name these goods because it goes in the paper, doesn't it? I do not think it is good business to mention a product; let us say a product but if I was to mention the name you would all be familiar with it.

By Mr. Fulton:

Q. Can you give us the category—is it a food?—A. No, effervescent salts, which a great many men take. Now, what was the question I was going to try to answer by this illustration?

By Mr. Thatcher:

Q. I asked you if your association goes to a manufacturer and asks him not to sell to a food store.—A. About the food store, yes. Well, we do not think that a food store is a proper place to sell an effervescent product. We think the drug store is the place to sell that.

Q. Isn't that practice bound to send up prices? When this product goes to the food store they are likely to sell it at a lower price?—A. No, the food store would sell that product that—I have in mind, of course, a price maintained product, and they won't sell it any cheaper.

Q. One other question, Mr. Preston. You have no written contracts between manufacturers for price resale maintenance. I wonder if you would amplify your statement to Mr. Phelan on the kind of sanctions you have if someone breaks fixed prices?—A. We have not any sanctions at all; we are a retail organization. It is the manufacturer that has sanctions.

Q. What kind of sanctions do they apply?—A. They stop selling to men and I quote the case in the newspaper now, the case of the Montreal Pharmacy, Charles Duquette against Charles E. Frosst.

Q. Would a manufacturer in a case like that stop selling him all their products?—A. The manufacturer in this particular case only stopped selling the one product.

Q. You do not think other manufacturers stopped selling him their products?—A. No, that was established in the P.A.T.A., and that was the trouble with the P.A.T.A. Now, of course, it is vertical price maintenance. In that case, Duquette vs. Frosst, it did not make any difference what other products Duquette may have cut—Messrs. Charles E. Frosst did not interfere.

Q. I cannot reconcile that answer with the report of the Frosst case which I have in my hand. It says:

> "The Frosst Company have refused to deliver the merchandise because the Montreal Pharmacy had sold identical products."

Not their products—"identical products at a price lower than that fixed by the Frosst Company to the public." Now, is not that pretty stringent?—A. I do not think you are reading it properly.

Mr. BEAUDRY: Is that a judgment?

Mr. THATCHER: No, the Canadian Press story.

Mr. BEAUDRY: I do not think we should take that as an authority.

The WITNESS: I can tell you that the Charles E. Frosst Company—Mr. Duquette cut the price drastically on a preparation. I think it was the well known Frosst 217 tablets. I am not quite sure, but I think that was it.

Mr. BEAUDRY: Mr. Chairman, on a point of order, please. As this case has come up fairly frequently and may come up again, instead of getting expressions of opinion from either members of the committee or witnesses would it not be proper to ask our counsel to secure a copy of the judgment and the declaration?

Mr. PHELAN: Mr. Chairman, I have it and as soon as it is translated I will have it distributed.

By Mr. Thatcher:

Q. Mr. Preston, a lot of Canadians have found it strange that American drug prices on some of these resale price maintained products are much lower than Canadian prices. For instance, in your brief in one place, I think on Bayer aspirin, Appendix 2, they are 79 cents per 100 in Canada. Then on page 15 of the third appendix it says Bayer is 59 cents on the resale price maintenance in the United States. Could you give the committee any reason why there would be those differences in price?—A. I cannot because the price again is set by the manufacturer. He says that the resale price is to be 79 cents. I do not know how he bases that or upon what. I cannot give an intelligent answer.

By Mr. Fulton:

Q. Mr. Chairman, I would like to ask Mr. Preston a question arising out of page 7 of the brief where you state just near the middle of the page—"In the first place..."—A. That is the first part of the brief?

Q. Yes, of the brief itself. Just near the middle of the page, in answer to your own question:

> "Will the consumer lose if price maintenance becomes illegal?" You say: "In the first place, if the independent retail druggist could not depend on the revenue from the price maintained merchandise he sells the whole system of drug distribution would have to be curtailed."

Well, you have told us already, I think, that approximately 50 per cent of the volume, of your sales, that is dollar volume, is in price maintained lines so I take it there cannot be much quarrel with that as a statement. What I want to know is this: is not that statement only true if you assume that the ending of the price maintenance system would result in the disappearance from the shelves of all individual stores of these goods that are presently price-maintained, and why do you assume that?—A. Well, we assume that the minute the government were to legislate against price maintenance every article that is now price-maintained would become over night a loss-leader.

Q. It is on the basis of that assumption that you made the statement which I have read from page 7 of the brief?—A. Yes, and from experience of over thirty years in the drug business.

By the Chairman:

Q. Did you say "would" or "might"?—A. In my opinion "would"—every item that is now price-maintained would become a loss-leader tomorrow morning.

By Mr. Fulton:

Q. Mr. Preston, upon what experience is that opinion based? Is that based upon experience of the practice prior to price maintenance?—A. Yes.

Q. Would it be fair to point out that what you appear to be saying is that prior to the introduction of price maintenance all these articles, representing some 50 per cent or 60 per cent of your volume, were loss-leaders?—A. Yes, sir, and that is why it was very difficult to operate a retail drug store in the urban centres prior to price maintenance. It was almost impossible to make a fair living.

Q. Then have you any figures to show that there has been a substantial increase in the number of retail drug outlets following the introduction of the price mainteance system?—A. No, except somebody might say, "That is normal growth." I can say in 1939 we had about 3,500 members and now we have 4,236. Of course, we have now 5 million more people in Canada than we had in 1939.

By the Chairman:

Q. Not 5 million.—A. 1939—what did we have—12 million? We have 3 million more.

Q. Roughly $2\frac{1}{2}$ million.

By Mr. Fulton:

Q. And do you number pretty well every retail drug store as a member? —A. Every drug store.

Q. Is membership voluntary?—A. No, it is not voluntary; it is based on this, as I said at the outset, our members are members of the provincial associations and by virtue of that fact they are members of our association.

Q. Thank you. Then, have you any figures on record or if you have not can you give me just in your own judgment an answer to the question of whether there is a tendency at present towards an increasing number of chain drug stores—is the chain drug store growing, or is the independent individual drug store holding its own, or what is the situation?—A. I would say normal growth, I think. The largest chain store in Ontario has grown since 1935 from 50 stores until it now has 85 stores.

Q. I think you told us that you estimated that of the volume of business approximately 25 per cent at present is done by chain and department stores. Is that a substantial increase in the volume of business over, say, the last ten years compared to the volume previously done by the chain and department stores, or has that figure remained relatively static?—A. I cannot answer that. Those figures were only guesswork on my part anyway.

Q. Have any of your associates here those figures?

Professor FULLER: Should I answer that?

The CHAIRMAN: Yes.

Professor FULLER: Chain store development has not increased in the last ten years. It came up to a saturation point and then sort of sloughed off. I apologize in the brief for using American figures but I am more familiar with them. There are approximately 8,000 fewer drug stores in the United States today than there were prior to the so-called fair trade laws, which is the name given to resale price maintenance in the United States. We do not want fair trade laws in Canada; we like our own system better because it is voluntary. Those figures are susceptible to other factors, however, because in 1932 the American Association of Colleges of Pharmacy went on a four-year basis, which requires four years of training for a pharmacist and they introduced business subjects into their curriculum for 10 per cent of the hours,

and that is what I have been engaged in in the United States for the last twenty-four years until August 1 of this year—teaching those business subjects.

As these students went out into business—better business men—they have conducted pharmacies much more efficiently than in the past, and that has been one reason for the reduction in drug stores, plus the fact that there was a war and there were fewer pharmacists being trained and so on and so forth, and also fewer pharmacists to operate under resale price maintenance and yet at the same time I think resale price maintenance has helped the pharmacists to be more efficient and the individual pharmacist now serves over 3,000 customers instead of the 2,200 that he used to. I think that is efficiency in marketing.

This is perhaps not the right way to approach this, but you have been saying a considerable amount about margins. Am I permitted to comment upon that?

Mr. FULTON: Well, it is not actually in my question.

By Mr. Fulton:

Q. Well now, I want to be fair about this, but then does it not almost necessarily follow from the figures you have given that it is impossible actually to assert or to prove that resale price maintenance operates immediately in favour of the maintenance of the individual independent retailer and against the chain stores, in other words, you cannot prove by these figures that to keep the system of resale price maintenance in existence is the greatest guarantee that we have that there shall be independent retailers, and a larger proportion of the business done by them rather than by a smaller number of chain retailers?—A. In my opinion the answer is yes, that keeps the independent in business and helps him to compete with the concentration of economic power in the chains. He is at a disadvantage in that respect. I brought in the number of retail pharmacists in the United States as a reply to a statement in the original interim report by the MacQuarrie Committee, in which they asserted that resale price maintenance has protected the inefficient and would increase the number of distributive units which, as shown by the very statistical data that we have presented from several sources, is not so at all; but there are other factors of course which must be taken into consideration, to get at the number of retail outlets.

Q. Then, your position is this, that although resale price maintenance has not increased the number of retail merchants, it has nevertheless guaranteed them continuity and security and ensured they would not all go under at the hands of the big chain and department stores. Is that correct?—A. That is correct. Your question is really tied up with that question of margin.

Q. I have another line of questioning to pursue, but I do not want to choke you off on margins.

The CHAIRMAN: I think it will come out very easily through some other witness.

By Mr. Fulton:

Q. I have just two or three more questions at this point I want to ask. And first, following along the lines of an answer that was given to Mr. Hees, I am interested in this loss-leader matter. I think you have answered in some detail on loss-leaders, Mr. Preston, but we have had previous evidence to the effect that there is not much danger of the loss-leader practice under the present economic conditions. Do you agree with that, or what is your opinion?—A. There is not much chance of it?

Q. It was said previously there's not much danger of the loss-leader practice growing up under present economic conditions, even if resale price maintenance is prohibited.—A. I understand it will be on our doorstep tomorrow morning.

Q. On what do you base that?—A. Keen competition. There is always somebody who thinks he can be smarter than the other fellow and get the business away, and it is generally the department store who will use that loss-leader to get the people into their stores. That is advertising. If you are going to advertise you have to advertise a bargain. You cannot fool the people all the time.

Q. You can some of the time, I suppose?—A. So you have to give them a bargain. The only bargain you can give them in the retail drug business is to give them a cut-rate item.

Q. So you would say that the factors which led to the loss-leader practice in prior years are just as much present today as they were then. Is that your answer?—A. Yes, sir.

Q. Apart from the Frosst case that we have discussed, have any of your members ever tried in the courts to have the contracts which they have entered into to maintain prices, declared void and not binding?—A. There was only one other case, and that is years ago, with the Wampole Company, and it was with the same Mr. Duquette. It was something of the same thing. That is the only other case I know of.

Q. What was the result, do you remember?—A. No result.

Q. In other words, the contract was held to be a binding and valid contract?—A. I do not think it was ever adjudicated upon.

The CHAIRMAN: Our counsel can perhaps get that information.

Mr. BEAUDRY: Was there a contract entered into, or was there just a tacit understanding?

Mr. FULTON: What I should like committee to get, then, is the answer to the question asked, whether Mr. Preston had any knowledge of other cases besides the Frosst case in which a contract to maintain prices had ever been before the courts in Canada, and if so, what was the result. Was the contract or arrangement held to be binding and valid, or otherwise?

The WITNESS: That was about 40 years ago.

By Mr. Fulton:

Q. Do you know whether the drug industry has ever been investigated under the Combines Investigation Act, apart from the P.A.T.A. matter?—A. I think they came under the Price Spreads investigation.

Q. That was a parliamentary inquiry, but I mean under the combines legislation has there ever been an investigation of the drug industry?—A. Not that I know of.

By Mr. Dickey:

Q. Mr. Preston, you, as I understand it, have had personal experience in the retail pharmacy business some years ago in a period when resale price maintenance was not quite so prevalent as it is at the present time. Is that correct?—A. Yes, I have been in the retail drug business since 1908.

Q. And I understood you to say that conditions were chaotic in that period? —A. Yes, sir.

Q. Would you care to expand those remarks just very briefly as to what you mean by chaotic?—A. Well, in those days when you opened up your store in the morning you might have goods on your shelves that had been selling for many years at a certain price. The newspaper would come out and you would find that a large chain or department store was selling that item that you had been selling, say, for 25 cents for maybe 20 years, that their price, as announced in the newspapers, was 13 cents or 2 for 25 cents. The result was you did not sell any of those goods. Now, multiply that by 50 and you have the results that obtained in Brantford where, as Mr. Fuller explained to you, the chain stores

fought among themselves and the independents sat by and looked out the windows and counted the customers on the sidewalk going to the chain stores.

Q. Yes, but was that a general situation or was it a situation that only arose in particular instances and in particular places?—A. In all urban centres that was a frequent practice; and then, of course, at the turn of the century we had the large mail order houses starting up and they have been growing uncreasingly ever since, until now, I understand, the mail order business is larger than their store business, and that would affect the rural firms.

Q. I understand your evidence to be that that kind of condition existed, one might say, almost throughout the drug trade and throughout Canada in all areas during that period.—A. In 1908, or previous to that, it was existing and was becoming very pronounced—when I was an apprentice—and it lasted till 1927 or 1928, when resale price maintenance began as a practice.

Q. As I understand, at the present time about 40 per cent of the trade in drug stores is not carried on under any system of resale price maintenance which you know of.—A. I think that would be a good figure.

Q. Now, do those conditions of chaos exist in that segment of the drug store business today?—A. No, there is not so much of that because none of those items are nationally advertised.

Q. But those conditions do not exist in that segment of the drug store business today nor have for the last few years?—A. No.

Q. One other point, Mr. Preston. As I understand it, the effect of resale price maintenance so far as the retailer is concerned is that it puts him in a position where he knows the mark-up that he can get on any particular product, and he knows that so long as he continues to sell that product at that price he will continue to get supplies of the product and will make what you term a living wage or a living return out of that particular product. Is that correct? —A. I would say so.

Q. That is the importance of it from the point of view of the retailer?— A. Yes, orderly marketing.

Q. Now, do you believe that if that were not the situation there would be any pressure on the manufacturer by the retailer, not only to change his percentage of mark-up which you are allowed, but to try to reduce his price to you. That is, would the retailer say that you could still get a living wage out of it and still sell the product at a lower price to the ultimate consumer?— A. I cannot answer for the manufacturer. The manufacturer gets his price first.

Q. Yes, but I am asking you about the tendency within the retail trade.— A. Perhaps Mr. Fuller could answer that question better than I.

Q. So far as I am concerned, I am just putting the question to the witness, and if one witness is prepared to answer, well, he may do so.

Mr. FULLER: On page 44 of the mimeographed brief, that is appendix I, I have attempted to show this diagrammatically. However, the typist did not locate the lines the way they were shown in the manuscript. Before fair trade, it shows consumer prices on the left and the retailer's costs on the left. In the original manuscript, after fair trade the lines on the right are much lower than the lines on the left and the spread may be greater in between. We have been talking about margins here. A manufacturer can reduce his price and there is definite evidence as to this, which I have documented in the brief to show that under resale price maintenance in the United States the manufacturers have reduced their prices to the retailer, giving him a larger margin of profit without increasing the price to the consumer. In fact, in some instances he has actually lowered them in order to get the co-operation of the retailer in pushing his goods, whereas before he did not have the co-operation. That is what I meant about margins. You can get a greater margin without increasing the price to the public by taking it out of the manufacturer. As I say, I

have not been in Canada except on vacation, and the 24 years of activity of the C. Ph. A. have been unknown to me except as I read their journal at times and I may have written an article for them, but similar retail associations all over the North American continent have said "we will get behind your goods and we will push it if you will give us a respectable margin and have an income from it, and you can do this by reducing your price to us, thereby giving us a better margin and we do not have to increase the price to the public". That was brought out in Grether's studies in 1929. I think I have documented it in the brief. It is at the middle of page 26, appendix 3. We can buy a pound of Epsom salts for about 10 cents a pound and put it up in quarter-pound packages of four ounces each. We would then get 40 cents by selling it at 10 cents a package, and that looks like a tremendous profit, but how often do you sell a package of Epsom salts? Maybe once a day or two or three times a week. Nobody is getting wealthy on that product. I do not think margins can be looked at in that way.

By Mr. Dickey:

Q. My question was really connected with the information brought out by Mr. Phelan's question, that there has been some action on the part of this association to try and influence the manufacturer, and I presume the dealer, to promote increased margins to the retailer. Do you think that if the competitive situation were such that the retailer found that he could not sell a particular product at a price higher than a dollar, and having to sell it at a dollar—giving him a 20 per cent margin of profit which he found was not sufficient—would he go to the manufacturer and say: Can you not reduce your price to me so that I can sell that article at a dollar and make a profit of 33⅓ per cent?

Mr. PRESTON: In practice, as I say, that does not happen.

By Mr. Dickey:

Q. That does not happen, and I can quite understand the reason why it does not happen under a system of resale price maintenance, but would it not—A. It would not happen because the manufacturer can give you umpteen reasons right away why he cannot reduce the price. It never happens. The manufacturer is adamant in that situation.

Q. Can he not give you umpteen reasons why you cannot increase your margin?—A. He can do that too.

Q. But you have been successful in having the manufacturer increase your margin— —A. In a very few instances. The price has generally gone up if we increase our profit. He does not decrease his profit except in isolated instances.

The CHAIRMAN: Mr. Shaw.

By Mr. Shaw:

Q. Mr. Preston has indicated that his organization, the Canadian Pharmaceutical Association, represents 4,236 retail druggists in Canada. Is that correct?—A. That is right.

Q. That represents all the retail druggists in Canada, I understand?—A. That is right.

Q. You said that membership in the organization was not voluntary. In answer to Mr. Fulton, you said it was not voluntary—what did you mean by that?—A. Well, I have to go back. To begin with, our association was not an association of members, it was the coordinating body of the provincial statutory associations. The provincial statutory associations control pharmacy in each province. They are in charge of education, licensing and jurisdiction over

pharmacy completely. Now, as all druggists must be licensed, they become members of the provincial statutory body. By virtue of that fact they pay a per capita fee to our association for each one of their members. By virtue of the fact that the man is registered with the provincial statutory body he is a member of our association.

Q. His membership in your association is compulsory?—A. Right.

Q. The payment of fees is compulsory?—A. That is right, that is the licensing fee.

Q. Well, he is licensed provincially?—A. That is right.

Q. Have you any sanctions which you may impose against a druggist in the province who may not belong to your association?—A. Well, they all belong to our association.

The CHAIRMAN: Automatically.

Mr. SHAW: They all belong but are they on a voluntary basis?

Mr. BEAUDRY: Are they not in exactly the same position as doctors, or lawyers—

The CHAIRMAN: Automatically.

The WITNESS: Yes.

Mr. BEAUDRY: —who automatically become members of the Bar.

By Mr. Shaw:

Q. Mr. Preston has already indicated within the provinces that is true but I have asked him if it is also true that a man must become a member of your national association for the same reason?—A. No. Put it this way. He is a member of our association by virtue of the fact that his association pays us a fee for that member.

The CHAIRMAN: Automatically.

By Mr. Shaw:

Q. Ex officio?—A. Yes, that is right.

Q. Actually, repeating what you said, your association does embrace all druggists within Canada?—A. Yes, sir.

Q. Your fear, as you have indicated, is that certain members of your association will through their practice likely do great damage, if not destroy, the small retailer?—A. Yes, sir.

Q. Have you a code of ethics within your national organization?—A. Yes, we have an altruistic code.

Q. Do you the members of your national association subscribe to the code of ethics?—A. No more so than the majority of us practice christianity—although we all maintain we are christians.

Some Hon. MEMBERS: Oh, oh.

The CHAIRMAN: Order.

By Mr. Shaw:

Q. You have not enough faith in your organization to conclude that there are not some who will destroy others as a consequence of a practice? You feel you have members in your association who would do that?—A. Yes, sir.

Q. Then Mr. Preston, did your association, following the announcement by the government that legislation would likely be introduced, write your members urging them in turn to write members of parliament?—A. Yes, sir.

Q. Could you provide the committee with a copy of the letter you sent out? —A. I think we could, sure.

Q. Fine, I would like to have that. Secondly, you have asserted that the loss leader is a danger if resale price maintenance is prohibited?—A. Yes, sir.

Q. You are familiar, I presume, with the policy of certain drug manufacturers as far as 1 cent sales are concerned?—A. Yes, sir.

Q. Do all druggists practice that?—A. No, sir.

Q. All drug manufacturers, I mean?—A. No, sir.

Q. Would you call it an unfair practice, or something akin to the loss leader, where some drug manufacturers follow that policy?—A. What is that question again?

Q. Some drug manufacturers have a policy which, carried to the ultimate, is known as the 1 cent sale? Two for the price of one, plus 1 cent?—A. Yes, that is right.

Q. You indicate that not all drug manufacturers practice that?—A. That is on a trade branded line. That 1 cent sale is only on the manufacturer's own products.

Mr. STUART: On a point of order, is that statement correct—that they do not sell other than their own manufactures—other than what that manufacturer makes?

The CHAIRMAN: Perhaps you could ask that question later, Mr. Stuart, you are next on the list.

By Mr. Shaw:

Q. Would you agree that in effect that is a loss leader?—A. Yes, it is a loss leader, but it is not for advertising purposes. It is not in the same category.

Q. They are all done for advertising purposes, to draw customers in and to sell them something else?—A. Yes.

Q. Do you condone that practice?—A. Personally, no. In our association we do not condone it but we do nothing about it. That is the manufacturer's business.

Q. But you have never seen fit to take any action to correct it?—A. No, we would not do that.

Q. Yet you feel so strongly, as far as loss leaders are concerned?—A. Yes, but this is a manufacturer—

Mr. BEAUDRY: On a point of order, Mr. Chairman.

Mr. SHAW: What is the point of order?

The CHAIRMAN: Let Mr. Beaudry state it.

Mr. BEAUDRY: Would Mr. Shaw like to establish from the witness whether that 1 cent sale represents a loss leader to the retailer, or only represents it to the manufacturer? I think there is quite a difference there?

By Mr. Shaw:

Q. Well, whether it represents a loss to the manufacturer or a loss to the retailer, it is still in principle a loss leader—which represents unfair competition, may I suggest, as between two drug manufacturers. However, I am prepared to leave that.—A. That is the manufacturer's policy. It is not the retailer's policy.

Q. Let me suggest or ask you this. Is a Rexall druggist, for example, obliged to sponsor a 1 cent sale in his drug store?—A. No, he is not.

Q. He is not?—A. No.

Q. Are you familiar with the form of contract which the Rexall manufacturer insists upon his retailer signing?—A. No.

Q. Have you ever heard of any such contract?—A. No, not personally—I do not know anything about it.

Q. And on behalf of your association you would assert that you have no knowledge whatsoever of any contract being insisted upon by the Rexall drug people?—A. I do not know of one. I have never seen one or heard of one. As an association we would have nothing to do with it whatever.

Q. Are you familiar with any contract of any kind signed by retail drug dealers?—A. No.

Q. None whatsoever?—A. None whatsoever.

Q. Are you familiar at all, Mr. Preston, with any legislation that might be in effect anywhere in Canada curbing the practice of loss leaders?—A. Well, I think they tried it out in British Columbia but I do not think it operates. I do not think it passed.

Q. Well, have you had any occasion, Mr. Preston, or has any member of your association had occasion to approach the British Columbia government to take action under whatever legislation may exist, as far as loss leaders are concerned?—A. Not that I know of. Really, I do not know anything about it. It is just a rumour—hazy with me as it happened many years ago.

Q. Have you any knowledge of your association or of any druggist in Alberta or any other province asking to take action under provincial legislation to curb the practice of loss leaders?—A. No.

Q. In fact you are not familiar with any loss leader practice that has been indulged in within recent years—that is in your business—to any appreciable extent?—A. None whatsoever.

Q. None whatsoever?—A. No, but the other week there was an outbreak—this Duquette case. That is all.

Q. Yes, and you assume, Mr. Preston, that although it has not actually occurred it is bound to occur should legislation be passed prohibiting resale price maintenance?—A. I think loss leaders would be on our doorsteps tomorrow. I have mentioned that many times.

Q. You come to that conclusion largely as a consequence of a feeling that certain members of your organization will cut the throats of others as it were, and destroy certain smaller or weaker members of your association?—A. Yes, sir.

Q. And you have no method within your organization of dealing with that situation?—A. None whatsoever.

Q. Then, finally, Mr. Preston, you would be perfectly satisfied to see federal legislation passed prohibiting resale price maintenance provided there was legislation passed prohibiting at the same time the practice of loss leaders?—A. That is our big point, yes.

Q. Then you are not so much opposed to the removal or prohibiting of the practice as you are favouring the status quo where we have no legislation prohibiting loss leaders?—A. Yes, I am not in favour of having legislation that would favour any one group to the detriment of another.

Q. Yet, within your organization you feel that very condition would develop?—A. Yes, sir, I am certain of it.

Q. One other question before I conclude. Your organization is opposed, we will say, to grocery stores retailing drugs?—A. Yes, as an association.

Q. Regardless of whether the retail grocery store may be situated 40 miles from the nearest drug store?—A. No, no.

Q. Well, either you believe in it or you do not?—A. No, no, that is not a fair question. May I answer this way? In Ontario, for instance, we would be silly if we were to say that a general store 20 miles or 40 miles as you gave it, should not sell patent medicines—even seidlitz powders and castor oil, because we could not service that area. The people in that area need service. We would be the last ones to say that and we would assist the general store if he was within the confines of the Pharmacy Act, in carrying out service.

Q. Well, where is the cut-off as far as that is concerned?—A. Well—

Q. I said 40 miles because I was thinking of a certain specific case. What is the cut-off?—A. Well, we think that people in those areas need those commodities and should be able to procure them from the grocery or general store but, in the urban centre where there is a druggist and a grocery, I do not think the grocery should take our drug lines. I am not talking about things they can sell that would naturally be their lines—that is under competition of course.

Q. Even if the grocery store were not 40 miles but 5 or 10, where is the cut-off?—A. Well, where we cannot service people.

Q. But you may argue that you can service them for 20 miles out, in this modern day and age.

I have just one other question. Of the 40 per cent of general sales that do not fall within the price maintenance sales, did you tell Mr. Dickey that there were no branded goods? Are there no branded goods among the 40 per cent that do not fall under resale price maintenance?—A. Owned, branded?

Q. 60 per cent of the commodities and goods sold by a drug store are sold under resale price maintenance?—A. Yes.

Q. Of the 40 per cent—you say that 40 per cent is outside the field of resale price maintenance?—A. Yes.

Q. And there has not been chaos there, Mr. Preston, as far as the 40 per cent is concerned?—A. 22 per cent of that is in dispensing.

Q. I beg your pardon?—A. 22 per cent is dispensing and we do not consider that. There could not be chaos there. That reduces it to 18 per cent.

Q. You have no evidence of chaos as far as sales outside resale price maintenance are concerned?—A. No.

Q. What might happen to them is largely a matter of conjecture? It is what you think might happen—there is no actual evidence on it?—A. Oh no, that is based on my long experience, and knowing the trade intimately.

Q. You have not too much faith in your associates in the drug business?—A. No, I have neither too much faith in my associates in the drug business nor in human nature.

By Mr. Stuart:

Q. Mr. Preston, I notice in your statement you said you did not think that groceries should handle drug lines. Is that correct?—A. Real drug lines.

Q. With respect to the 4,200 drug stores you have mentioned across Canada, what percentage of those drug stores would serve meals and lunches?—A. I do not know.

Q. Would it not be quite a large percentage of them?—A. No, a very small percentage.

Q. Very well, I shall leave your answer as it is, but I have my own opinions. In most drug stores, is it not true that you would find tobacco being sold in nearly every one, while perhaps there would be a tobacco store on the very next corner?—A. That is right, but remember, tobacco is a drug.

The CHAIRMAN: Page General MacArthur.

By Mr. Stuart:

Q. Are not books and magazines sold in drug stores where they are sold in stores which sell nothing else as well?—A. Some would be sold in drug stores.

Q. And you have mentioned cameras, and so on.—A. Yes. Most of our better stores sell cameras and Kodaks.

Q. And the drug stores still carry those lines?—A. Yes, they do and they always have.

Q. Would you think that such a practice might be unfair to other types of the retail trade?—A. In that case, the kodak company comes to the druggist. The kodak company thinks that the druggist is the best distributor.

Q. You mentioned the fact that chain stores were today, to a greater extent, selling drugs or things which a drug store would normally sell. Would you apply the margin of profit to those particular articles which might be attributed to the chain stores?—A. You mean, our chain stores?

Q. No. You spoke of other chain stores, general stores, groceries, such as Loblaws or any other grocery store.—A. I think they are just out after more volume. They have put in wool and other lines as well.

Q. Will you not say that the margin of profit in the drug line is very much greater than it would be in the food line?—A. Yes, oh yes!

Q. Would not that be an attraction to the chain store to take in these drug articles and retail them?—A. It might be.

Q. I think it would be and my next question may be out of order, however, here it is. I noticed in the list of retail prices which you have here, that Pepsodent tooth paste sells for 95 cents. You will find that on the back of page 9. It is on the back of the price list. I am not familiar with the chart which you have made up. But I take it for granted that that toothpaste cost the retailer 76 cents. Is that correct?—A. That is right.

Q. That is the margin of profit that he is allowed?—A. 20 per cent, yes.

Q. That is the retail margin?—A. That is the correct price, yes.

Q. Then, maybe this is out of your jurisdiction completely, but I ask you the question because I feel that the manufacturer is taking a full advantage in this country when a tube of toothpaste sells for 95 cents here in Canada, while the same tube of toothpaste sells for but 60 cents in the United States. Do you think the same manufacturer who manufactures that article in the two countries would have any legitimate reason for that spread?—A. I am not a manufacturer.

Q. But I have asked you for your opinion. Is there any necessity for such a great differential between the same article as priced in the United States and as priced in Canada?

Mr. BEAUDRY: Mr. Chairman, on a point of order, I object to the extracting of opinions from witnesses who are not qualified as experts in any given field.

Mr. STUART: I was not asking you for your opinion, Mr. Beaudry.

Mr. BEAUDRY: I have a right to rise on a point of order, Mr. Chairman.

The CHAIRMAN: I think this question had better be asked when we have the manufacturers before us.

By Mr. Stuart:

Q. Would any of your supplies in the drug business come into Canada from the United States?—A. I suppose that some of the basic ingredients would.

Q. They do?—A. I suppose so.

Q. I can form my own opinion as to the price spread.—A. I do not know where the manufacturers get their supplies.

The CHAIRMAN: I think Mr. Stuart was thinking in terms of propriety articles.

The WITNESS: No, no, Pepsodent toothpaste would be manufactured here.

By Mr. Stuart:

Q. You have mentioned many articles, some of which would be manufactured here in Canada and some of which would be imported from the United States?—A. I think in the main most of the companies in the United States would have established subsidiaries here in Canada.

Q. The mark-up price is 76 cents; the wholesale price is 76 cents for a tube of toothpaste in Canada?—A. That is right.

Q. And on that tube of toothpaste the cost in Canada would be just about double the wholesale value of it in the United States. I would like to have some witness explain that to me.—A. I think the manufacturer could tell you.

Q. Might I ask this gentleman here?

Professor FULLER: I do not know if I can give you a successful answer; but I would like to suggest that if that price were reduced, you would be taking wages away from Canadian labour.

Mr. STUART: But that is not what I am asking you. I have been given to understand that these figures are authentic and that the cost of manufacturing that tube of toothpaste runs anywhere from 11 cents to 14 cents. Do you think that would be correct?

Professor FULLER: I would not have any idea of the cost at all because costs are based upon sales, not simply on the cost of the raw materials and the labour which go into the thing. Costs are based on sales over a period of time.

Mr. STUART: You say they are not based on the costs of the materials and the labour?

Professor FULLER: Not merely.

Mr. STUART: I think that would apply pretty much to aspirin tablets, would it not?

Professor FULLER: Yes. We can turn out aspirin tablets for 9 cents or 10 cents a hundred, providing we leave out the cost of the machine and interest on the capital which is invested in the machine.

Mr. STUART: The same machine which manufactures aspirin in Canada could manufacture aspirin in the United States, could it not?

Professor FULLER: Yes.

Mr. STUART: Yet aspirin can be bought in the United States for one-sixth of what it can be bought for in Canada.

Professor FULLER: But remember, there is an exchange rate to be considered, to begin with.

Mr. BEAUDRY: Mr. Chairman, I rise on the same point of order.

The CHAIRMAN: Mr. Stuart, in fairness to the witnesses, please remember that these witnesses come from the retail trade not from the manufacturers. When we get the manufacturers before us, you might ask your questions of them.

Mr. STUART: That is fine, Mr. Chairman.

The CHAIRMAN: Now, Mr. Garson.

By Hon. Mr. Garson:

Q. There are one or two answers which you have given which leave me a bit confused. I wonder if you would clear up my confusion for me.—A. I will do my very best, sir.

Q. You mentioned that when the British Columbia organization asked yours to secure a 40 per cent mark-up, that that was a discount. I think you used that term, a discount on the selling price.—A. That is right.

Q. I just want to make sure that I understood what the significance of that is. That is to say, that if the article were sold at $1, and the retailer got a 40 per cent discount off that, his purchasing price would be 60 cents?—A. That is right.

Q. And his profit would be 40 per cent on 60 cents, or 66⅔ per cent profit?—A. That is right. We base all our margins on the selling price.

Q. When I was reading the brief I assumed that they were mark-ups on the cost.—A. No, on the selling prices.

Q. And that would apply to all the figures?—A. Yes, everything.

Q. And in that way what you stated as a 33⅓ per cent discount would become 50 per cent profit.—A. Fifty per cent profit on costs.

Q. I thought I understood you to say that if resale price maintenance were abolished, all of the articles which are now sold under that system of selling would become loss-leaders; and I understood very clearly your meaning there. But you also stated that if resale price maintenance were abolished, prices would rise to the consumer. I understand each of your answers quite clearly, but the two of them taken together confused me. Could you reconcile those two answers for me so that I can understand what you are driving at?—A. I did not mean to say that if resale price maintenance were declared to be illegal that prices would rise. I think prices would drop on those commodities, on the overall price of the drugs.

Mr. THATCHER: But that is not what you said.

By Hon. Mr. Garson:

Q. It is just to clear up this question that I raised it, in fairness to the witness and to the rest of us. I was quite clear, and you repeated it once or twice in reply to Mr. Thatcher, when you said that prices would rise, and therefore in the interests of the consumer, resale price maintenance should be retained. Secondly, I think you said they would all become loss-leaders. Now, you say that your second answer is the correct one?—A. Yes, I think so. I am sorry if I erred because probably what I was trying to say was yes or no to the question which was put to me and sometimes it is not quite clear. But what I certainly meant to say was that if you should illegalize price maintenance, prices on those items would certainly drop.

Q. You mean, they would come down?—A. Yes.

Q. And that would mean a prejudice to the retail dealer, but something which the consumer might regard as perhaps beneficial from his point of view?—A. Yes. The consumer would immediately benefit from that; but in the overall picture, he would not benefit at all because as I tried to explain, if you lose on the bananas, you will make it up on the oranges. And when I was in business, I used to think that if you could not get 32 per cent on gross, you could not stay in business. So, if you can only make 5 per cent or less on these articles, on which under price maintenance you can make 20 per cent, you would then have to make it up on something else or go out of business.

Q. Yes, quite; and in that connection, since these other articles are not price maintained, would he, in raising his price to make up his profit on those other items, not have to meet the competition of his fellow merchants, and of the chain and department stores?—A. Yes.

Q. So his ability to secure that compensation would be limited by that competition?—A. But the chain and department stores would also raise their prices, because they have to stay in business, and you cannot sell loss-leaders at less than cost unless you make it up on something else.

Q. Precisely. And did you not, in reference to Mr. Shaw's question of a few moments ago, concerning the Rexhall One-cent sales—did you not have to sell at prices which are in effect and substance loss-leaders?—A. Yes.

Q. And you said that that was something you could not stop because they were under the control of the manufacturers chains and that they can sell their own products at any price they like?—A. Yes. But those sales last only for six days in a year, three days in the spring and three days in the fall; and it is only on controlled lines. You have mentioned Rexall. The

Rexall one-cent sale is organized and operated by the Rexall Drug Company on behalf of their agents only, or for their agents who want to participate. They do not have to participate. Agents who do not wish to participate in the one-cent sale need not do so. But it is all controlled by the Rexall Drug Company, and it is only on the drug products which they sell to the distributor that the one-cent sale applies. That is their remedies and cosmetics and writing pads and stationery. You buy all that material from the Rexall Drug Company as an agent of theirs. You do not buy anything—there is nothing else on that one-cent sale but products that the Rexall Drug Store sold you for that sale.

Q. You would not suggest that competition is any less severe to you because it has the name "Rexall" attached to it?—A. I do not quite understand you.

Q. I mean, if these reduced prices take that particular form they are a competition that you have to meet and they reduce your turnover as well?—A. At the time they operate they are really competition, but they only operate for six days in a year.

Q. And you think the loss-leaders would operate—A. For 365 days a year, particularly on the week-ends.

The CHAIRMAN: Our agreement was that we would quit at 1 o'clock. There have been six speakers who have said they would like to go on now. Does the committee want to hear these witnesses tomorrow morning provided the witnesses will be available tomorrow morning?

The WITNESS: Well, may we come back on Monday? I happen to have an uncle who is 85 years old and we are going to have a birthday party. I have already lost my vote, which bothers me a lot, and I do not want to miss the birthday party.

Mr. THATCHER: Mr. Chairman, the witnesses have given us this list of resale price maintenance products at the back. I wonder if they could give us a list of non-resale price maintenance products—maybe 250 products as closely similar to these as possible so that we can compare the market values?

Mr BEAUDRY: You mean a price on products on which there is no price quoted?

The CHAIRMAN: Mr. Thatcher has asked for a comparable list of goods which are not price maintained. Is that possible?

The WITNESS: We would certainly be glad to do it but I do not think we can do it by Monday.

The CHAIRMAN: The steering committee will meet and we will agree to take these witnesses at our convenience.

The WITNESS: Well, may I request that we come on Monday?

Mr. BEAUDRY: On that very point; the committee has already agreed to sit four days a week excluding Monday.

The CHAIRMAN: Five days a week.

Mr. BEAUDRY: I stand corrected. I had thought we had agreed to sit Tuesday, Wednesday, Thursday and Friday.

The CHAIRMAN: No, we are sitting five days of the week. The secretary will get in touch with you, Mr. Preston.

Will the steering committee just stay for a minute or two?

—The committee adjourned.

APPENDIX "A"

This
Presentation
is being made to the
Joint Parliamentary Committee
Appointed
to study the
MacQuarrie Interim Report
Relating to Resale Price Maintenance

by

THE CANADIAN PHARMACEUTICAL ASSOCIATION, INC.

TUESDAY,
November 20, 1951.

PREFACE

In the hope that it will facilitate the work of the Committee, this Presentation is prepared in as concise form as possible.

This Brief expresses the opinions of the Retail Pharmacists of Canada in relation to Resale Price Maintenance.

It is accompanied by supporting documentary evidence of the statements and opinions contained therein.

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THE CANADIAN PHARMACEUTICAL ASSOCIATION, INC.

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THE BRIEF

Mr. Chairman and members of the Joint Parliamentary Committee. We are pleased to have this opportunity to present our case on resale price maintenance as it now is operating. This Brief is presented on behalf of every retail pharmacist in Canada, with the exception of the thirty-three (33) drug store owners in our new sister Province of Newfoundland. Our total membership is 4,236, which includes independent retail drug stores, chain drug stores, and the drug departments of the large department stores.

In pointing out to you why we consider the present system of resale price maintenance beneficial to the consumer, we must emphasize that we can only speak for our own retail group, the pharmacists of Canada. To give you a quick view of our industry we can say that the total volume of business in all drug stores for 1950 amounted to $229,715,929.00 and that only 22 per cent of that business was in the prescription department. This latter statement has a significant bearing on the subsequent examination of resale price maintenance as it applies to our retail group.

It is our contention that the principle of resale price maintenance is so woven into the fabric of our economy that any move to declare the practice illegal should not be made hastily, nor without scientific investigation. Undoubtedly the government felt that such a scientific investigation was made when the Committee under the chairmanship of Mr. Justice MacQuarrie was asked to study the Combines Legislation with special reference to resale price maintenance.

We have examined the Interim Report brought down by the MacQuarrie Committee and do submit that the Report does not provide a sufficient basis on which to enact legislation against resale price maintenance. To this end we have included as Appendix III to this brief a commentary on the Interim Report written by Professor H. J. Fuller, in charge of pharmaceutical administration at the Ontario College of Pharmacy. Professor Fuller is a pharmacist and an economist, holding a graduate degree in economics from Yale University, and was Assistant Professor of Economics at the University of Connecticut for 18 years. We do not propose to dwell at length on this commentary because it will speak for itself. It is Professor Fuller's opinion that the methodology used by the Committee is faulty and that the conclusions reached cannot be supported by the facts, as they appear in the Report.

Is Price Maintenance Detrimental to the Consumer

The stated reason for making price maintenance illegal is that such legislation will bring down prices. We submit that the prohibition of price maintenance will not bring down prices, and in some instances will increase them.

Because price maintenance has been operating in this country since 1910, and to a much fuller degree in our retail group only since 1927, it is not possible to get comparative Canadian statistics to prove our statement that the abolition of price maintenance will not bring down consumer prices. Therefore, for these statistics, it is necessary to turn to the United States which has legalized price maintenance in all but three states and the District of Columbia. Legalized price maintenance, or the Fair Trade Acts, as they are called in the United States was given impetus by the passage of the Miller-Tydings Act in 1937. California was the first state to enact legislation setting up Fair Trade and 45 other states have followed.

In a recent bulletin from the Bureau of Education on Fair Trade entitled "Current Research Studies on Fair Trade," it was shown from statistically valid research data that in a comparative study of the prices of 26 nationally advertised Fair-traded drug products, the American consumer is found to pay one-tenth of a cent less for these products, taken as a whole, in the 45 Fair Trade states than in the non-Fair Trade area of Missouri, Texas, Vermont, and the District of Columbia. The price differential between Fair Trade and non-Fair Trade areas is very slight, the maximum difference being 3·7 cents in favor of Fair Trade. The second important point which the survey shows was that drug stores in the Fair Trade states charged less in 1948 for all their items, taken as a whole, than did drug stores in the non-Fair Trade area. And finally, the survey revealed that drug stores in the Fair Trade states are operated more efficiently, on the average, than are those in the non-Fair Trade area.

Therefore, the conclusion must be that if the experience in the United States is any criterion, then the Canadian consumer cannot expect that prices will come down in drug stores if price maintenance is declared illegal.

Before we carry our argument for price maintenance further, we should comment on the present status of Fair Trade in the United States. Members of this committee may recall that a recent decision of the U.S. Supreme Court was hailed in the press as the "death of Fair Trade" and started a price war among two large departmental stores in New York. On October 10, 1951, the *Globe and Mail,* a reputable Toronto newspaper, printed on page one, "Its promise of resale price legislation was the government's answer to those critics both in parliament and in the country who have been demanding measures to curb the rising cost of living. Similar legislation has been brought forward in the British Government. In the United States, a court decision has achieved the same end". This last statement is absolutely untrue. The court action had nothing whatever to do with any cost of living outcry. A whiskey dealer in Louisiana cut the established price of whiskey. He was sued by the manufacturer. He took his case to the Supreme Court of the United States which ruled only that the *non-signer* clause of the Fair Trade laws was invalid. It did not in any way invalidate the right of the manufacturer to make contracts with distributors relative to prices.

Will the consumer lose if price maintenance becomes illegal? In the first place, if the independent retail druggist could not depend on the revenue from the price maintained merchandise he sells the whole system of drug distribution would have to be curtailed. This is no small factor to consider when studying the problem of price maintenance. It is no exaggeration to state that the present system of price maintenance in pharmacy does not act to the detriment of the consumer, and indeed, benefits him a great deal. It should be made perfectly clear that if the pharmacist had to depend entirely on dispensing and the sale of drugs (which Federal and Provincial laws say may only be sold by registered pharmacists) large areas of our country would be without the present efficient health service.

As we have stated previously, we have 4,236 registered drug stores in this country yet less than 50 of them can exist on prescription business and the sale of sick room supplies alone. Those dispensing stores are located only in the largest metropolitan centres. The 9th annual drug store survey taken by the Canadian Pharmaceutical Association found that Canadian drug stores in 1950 dispensed 28,248,102 prescriptions or an average of 6,859 per store per year. The prescription business accounted for, on the average, only 22 per cent of the total volume of the drug store.

We admit that the consumer is not much interested in any arguments except those of price. As the late Justice L. D. Brandeis of the U.S. Supreme Court has stated, the consumer is shortsighted and unorganized and the big interests use him to their own interests. In the statistical part of this brief we

have quoted Mr. Justice Brandeis to some extent because he was a life-long champion of the right of price maintenance. "Thoughtless and weak he, (the consumer) yields to the temptation of trifling immediate gain, and by selling his birthright for a mess of pottage, becomes himself an instrument of monopoly.

But, if the consumer is shortsighted the legislator need not be, and arguments which might fall on deaf ears if presented to the consumer should be given considered thought by the members of this committee. We mentioned that the ability of the retail pharmacist to sell in competition with the largest outlets through the present system of price maintenance enabled him to perform a community health service which he would not be able to do otherwise. Let us look deeper into the ramifications of this statement. Pharmacy is a profession which is gaining more and more stature as the research laboratories of the pharmaceutical manufacturers create potent and complex drugs. How quickly conditions have changed in the profession of pharmacy can be understood from the statement that 50 per cent of the prescriptions filled in drug stores today could not have been filled 10 years ago, and 75 per cent of the prescriptions could not have been filled 20 years ago. There are eight pharmacy colleges or faculties in Canada today and all of them are now giving a four year course in pharmacy with a degree of bachelor of science in pharmacy. The physician is learning to depend on the well trained pharmacist more and more for his information about new drugs coming on the market. The profession of pharmacy is meeting this demand in many ways such as providing longer courses of training for pharmacists, better laboratories for research, highly trained teachers and money in support of research. All of this health service which the public is inclined to take for granted feeds on the retail drug store. Only a limited number of our pharmacy graduates each year enter manufacturing, hospital or research pharmacy; by far the greatest majority go into retail pharmacy, where they are in constant touch with the physicians in their neighborhoods.

If we, as a profession, are to continue attracting high quality students we must be able to give them some guarantee for the future.

The Legislation Would Be Discriminatory

If the government makes price maintenance illegal it would be, in effect, passing discriminatory legislation; legislating for the benefit of the larger operator to the detriment of the small. To carry the thought to its logical and very possible conclusion, the large operators could afford to loss leader the nationally advertised products until they would achieve an effective monopoly in the distribution of the price-cut merchandise. (Quote Fuller brief re competition.)

We have heard the argument that if the large operators cut the price on drug store merchandise the manufacturers of those products would have to reduce the price of the same merchandise to the small retailer so he could compete. The thinking in this statement is evidently that the manufacturer would be forced to bring down his price simply because he could not afford to have his entire distributive system destroyed by the tactics of the price jugglers.

Such thinking does not take into consideration the practical principles of marketing. One of those principles recognizes that quantity buying is the only method by which one retailer gets an advantage over another. Obviously the small retailer cannot buy in carload lots as the large retailer can and if the manufacturer tried to adjust the imbalance between these two customers by giving the small retailer a better price he would soon find that his big customer would be demanding even greater advantages.

Does price maintenance protect the inefficient?

A favourite statement by the opponents of price maintenance is that it protects the inefficient operator to the detriment of the public. Ironically enough the statement is often made by representatives of the labour groups where union scales of wages provides for the same rate of pay without regard to the productivity of the worker. Indeed, in some trades the productivity of the worker is subject to the dictum of the union officials.

How valid is the accusation that price maintenance protects the inefficient operator? Again we turn to the Bureau of Education on Fair Trade and its publication of "Current Research Studies on Fair Trade" for some light on this question. The figures for this study were provided by 1,122 drug stores (1,051 in Fair Trade States); 71 in the non-Fair Trade area. It was found that the operating costs of drug stores in the Fair Trade states are 26.17 per cent of sales; whereas the comparable cost of drug stores in the non-Fair Trade area is 27.57 per cent of sales. But the most telling refutation to the charge that the small operator is inefficient comes from the continuing studies of the Harvard Graduate School of Business Administration which show that the operating expenses of all department stores in the United States, as an average was 31.15 per cent of sales in 1948.

If the large operator is not more efficient how can he afford to use the nationally advertised products as loss leaders? One does not have to look far for the answer to this question. What these operators lose on the loss leaders they make up on other free-priced articles. It was a well known fact during the last period of price cutting, in the middle twenties that customers found it difficult to come out of a drug store with the deep cut article which had been advertised; usually all the wiles of salesmanship were exerted to sell a similar "own brand" or unknown brand product, which in most cases, the customer did not want. Almost without exception this "own brand" merchandise carried a much higher margin of profit than the usual markup on the nationally advirtised price maintained merchandise.

As Appendix 11 of this presentation we have attached a list of 251 fast-moving nationally advertised drug store products. In this list you will find the manufacturer's established price for each product. The price which the retailer must pay the wholesaler, and the unit cost price of the articles. To our mind the most important column in this list of prices is the one showing the actual profit which the retailer gets for each item. The average gross profit which this extensive list of merchandise shows is 25.17%. Because of co-operative wholesaling some druggists in Canada get commissions on purchases or discounts from their invoices which, at the maximum, add another 6.75% to the profit. Therefore the average profit of the druggists on this list fortunate enough to belong to co-operative wholesale houses would be 31.8%. It should be pointed out here that druggists in some parts of Canada do not enjoy the extra commissions or discounts which bolster this figure from 25.17% to 31.8%.

In the light of the above we submit that the following paragraphs of the MacQuarrie Report do not apply to the retail drug business and therefore weaken the whole argument in favour of making price maintenance illegal:

> First, the high margins determined by resale price maintenance may be used by large stores to expose the small retailer to a more acute form of competition in the field where prices are not maintained. The common policy of department and chain stores seems to aim at a certain desired margin for a department or unit. If the margins guaranteed in the sector of price-maintained goods are above the desired general level, large stores may be put in a position where they can reduce abnormally the price of products which are not maintained by the manufacturer.

> Second, high margins do not necessarily mean high profits. High markings merely transfer competition from prices to services and often result in wasteful forms of competition in services thus increasing costs. Moreover, high margins provide a strong inducement to enter into the retail field, so that a too great number of outlets, coupled with the consequent reduction in the individual volume of sales and profits, may result.

The first conclusion which appears in the MacQuarrie Interim Report is that the direct and immediate effect of resale price maintenance is the elimination of price competition among retailers in price maintained goods. We submit that this statement is not true as far as our industry is concerned. In the extensive list which we mentioned above (Appendix 11) you will find that there are 10 brands of tooth paste, 7 brands of hair tonic, 4 headache remedies, 9 shaving creams, 5 disinfectants and 5 shampoos. In a recent Druggists' Price Book, published by the Canadian Pharmaceutical Journal, there were listed 14,000 drug store products. Almost every type of article has several competitors, all with different prices. Surely this does not indicate the elimination of competition! It is the very opposite to the monopolistic trend mentioned in the MacQuarrie Report.

Government Itself Uses Price Maintenance

We cannot understand how any government either federal or provincial can legislate against the principle of price maintenance when they have used it most effectively themselves to bring about orderly and efficient marketing. The Federal Wheat Marketing Board is a good example of the principle of price maintenance at work; in this instance the Wheat Board control the marketing of this important commodity at all levels. Actually, as pointed out on page 43 of our Appendix 1, the provincial marketing boards go far beyond the type of resale price maintenance with which we are concerned. The prices of certain commodities are fixed by the government and there are no adequate alternatives to which the consumer can turn.

There is one opinion in the MacQuarrie Interim Report with which we wholeheartedly agree. It is found in the following very important paragraph:

> As to the "loss leader" device, the Committee believes that it is monopolistic practice which does not promote general welfare and therefore considers that it is not compatible with the public interest. However, we do not believe that it presents any immediate danger: extreme forms of price-cutting are not very likely in this period of inflation and relative scarcity. Moreover, we are convinced that there can be found other effective and more desirable methods of controlling the "loss leader" than minimum resale price maintenance. Present circumstances afford time to make a careful study of such methods and the Committee, therefore, does not think it imperative to make an immediate and hasty recommendation regarding that practice.

We agree that the "loss leader" device is incompatible with public interest, simply because it leads to retailer monopolies which could be used to control prices to the deteriment of the consumer. The other effect of "loss leadering", as we have pointed out, is that it will weaken the entire distributive system as now performed by the small independent retailer.

In view of the above opinion of the MacQuarrie Committee we find it difficult to visualize legislation which will prohibit the manufacturer from enforcing his minimum prices without writing legislation to eliminate the "loss leader" device. We, as retail druggists, who have seen the "loss leader" in action, maintain that there is no such thing as price cutting without the

"loss leader". The one inevitably follows the other. If the government legislates against the "loss leader" does it intend to state how much a product can be cut in price? Will the legislation tell us when a product is merely cut in price, and when the depth of the cut makes it a "loss leader"?

It is the contention of the pharmacists of Canada that the moment legislation is enacted making price maintenance illegal, the retail economy of this country will be open to the dangers of the "loss leader" device. We cannot agree with the opinion of the MacQuarrie Report that "we do not believe it (the loss leader) presents any immediate danger".

The Interim Report also mentioned in the paragraph just quoted that "relative scarcity" would prevent the use of the loss leader. There is no special scarcity of merchandise in the drug industry and since most drug store products have only a controlled demand; that is, a consumer usually buys a headache remedy when he has a headache, the net result of loss leadering would be the transference of the business from the independent drug store to the large operator. Such transference would take place not only in the large centres close to the price cutters but due to the gigantic mail order business done in this country all country areas would be affected as well. The country drug store owner today is in very real competition to the mail order depots established in his town.

In the days of the most rampant price cutting, particularly in the middle twenties the small independent druggist was in a precarious financial position. No better description of the havoc wrought could be used than that given by L. V. O'Connor, Commissioner of the Combines Investigation Act in his report on The Investigation of the Proprietary Articles Trade Association, dated October 24, 1927. He ends a chapter on "Price cutting" with these words:

> . . . the condition of the trade had become desperate, and that many of the wholesalers and retailers were bordering upon bankruptcy . . .

Today, thanks to the regulated and controlled competition provided under resale price maintenance, he is able to carry many expensive modern drugs in stock, sometimes for years, until the emergency arises when the physician will call for them. In effect, our present system of price maintenance has subsidized the nation's distributive system on prescription drugs, without loss to the public; being achieved by spreading the available business over the entire country instead of having it concentrated in the hands of a few large, monopolistic retailers.

The importance of the pharmacist's role in public health was the subject of special comment by the Honourable Paul Martin, Minister of National Health and Welfare, in a speech given at the Ontario Retail Druggist's Association convention on June 16, 1951:

> Canadian druggists can be proud of their contribution to higher health levels in this country. Through the years your profession has developed its enviable reputation for serving the public and assisting the physician. I am confident that whatever the responsibilities of the years ahead . . . and they will be heavy . . . your prescription for the future will be to guard the high ideals of your profession and to extend the effectiveness of your service.

Let us hope that the government will not destroy the means whereby we may carry the responsibilities of which the Minister speaks or legislate against our ability to extend the effectiveness of our service!

Since this is a brief from a group of retailers we have had little to say about the manufacturers' position in price maintenance. Reducing the terminology to its simplest form, the whole burden of argument on price maintenance rests on the right of the manufacturer to say what the consumer

shall pay for his product, and therefore set the margin of profit through the distributive channels. When a manufacturer sells a product to a retailer two things are involved in the transaction; first, the product itself which the manufacturer sells, and the other is the trade-mark which the manufacturer does not sell. When the manufacturer establishes a minimum price for his merchandise he is actually protecting his trade-mark; he is saying to the retailer that he may sell the product but he may not use the reputation of the manufacturer to build up his business, or bring customers into his store so he can sell him some "own brand" competing merchandise. In a judgment handed down by the U.S. Supreme Court it ruled that the manufacturer has the right to protect his trade-mark right down to the consumer. Because his reputation is involved he should have the same right to set the marketing policy of his product. This would seem to us to be one of the basic tenets of our free enterprise system of economy for which we have all fought so dearly.

CONCLUSIONS

We who have prepared this brief have had long experience in retail pharmacy, and we have seen the chaotic condition which resulted from previous price cutting periods. As Commissioner O'Connor stated, such price cutting is not good marketing, it is competition gone mad. We believe that legislation to make price maintenance illegal will bring down all the corrosive forces of predatory price cutting on our economy. Because of our belief we present our case with all vigor and all sincerity.

Our conclusions are that resale price maintenance does not react to the detriment of the consumer; to the contrary he receives substantial benefits from its existence. It is our opinion that the abolition of price maintenance will do nothing to bring down the rising cost of living. It will unleash a price cutting war which will create new monopolies and seriously curtail the distributive system by which the public gets its present efficient health service through drug stores.

Further, we conclude that any legislation to make price maintenance illegal would be discriminatory. We feel that we have present adequate proof that a high range of profit does not exist in the price maintained products and that it is only commensurate with a fair payment for the distributive service.

We maintain that price maintenance does not eliminate price competition.

We agree with the MacQuarrie Report that the loss leader is a monopolistic practice, and because it is so much a part of free pricing it cannot be controlled unless we keep our present system of price maintenance.

Finally, we maintain that the manufacturer has the right to protect his trade-mark, and thereby the reputation of his product by establishing the resale price.

APPENDIX 1

RESALE PRICE MAINTENANCE

BY

HORACE J. FULLER
ASSISTANT PROFESSOR OF PHARMACY
IN CHARGE OF PHARMACEUTICAL ADMINISTRATION
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RESALE PRICE MAINTENANCE

In 1913 the Supreme Court of the United States held that manufacturers of patented articles could not fix the price at which retailers sold their product to the consumer.[1] Louis D. Brandeis, who later became associate Justice of the United States Supreme Court,[2] wrote "The Supreme Court is all wrong and I want to set machinery in motion to get this straightened out". "When a court decides a case upon grounds of public policy the judges become, in effect, legislators. The question then involved is no longer one for lawyers only. It seems fitting, therefore, to inquire whether this judicial legislation is sound".[3]

Brandeis worked indefatigably for a reversal of this decision. Three years later he was appointed Associate Justice of the Supreme Court. In 1937, twenty-four years after Brandeis took up the cause, victory came with the passage of the Miller-Tydings Act.

Resale price maintenance is found in every major capitalistic country of the world. It is the obverse of "cutthroat competition". Some European countries have legislation making price-cutting illegal. The purpose of resale price maintenance is not to circumscribe competition but to strengthen it. The historian of the late L. D. Brandeis, Alpheus Thomas Mason, after examining both Brandeis' published articles and his personal letters, states:

> Convinced finally of the wisdom of his position, he sought support from editors and businessmen: "It is very important that we, who believe in competition, should undertake to remove the restriction which the Court's decision has imposed upon legitimate business practice . . . We must afford protection to those agreements between competitors which preserve and make continued competition possible; and we must protect also those agreements which the individual engaged in competitive business develops for the prevention of "cutthroat" competition—so long as there is nothing in them against public welfare. The denial of this right would inevitably further capitalistic combinations. . . Ultimately, we must get an express legislative recognition of the right of the individual manufacturer engaged in competitive business to market his goods through retail channels at a uniform price. It is good morals and is essential to the existence of the smallest business concerns.

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1 *Dr. Miles Medical Co. v. Park and Sons Co.*, 220 U.S. 409; *Bobbs-Merrill Co. v. Strauss*, 210 U.S. 339; *Bauer v. O'Donnell*, 229 U.S. 1.

2 June 5, 1916.

3 Brandeis, L. D.—"Cutthroat Prices, the Competition that Kills", Harper's Weekly, November 15, 1913.

When the retailer can cut prices at will on trade-marked articles, he argued, injury redounds not only to the manufacturer but to the dealer and to the consumer public. The use of a "leader" sold at less than standard price to attract customers—or, as he termed it, a "misleader"—demoralizes trade in that article to the disadvantage of all concerned. But more than that, price-cutting paves the way to monopoly. It was among the most effective methods used by the Standard Oil and American Tobacco Trusts in exterminating the small independent producers and retailers. In the end the public was the loser: "Farseeing organized capital secures by this means the co-operation of the shortsighted unorganized consumer to his own undoing. Thoughtless or weak, he yields to the temptation of trifling immediate gain and selling his birthright for a mess of pottage, become himself an instrument of monopoly".[1]

In condemning price fixing, the unthinking failed to distinguish between "the independent manufacturer who fixes the price on his own particular product and the monopoly or combination which fixes the price on a common article of trade". Price maintenance was not a device of monopoly but a method by which competition could be regulated and protected.[2]

The Government of Canada has proposed legislation making resale price maintenance illegal. The reason for such a proposal is the recommendation of the Committee to Study Combines Legislation as contained in their Interim Report. The standard of judgment used by the committee is expressed in their words as follows:

By what standards should resale price maintenance be judged a desirable or an undesirable practice? They can be suggested in simple form by two sets of questions.

First, does the system place the determination of prices, which is the mutual concern of producers and consumers, under social control either through competition or public regulation or does it set up a system of control by private law or agreement? Does it prevent the consumer from exercising his full influence in determining what services he is willing to pay for and what services he deems too expensive? In brief, does the system facilitate or restrict competition?

Second, how does the maintenance of resale prices effect prices, production, distribution and consumption? Does it promote efficiency in the economic system providing the consumer with the goods and services he requires at the least necessary prices? Does it direct adequate but no more than adequate resources to the distributive system? This is the standard of economic efficiency?

We propose to show that resale price maintenance, first, does not circumscribe competition but on the other hand, strengthens it; second, does not increase the cost of living but, on the other hand, has been a stabilizing influence on prices. The method, though analytical, is of necessity, descriptive as well.

Analysis of Markets

Since competition is a market condition, it becomes necessary to examine what is meant by the term.

In our society, prices are determined by two major forces referred to as Supply and Demand. It is also true that Supply and Demand are both influenced by prices. Further, prices are influenced by the total amount of

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[1] Mason, Alpheus Thomas,—Brandeis—A Free Man's Life, 1946, p. 425. The quotes within the quotes are from a letter from Brandeis to E. A. Van Valkenburg, June 13, 1913 and from a typed manuscript on Price Maintenance.

[2] Ibid,—p. 426.

purchasing power in circulation. If these forces are allowed to function freely in the market places, they automatically, without human interference, private or governmental, determine:

1. What should be produced
2. How much should be produced
3. For whom we should produce

Hence in competitive theory,[1] the responsibility for prices rests with impersonal market forces. The theory of *laissez-faire* emphasizes regulation of business activity by prices. This is the orthodox view, and comes down to us from Adam Smith's *The Wealth of Nations*, 1775.

Competition then is a market condition in which there are so many buyers and so many sellers that no one buyer and no one seller can appreciably influence price.

On the other hand, monopoly is that degree of unified control over supply or demand which will permit the regulation of price.

There are several kinds of competition:

1. Pure competition is merely competition free from all monopoly elements; and it prevails where the following conditions are found:

(*a*) the product bought and sold must be standardized, identical for all sellers, so that buyers will shift from one producer to another at the slightest difference in price;

(*b*) there must be so many buyers and sellers in the market that the purchases or sales of any one of them have no appreciable effect on the price;

(*c*) there must be no agreement as to price or quality among the sellers.

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[1] Provided that there is not too large or too small a total monetary demand in relation to the supplies of goods and services available for purchase, and provided that there is a reasonably equitable distribution of that total monetary purchasing power, there are strong market forces at work promoting the most economic use of the community's resources. Consumers bid most for those commodities which they most desire; and if the distribution of income and property is reasonably equitable, the price offered by one consumer can be taken to be of equal importance to the price offered by another. Particular goods should then go to the particular consumers who offer the highest price for them. And producers, if left free, will in their own interest produce in greater quantity those things for which consumers offer the most in relation to the cost of production, and—through technical innovations and through the use wherever possible of cheaper resources in place of more expensive ones they will produce each commodity by the means which are technically the most efficient and which employ as much as possible of the plentiful (and therefore relatively cheaper) resources and as little use of the scarce (and therefore expensive) ones. In such circumstances freedom of consumers' choice combined with the profit motive produces the maximum social advantage.

Quite apart from an excess or a deficiency, or an inequitable distribution, or general purchasing power, there are unfortunately many reasons . . . . why in particular cases this happy coincidence of private and social advantage does not exist. There is nevertheless this underlying tendency at work; and where it can be made effective, the liberal solution of *laissez-faire*, or free competition, is undoubtedly the one to adopt. It combines complete personal freedom with maximum economic efficiency.

A main purpose of policy must, therefore, be to ensure that this principle does work over the widest possible range of activities. The profit motive will work to the benefit of society only if producers can exploit neither the consumer by restricting output and thereby raising the price of the products which they sell, nor labour (or other factors of production) by restricting the number of workers whom they employ and thereby depressing the wage-rate which they have to offer.

Where there are many competing producers each producing a small proportion of the total supply of a fairly standardized product, and each employing a small proportion of a fairly homogeneous type of labour, no single producer will have the power of exploiting the consumer or the worker. For since each producer accounts for so small a part of the total production and employment, a variation in his sales or employment alone will have an inappreciable effect upon the total market for the product or for labour; and he will not, by producing less, be able significantly to improve the terms on which he can sell his product or employ his labour.—Meade, James Edward (Professor of Commerce University of London) Planning and the Price Mechanism, The MacMillan Company, New York, 1949, pp. 56ff.

The wheat market, on the farmer's side only, represents practically pure competition. On the buyer's side, the wheat market is by no means purely competitive . . .[1]

With respect to the number of buyers and sellers, competition is not sharply differentiated from monopoly but shades gradually into it. There may be a million of each, or a thousand or a dozen or only one; and as the number declines, conditions shade from practically pure competition to monopoly or monopsony.[2] (In the strict definitional sense, monopoly means only one seller, monopsony means only one buyer).

(The word monopoly, of course, means one. Again, in the strict definitional sense, monopoly means one seller. However, other terms are used to indicate relative monopoly, for example, duopoly means only two sellers, oligopoly means more than two but still only a few; monopsony means only one buyer, duopsony only two buyers, and oligopsony more than two but still only a few.)

2. *Monopolistic Competition*

This incongruous term describes a market situation in which there are a large number of buyers but a very small number of firms supplying the market. The reasons for the increase in this type of market situation need not be discussed here. The Temporary National Economic Committee of the United States noted:

> Among the 1807 products, representing nearly half, by number and more than half, by value, of those included in the Census of Manufacturers for 1937, there were 291, or more than one-sixth of those in the sample, in which the leading producer accounted for 50 to 75 per cent of the total supply. One company, in each field, in some year between 1930 and 1940, produced 40 per cent of the Nation's output of industrial

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1 for there may be only one or two local elevators buying wheat; this presents a picture of monopoly or duopoly—or, more precisely, monopsony or duopsony, since they represent the buyer's side of the market....one of a million wheat producers can exert only an infinitesmial effect on the price by offering or withholding his part of the total supply; he can sell all his product at the market price, but none at even a slightly higher price. One of a thousand producers can have only the slightest influence on the price; one of a dozen has a definite effect; and a single producer can set his own price,

With respect to identy of product, it may be perfectly identical for all producers, or nearly identical, or it may differ somewhat, or it may differ greatly. Number 1 hard wheat is almost perfectly identical for all producers, although not quite perfectly identical, for there are very slight differences in samples of Number 1 hard wheat. Some other farm products are less well standardized than wheat—fruits and livestock, for instance—and in these there may be enough differentiation so that some producers will be able to command a premium price in which there is a trace of monopoly. Since there is some differentiation, some buyers will pay this price rather than turn to the most acceptable substitutes. Any bushel of Number 1 hard wheat is an almost perfect substitute for another bushel, but no dairy cow or beef steer is so nearly a perfect substitute for another. Ise, John—Economics, p. 181.

2 "To shift further from conditions of nearly perfect product identity, Kellogg's Corn Flakes are much like Post Toasties, yet different enough so that some buyers who prefer Post Toasties will not accept Corn Flakes as a perfectly satisfactory substitute and will be willing to pay a premium price, if necessary, for their favorite cereal food. The producer of Post Toasties must meet the competition of other producers of cereal foods; but since no other cereal food is a perfect substitute for his own, he can charge a price that has an element of monopoly in it.

"When we reach the realm of almost pure monopoly—for example, the electric company which provides current for lighting—we find gas lights and oil lamps very poor substitutes for electric lights; hence the electric company has a very strong element of monopoly power. Thus, with respect to product identity, we find every shading, from the practically perfect identity of Number 1 hard wheat to the high differentiation in lighting facilities, with resulting shading in the amount of monopoly power".—Ise, John,—Economics p. 181.

alcohol, 40 per cent of the corn products, 41 per cent of the farm machinery, 50 per cent of the towels, 60 per cent of the fruit jars, 66 per cent of the canned soup, and 85 per cent of the fire extinguishing apparatus and supplies. One company, in 1932, was said to manufacture 65 per cent of the cinema negative films, 75 per cent of the cinema positive films, and 85 per cent of the still film for amateurs.

Two companies manufactured 70 per cent of the heavier types of electrical equipment, 70 per cent of the electric motors, and 75 per cent of the watt-hour meters made in 1923 and produced 80 per cent of the distribution and power transformers and 89 per cent of the generators that were in use in 1925.[1]

. . . in 1935, in 54 industries some of them very important, the four largest firms produced more than two-thirds, by value, of the total output; and in 1937, of 121 products, the four largest firms produced more than three-fourths of the total output.[2]

EIGHT INTEREST GROUPS AND THEIR ASSETS, 1935[3]

(Millions of Dollars)

—	Morgan-First National	Rockefeller	Kuhn-Loeb	Mellon	Du Pont	Chicago	Cleveland	Boston
Industrials.....	$ 3,920	$ 4,262	$ 0	$ 1,648	$ 2,232	$ 858	$ 1,066	$ 425
Rails.....	9,678	0	9,963	153	0	0	0	0
Banks.....	4,421	2,351	548	672	396	2,595	338	740
Utilities.....	12,191	0	342	859	0	813	0	554

TOTAL $61,025

The recognized study among economists of the pricing mechanism under monopolistic competition is that of Edward Chamberlain in the *Theory of Monopolistic Competition,* Harvard University Press, 1936.

Monopolistic competition departs greatly from pure competition. Under pure competition, there are so many sellers that no one can appreciably influence price since any one of the producers controls only a small segment of supply and a small segment of the labour force. Under monopolistic competition, there are only a few sellers or producers and this few control a large segment of supply. The pricing policy of any one of them can appreciably influence price.

3. *Imperfect Competition*

Imperfect competition is a market situation in which there are many sellers but each seller attempts to differentiate his product slightly from those of his competitors. Often the differentiation is very slight and sometimes it is only imaginary. Sometimes the differentiation is one surrounding the conditions of sale, such as a specially good location.

Whereas limitation of the number of sellers is the characteristic of monopolistic competition, the characteristic of imperfect competition is differentiation in the product itself or the conditions surrounding its sale.

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[1] Temporary National Economic Committee, Monograph No. 21 pp. 113-114.
[2] Ise, John,—Economics, p. 135.
[3] National Resources Committee, The Structure of the American Economy, Part 1, p. 161

It is to this last group of goods, goods marketed under conditions of imperfect competition, that resale price maintenance is most applicable. The differentiation of product is sanctioned by governments through the granting of patents, trade-marks, and copyrights.

4. *Cutthroat or Destructive Competition*

"Competition is said to be cutthroat or destructive when the existence of idle capacity and the pressure of fixed charges lead sellers successively to cut prices to a point where no one of them can recover his costs and earn a fair return to his investment." [1]

5. *Predatory and Discriminatory Competition*

When one seller cuts his price for the sole purpose of eliminating another competition is said to be predatory.

When one seller confines the cut to a portion of his sales that competes with those made by another competition is said to be discriminatory.

The price cutter may:

(*a*) cut price uniformly, deliberately sacrificing present earnings in an effort to obtain future monopoly power and profit.

(*b*) discriminate among localities, temporarily cutting his price in one area while he maintains it in others, raising it again when he has elminated his local rivals.

(*c*) discriminate among products, temporarily cutting his price on one brand while he maintains it on others, dropping the fighting brand when it has served its purpose.

The test of predation and discrimination is intent and that can only be known with certainty by the price cutter himself.

6. *Non-Price Competition*

Under pure competition the product bought and sold must be standardized, identical for all sellers, so that buyers will shift from one producer to another

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[1] Dean, Joel, (Graduate School of Business, Columbia University) Managerial Economics, 1951, p. 52.

One of the best expositions of this type of competition is that of Lloyd G. Reynold, Professor of Economics, Yale University, which appeared in the American Economic Review, Vol. 30, pp. 736-744, December 1940. A few "quotes" may point up the situation: "Economists have long maintained that free competition tends to promote economic efficiency. Businessmen, however, have remained singularly unconvinced. In trade journals and at manufacturers' conventions competition is termed "ruinous", "unethical", "cutthroat", "destructive". The control of competition through patents, tariffs, mergers, trade associations and informal agreements has been a major objective of business policy.

The competitive practices condemned by businessmen are of two quite separate types which should be clearly distinguished. Cutthroat competition sometimes refers to false advertising, adulteration of goods, commercial bribery, defamation of competitors, and similar fraudulent practices. It would be generally agreed that such practices are undesirable, and they therefore raise no major question of public policy.

Second and perhaps more commonly, cutthroat competition refers to acts which tend directly or indirectly to lower the existing price structure... Cutthroat competition, thus defined, can arise only where there is excess capacity of the fixed factors, engaged in the industry..."

An empirical study of cutthroat competition in the cotton textile industry then follows. Reynold concludes with:

"The process of adjustment, of course, has been painful for many, of those connected with the industry. The chief losers have not been the owners of New England mills, whose investments had in most cases been thoroughly amortized from previous earnings, but the New England textile worker. The closing of the mills has thrown some 100,000 New England workers out of employment, and large numbers of these workers are still unemployed."

at the slightest difference in price. On the other hand, product differentiation is a characteristic of both monopolistic and imperfect competition, hence competition takes the form of competition in quality, style, advertising and salesmanship.

Clair Wilcox maintains that, "Competition in quality and in service may be quite an effective in giving the buyer more for his money as is competition in price. Competition in service, however, may compel the buyer to pay for something he does not use or want as a condition of obtaining the commodity he desires. Competition in style may give satisfaction to the buyer, but it may also destroy the value of the goods he purchases by hastening their obsolescence. Competition in advertising and salesmanship are necessary concomitants of competition in quality, service, and style, but they may not, in themselves give the buyer a value which is equal to their cost. Each of these forms of competition is a common feature of the markets for manufactured consumers' goods." [1]

7. *Effective or Workable Competition*

This type of competition is explained most concisely by Clair Wilcox in the Temporary Economic Committee Monograph 21, 1941 as follows:[2]

Competition among sellers, even though imperfect, may be regarded as effective or workable if it offers buyers real alternatives sufficient to enable them, by shifting their purchases from one seller to another, substantially to influence quality, service, and price. Competition, to be effective, need not involve the standardization of commodities: it does, however, require the ready substitution of one product for another; it may manifest itself in differences in quality and service as well as in price...It requires the presence in the market for several sellers, each of them possessing the capacity to survive and grow, and the preservation of conditions which keep alive the threat of potential competition from others. It cannot be expected to obtain in fields where sellers are so few in number, capital requirements so large, and the pressure of fixed charges so strong, that price warfare (sic), or the threat of it, will lead almost inevitably to collusive understandings among the members of the trade.

....The test of effectiveness and workability in competition among sellers is thus to be found in the availability to buyers of genuine alternatives in policy among their sources of supply."

8. *Miscellaneous*

We have defined competition as a market condition or a market situation and have briefly described the major situations. However there are many types of market situations.[3] Professor J. M. Clark, Professor of Economics at Columbia University, states that the "number of mathematically possible combinations runs into the hundreds of thousands—and suggests the possibility that every industry may be in some significant respect different from every other, or from itself at some other stage of development."[4]

The foregoing analysis and description of market situations is admittedly superficial. Alfred R. Oxenfeldt has recently contributed a 602 page book

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[1]Wilcox, Clair.—in Competition and Monopoly in American Industry, TNEC Monograph 21, 1941.

[2]Ibid.

[3]Oxenfeldt, Alfred R.,—Industrial Pricing and Market Practices, 1951, p. 70.

[4]Clark, John Maurice,—"Toward a Concept of Workable Competition" reprinted in "Readings in the Social Control of Industry", 1942, p. 456.

The term "market" is used here to refer to all the circumstances that influence production, sale, cost and demand for a product.

on the subject. Oxenfeldt is used as the 'raison d'état' because the Interim Report of the Committee to Study Combines Legislation quoted 24 lines from this colossal study in support of its view that "the general level of prices is higher with resale price maintenance that (sic) it would be if competition existed." Further, whether to enact or not to enact legislation restricting resale price maintenance hinges on this viewpoint. We feel therefore, that whereas it is physically impossible to write the complete text of Oxenfeldt's book into the record, it is possible to call attention to the conclusions given in the book used by the above named committee.

Oxenfeldt in his conclusions[1] states, "The few generalizations that emerge from the foregoing chapters only show how complicated a realistic explanation of price must be. One is tempted to conclude about prices that, like people, "every one is different."...the detailed analysis of prices presented in this book suggests that every price is unique in some important respect. No fairly simple explanation of price, like the law of supply and demand, has been uncovered."

The General Conclusions of the book are twelve in number. They are presented here as evidence that the standard of judgment as stated in the interim report and on which so much depends is inadequate to the task of evaluating resale price maintenance.

GENERAL CONCLUSIONS[2]

First, there seems to be a universal distaste among businessmen for the kind of rivalry needed for pure competition and even for workable competition. It is not clear that public opinion would stand for the intensity of rivalry and the solvency by a hair that is implied by pure competition. Accordingly, there are almost incessant efforts by businessmen to escape the rigors of competition. Often these win the support of the courts and the public, who probably regard pure competition as ruinous competition. Frequently businessmen's efforts to lessen the severity of competition are successful; more often, they do not achieve as much as was sought, but the operation of markets is, substantially altered by these attempts to mitigate competitive pressures, nevertheless.

Second, many businessmen seem to be influenced strongly by considerations that make them both resist the impulse to charge everything the traffic will bear and refuse to accept prices lower than those they regard as fair, even if a lower price would yield a larger profit than the fair price. Businessmen have not been able to separate their business lives completely from their social relationships. While the ethical standards of business are very different—one would call them lower—from those governing most personal relationships outside business, businessmen are partly motivated by ethical notions. The growth of public relations consciousness has compelled businessmen to become articulate about their ethical standards. And once they have implied or stated a standard of conduct in order to win public approval for their actions, they are partly bound in future actions by these statements.

Nevertheless, in time of war or inflation, many firms seem to think only of profits. At such times, the nation's interest in avoiding price increases is obvious. They do occur, however, and they represent an apparent contradiction to the statement that businessmen are strongly influenced by moral considerations. Moral considerations operate primarily when a firm is or would become conspicuous. For example, a large firm ordinarily will hesitate to be the first to increase prices during

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[1]Oxenfeldt, A. R.,—op. cit., p. 577.

[2]Oxenfeldt, A. R.,—op. cit., pp. 579-582

a period of national emergency. However, during such periods, many small or medium size firms will raise prices. Frequently prices will rise first in the more competitive sectors of industry, such as agriculture and textiles. After many prices have risen, executives of large industrial firms will not long hesitate to raise price. It becomes much easier for them to justify price increases when many other businesses have already raised prices; and to some extent their price changes go almost unnoticed among a large number of price increases.

Third, a large proportion of business activity does not take place in the office or on the market. Success in business often is achieved through negotiations with rivals and through activities that influence government on behalf of industry. The axiom "things equal to the same thing are equal to one another" is unassailable, but the statement that "business is business" is not completely true.

Fourth, businessmen enjoy wide latitude in their pricing and market practices. They have no kit of sure-fire tested nostrums to apply when beset by difficulties. Nor are businessmen mere playthings tossed about by overwhelming market forces. The manner in which the industrial system performs depends upon the activities of businessmen, who have it within their power to improve or worsen the performance of the economy. Rather than by automatically operating economy, our industrial system is run by private planning.

Fifth, the conditions surrounding the production and sale of products that are pertinent to an explanation of price are very numerous. The influence of each one seems to depend upon the combination of other circumstances in which it occurs. Generalizations about price on the basis of structural characteristics of the market tempting though they may be, are treacherous. Similarly, public endorsement of some structural conditions and condemnation of others without reference to all related conditions is a common error.

Sixth, the information about relative scarcities of productive factors, their productive contribution, the value to consumers of alternative products, and other related circumstances that should determine the output of individual products is not known to anyone. Businessmen know little, and cannot know all one would like them to know, about demand for their output, and cost calculations are subject to major errors. As a result, businessmen's calculations are only guesses. Even if they did know conditions of cost and demand, it is unlikely that maximization of profit under prevailing conditions would closely approach the best performance of which the economy is capable.

Seventh, prices often are not the major instrument of business market policy. Sales promotion activities, relations with distributors or with suppliers, the general provision of contractual arrangements, and the like seem to figure more importantly in businessmen's thinking than the determination of price. Very probably they are correct in thinking that prices are less important than some of these other instruments of business policy.

Eighth, prices of nearly all products are influenced in numerous ways by government action. The American economy is heavily regulated. However, most regulations are used to increase the income of the regulated industry and to increase the security of sellers in it rather than to protect the public. The welfare state is not new: but new groups are getting help from the state. One might say that prices are subject to an enormous amount of government regulation, but only to a trifling amount of government interference.

Ninth, strategic influences upon price are to be found along the vertical chain of processes between the raw material producer and the final consumer. The final price for a product is largely explainable by the prices at which it is transferred in various stages of completion from one firm to another along the vertical chain of processes. There seems to be reason to believe that transfers of goods tend to distort the proper use of resources, so that a reduction of these successive transfers would often be in the public interest.

Tenth, rivalry among sellers is almost irrepressible. Agreements that shut off competition in one phase of a business generally have the effect of transferring it elsewhere. Unless firms merge, their conflicting interests will find expression even if they come to extensive agreements with their competitors. Their desire to get ahead of other firms in the industry is a powerful motive, and many firms seem unable to curb it even to gain long-run advantage. The growing recognition among businessmen of the futility of price competition intensifies efforts to outdo other firms in sales promotion and in making improvements in quality of product.

Eleventh, competition of an intensive sort can itself be a cause of monopoly. This apparent paradox is easily reconciled. If an industry suffers such rigorous competition that most sellers and employees are acutely distressed, the state is likely to come to their assistance by allowing them to exercise monopolistic privileges. This form of government gift to an industry does not require an increase in taxes, and therefore has an irresistible charm to legislators. If the government does not help them, businessmen may be driven to make agreements among themselves to assure their survival. One can get too much of a good thing—especially is this true of competition.

Twelfth, very intense market rivalry often has perverse effects. As just indicated, it can result in monopoly. It can raise price without bringing about a private agreement among rivals by increasing productive facilities and so raising costs. After redundant facilities are created, they give rise to a pressure that may ultimately cause margins to increase.

Finally, evaluation of industrial arrangements and of the pricing process can have validity only when based on an analysis of all pertinent circumstances in concrete situations. No criteria of service to the public interest have yet been developed (and it is not likely that they will be) to permit reliable evaluation of elements of industry structure or business practice in general and without reference to the total situation within which it occurs.

Evaluation of industrial arrangements, even if they take account of all pertinent circumstances, have little value unless they compare existing conditions with some attainable alternative. The only situations that warrant change are those that can be made better—it is not enough to be able to imagine conditions that would be better.

There is nothing in these conclusions even as much as hinting that resale price maintenance should be outlawed as a matter of public policy. In fact there is much to indicate the opposite, for example: "frequently prices will rise first in the more competitive sectors of industry." "Generalizations about price on the basis of structural characteristics of the market, tempting though they may be, are treacherous." "The growing recognition among businessmen of the futility of price competition intensifies efforts to outdo other firms in sales promotion and in making improvements in quality of product." "One can get too much of a good thing—especially is this true of competition."

"There is no escape from the conclusion that pricing practices vary from firm to firm and over time. Broad generalizations are almost certain to be incorrect generalizations." p. 198

"As indicated, quality changes often are an escape from the futility of changing price. They serve as a safety value whereby aggressive sellers may make their bid for success without influencing price. To this extent, quality changes contribute to price stability." p. 204 "As indicated, pressure to get ahead by improving the quality of one's product has contributed substantially to rising living standards." "An improvement in a product selling at a given price is substantially similar to a reduction in price of a product of unchanged quality". p. 205 "Firms that are driven out of business by price war are not necessarily the least efficient in the industry. Survival in an out-and-out price war depends almost exclusively on the ability to withstand losses . . . Might scarcely makes right in any sphere, and certainly not in business." p. 260

Concerning market-controlled prices (see page 175) Theodore J. Kreps says:

> The fact emerges clearly that market-controlled prices are neither necessarily reasonable prices nor just prices, for they are an essentially haphazard result of all the various divergent producer-and-consumer-decisions about alternatives. They may be fantastically high as was the price of tulips in the conservative Netherlands during the tulip mania, or the price of Florida real estate and of common stocks in the twenties.
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> If one applies what may be called social tests, prices frequently have no relationship to human needs, for those without money have no influence at all on amounts, prices, or kind of items produced and distributed except as they are beneficiaries of private or public charity. By following market value producers supply luxuries in abundance and even the extravagant futilities of Palm Beach, while one-third of the nation has no little food to eat, and such inadequate clothing and shelter that infant mortality, morbidity, and disease rates exceed those of Europe, the farmers all the while getting prices so low that crops are allowed to rot in the fields. Market-controlled prices gave Milton less than $100 for the seven years of labor that produced the manuscript of *Paradise Lost* and starved the marvelously productive Franz Schubert into premature death at the age of thirty-one.
>
> Market-controlled prices may be destructively low. They condemn women and children to break their bodies in sweatshops, in factories and in coal mines at demoralizing and crime-generating wages having not the slightest relationship to efficiency or productivity or anything save ruthless exploitation of hunger and need by avarice.
>
> Still one further charge must be made, because market-controlled prices sometimes produce chaotic rivalry as in the coal industry and lead eventually to destruction of competition by cartels or monopoly. . . They involve consequences so unpalatable to producers that they resort to a number of devices which destroy the market, notably discrimination, rate wars, tying contracts, bogus independents, dumping, "freezing out" small or incipient competitors and other guerrilla tactics whereby prices and price changes, actual and implicit, are managed in order to gain or hold control. . .

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[1]Kreps, Theodore J. (Professor of Business Economics, Graduate School of Business, Stanford University) in Economic Problems in a Changing World—Willard L. Thorp, editor, 1939, p. 263.

V. W. Bladen, Professor of Political Economy, University of Toronto, discussing "Wheat and the Price System"[1] says:

> Our discussion of the wheat economy has taken us into a world very different from that of our model price system of Chapter III. It is however, similar in that the unit for production is generally the family, and in that the number of small producers is so great that the condition of competition is achieved. No farmer can hope to influence the price of wheat by reducing his acreage or withholding part of his crop. But the contrasts are obvious, especially in the results. The nice adjustment of production to consumption at a price which gives the producers an income roughly equal to that of other producers, which we found in the model, is noticeably absent in the real wheat economy.

The national money income of Canada declined from some $5,000 million in 1929 to little over $2,500 million in 1933. Not all of this can be explained by reference to wheat alone. However, a decline of Saskatchewan farm incomes by nearly $200 million might account, through the Keynesian multiplier, to a total reduction in the national income of $700 or $800 million.[2]

Between 1929 and 1933 the price of wheat fell about 66 per cent while the average fall in prices of a large sample of "things farmers buy" was only 25 per cent and many important items fell less than that.[3]

"But the price system was not left to do its worst; attempts were made by the Dominion government, some of them relatively ineffective, to raise the income of those farmers who had wheat to sell."[4]

We are suggesting here that the Dominion government:

1. Does not believe that man's fate should be left to the blind impersonal forces of prices determined by supply and demand.
2. The government also interferes with the market price when there is only one producer, for example, public utilities regulation.
3. The government interferes with competition in sanctioning Labor Unions. In the economic sense, labor unions are monopolies but they are removed from the stigma of restraint of trade by law, and the government by setting the rules for collective bargaining assists labor unions to set aside competitive prices.
4. The government of the Province of Ontario interferes with the establishment of competitive prices for milk through the operation of the Milk Control Board of Ontario. "It is an offence to sell milk for less than the established price."[1]

THE RETAIL DRUG INDUSTRY IN CANADA

The retail drug business in Canada is carried on through approximately 4200 retail pharmacies. Each pharmacy carries from 7,000 to 15,000 different items. About 20 per cent of these are marketed under resale price maintenance. In no other field is there so many trade-marked and branded items. These trade-marked and branded items are marketed under the market situation called imperfect competition as described on page 177, that is, a market situation in which there are so many producers but each producer attempts to differentiate his product slightly from those of his competitors, the extent of differentiation being sanctioned and protected by the Federal Government by means of trade-marks and the registration of brand names.

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[1]Bladen, V.W.,—An Introduction to Political Economy, 1948, p. 116.
[2]Ibid,—p. 119.
[3]Ibid,—p. 120.
[4]Ibid,—p. 124.

What has been said, pages 170 and 171, concerning Effective or Workable Competition applies here, namely, competition among sellers even though imperfect, may be regarded as effective or workable if it offers buyers real alternatives sufficient to enable them, by shifting their purchases from one manufacturer's brand to another. The existence of adequate alternatives is easily verified by a cursory glance at the shelves of almost any pharmacy.[1]

Resale Price Maintenance as an Aid to Shoppers

"Purchase should be a casual venture, not a technological ordeal, according to Walton H. Hamilton, formerly Professor of Law, School of Law, Yale University.[2]

In laissez-faire economics the determination of prices in a competitive market by the forces of supply and demand is conditioned by two factors, full employment and rational behaviour. By rational behaviour is meant that the customer knowingly always acts in his own self-interest. This may have been true in Adam Smith's time when the world was peopled by small independent businessmen of about equal wealth and the number of different kinds of goods to be purchased was relatively insignificant in terms of the vast multiplicity of goods offered for sale today.

> As physics, chemistry, biology, bacteriology were one after another absorbed into the industrial arts, the processes of production became numerous, complicated, unlike in kind. Only the expert could know the quality of the ware, and even he might have to employ test-tubes and instruments of precision in order to be sure. This situation, this trend, exposed the consumer to an increasing ignorance of the articles of use. The consumer is an amateur; he knows next to nothing about the multiple of processes and the multiplex of ingredients which lie implicit within a commodity. He cannot judge whether the consumption of an article contributes to his personal well-being. But even if every man were the omniscent Olympian which the philosophers of the nineteenth century assumed him to be, it would seem to be ridiculous for each individual to have to solve for himself the problems which all are required to face. . . An agency should act for all who are buyers; minimum standards should be set up for the admission of foods and drugs to the market.[3]

Two agencies have been established for the facilitation and protection of the consumer. One is the establishment of standards by the Food and Drug Act the other is the establishment of brands by manufacturers. The manufacturer who identifies his merchandise by a brand assumes the responsibility of maintaining the quality. A customer who buys by brands reflects any dissatisfaction directly in his or her purchases. Brands encourage repeat sales. The customer does not have to go through the ordeal of decision every time she buys another

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[1]The number of brands of selected items purchased by families in greater Milwaukee in 1930 were tooth brushes 256; tooth paste 76; toilet soap 65; mouth wash 68; shaving cream 73; fly and bug killers 61.—Recent Social Trends, Report of the President's Research committee on Social Trends, 1933, p. 876.

In 1937 at the Hearings on the Miller-Tydings bill, E. L. Newcomb, Executive Vice President of the National Wholesale Druggists' Association, testified that there were 200 brands of tooth paste on their list and that a complete enumeration would probably exceed 1,000; also that partial listings a few years ago for face powders and laxatives carried 1,200 and 2,000 brands respectively.—75th Congress, 1st Session on H.R. 1611, Serial 1, January 27-29, 1937, pp. 26, 58.

[2]Hamilton, Walton H.—Introduction to "Food and Drug Legislation" by Stephen Wilson, 1942.

[3]Ibid.

unit. Brands provide protection against substitution and facilitate the introduction of new items.[1]

It facilitates shopping if a fairly stable price goes along with a brand name, whether national or private brand. One can buy the Toronto *Star* for three cents or the *Globe and Mail* for 5 cents. One can buy Pepsodent toothpaste for 33 and 60, Listerine for 33 and 55, MacLeans for 43 and 69, Tamblyn's for 33 or Klenso (Rexall product) for 39 and 59.

Just after the close of the Civil War in the United States, John Wanamaker initiated the one-price system. Previous to this prices were arrived at by means of a bargaining process between the customers and the salesperson. "No prices were displayed on the merchandise, and the customer, upon being told the price of an item, would endeaver to higgle and beat down the price, while the salesclerk tried to keep it as high as possible, and still effect the sale. Wanamaker changed all this and caused price tags to be placed on all merchandise, which prices were the only ones at which the merchandise would be sold at any given time. The higgling procedure was abandoned . . . Although there was considerable opposition to this change, both from customers and other stores, in a relatively short time it became the standard practice in department stores as well as in most of the rest of the retail field."[2]

No one would suggest that we go back to "higgling" for price each time a purchase is made. The world's work would not get done efficiently if customer and salesclerk had to waste so much time. Retailing has moved forward since the establishment of the one-price policy instituted by John Wanamaker. It has moved another step forward with the establishment of resale price maintenance in every major capitalistic country of the world. It makes it easier for the customer to shop. "Purchase should be a casual venture."

One of the greatest retail merchants of the twentieth century, the late Edward A. Filene of William Filene and Sons of Boston, said, "Buying at a fixed price is by far the most advantageous method of buying all things in general use."[3]

> Concentration of the entire stocks in three price lines will greatly increase sales, because it will bring as much better values in the higher-priced lines of goods, as the low-price variety chains offer in the lowest prices. Buying at a fixed price is by far the most advantageous method of buying all things in general use. Stocks turn faster, customer selection will be simplified, and selling-time and effort reduced. The model stock plan is one type of standardization in retailing which will greatly increase sales, reduce distribution costs, and increase profit, because it enables the merchant to offer incomparably better values, complete stocks, and widest selections with a resulting quicker turnover. This greatly increased buying power in the three price lines will induce manufacturers to offer greater values in merchandise, because additional savings are made possible through production planned to sell at fixed prices.[4]

Resale price maintenance prevents the "misleading" of the public by the use of "loss-leaders". This practice is designed to make the customer believe that all goods sold in the "loss-leader" stores are lower than other stores. If customers would buy only the loss-leaders at such stores, such stores would

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[1]Whenever science develops a new invention like the radio, or a new improvement in a familiar article, the facts about it are spread to the most remote corners of the country in a few months. From such advertisements consumers learn of new commodities and improvements, and of new uses for old commodities. They learn what foods contain certain vitamins; what soaps are made of vegetable oils, what automobiles have floating power, safety glass, or knee-action springs. They obtain a basis for discriminating among various brands of the same commodity.—George Burtin Hotchkiss in An Outline of Advertising, p. 80.

[2]Baker, Harold A.—Principles of Retail Merchandising, 1939, p. 160.

[3]Filene, Edward A.—Next Steps Forward in Retailing, 1937, p. 108.

[4]Ibid,—p. 108.

soon be out of business. They must make up the difference on some other goods the value of which is unknown to the customer. As Louis D. Brandeis said, "price-cutting paves the way to monopoly".

The following statements by A. & P. executives made during the criminal antitrust suit decided against A. & P. in 1943 are indicative:

> . . . It might be necessary for us to operate unprofitably for several weeks . . . prior to the time the competitor plans to open so that the people in the community will be impressed with our low prices and will continue to shop with us after the competitor has opened shop.[1]
>
> . . . Whenever we get wind of the opening of one of their stores now we set up a special program three weeks ahead of time, so that by the time they are ready to open their doors for business there isn't very much they can do to entice trade from us.[2]

Resale price maintenance helps to prevent the growth of chain store monopoly.

> Chain stores doubtless tend to divest a town of its local economic autonomy. Like big business generally, then tend to make a town or city merely as economic colony of the great financial centers from which the chains and mail-order houses are controlled, a colony inhabited partly by employees of the chains who do not have the same pride and interest in the community that independent storekeepers do. Again like our big, highly integrated business enterprises, the chains are efficient; but they tend to centralize wealth and economic control, to make hired men of some who once had the opportunity for modest individual entrepreneurship, and to rob the community of local leadership, dignity, pride, and responsibility. Whether their price economies are compensation for these losses is a matter of individual judgment.
>
> Our general conclusion as to chain stores perhaps should be that it would be unfortunate if they were driven entirely out of existence, and equally unfortunate if they should take over the retail field completely. If there were no chains, some independent retailers would build up local monopolies to exploit consumers, just as some of them did before the chains appeared. On the other hand, if the chains controlled the retail field entirely, they might combine in another form of monopoly. The present competition between chains and independents is healthful for both of them.[3]

Many States in the United States have laws designed to prevent the use of loss-leaders.

> Legal control of resale prices has also been sought in recent years in the United States by a prohibition of sales below cost. Thirty states have such laws generally applicable to wholesale and retail sales. They are variously designated as Unfair Practices Acts and Unfair Sales Acts. They may be referred to also as Anti-loss-leader laws because an article Items of known quality are chosen for sale below cost as loss-leaders. In addition, Michigan has such a law limited to bakery products and petroleum products, and Ohio has one covering only cigarettes.
>
> These state laws were all passed in the decade immediately preceding World War II. There is no Federal law prohibiting sales below cost. The justification for such enactments is that, under ordinary circumstances, a sale below cost is necessarily deceptive. No wholesaler or retailer can continue indefinitely in business if he sells below cost. If he

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[1]Quoted by Edward M. Brecker in "Government vs. A. & P. Consumers Reports, published by Consumers' Union, January, 1950,, u. 37.
[2]Ibid.
[3]Ise, John—Economics, p. 329.

regularly sells some items for less than cost, the selling prices of the other articles in his establishment must be high enough not only to cover costs on them, but also to pay the losses on the articles sold below cost. Items of known quality are chosen for sale below cost as loss-leaders. The customer usually has no way of knowing the extent to which unknown and non-standard articles are overpriced.[1]

Resale Price Maintenance Strengthens Competition

"Pressure to get ahead by improving the quality of one's product has contributed substantially to rising living standards. An improvement in a product selling at a given price is substantially similar to a reduction in price of a product of unchanged quality".[2]

Pharmaceutical manufacturers spend millions on research to improve existing products and to discover new ones. "The installation of a new facility, a radioisotope laboratory at the research laboratories of E. R. Squibb & Sons, New Brunswick, N.J. was announced yesterday by Dr. A. F. Langlykke, director of research and devolopment . . . Functioning primarily in service of other research departments, the laboratory will use isotopes as tracers in helping to determine the action of new drugs".[3]

In 1948 a new wonder drug Chloromycetin, was discovered by Dr. Paul Burkholder, a Yale botanist. It is made of microbes found in samples of soil obtained from Caracas, Venezuela. On March 27, 1949, Parke, Davis and Company announced the successful synthetization of Chloromycetin. It is a specific for typhus fever and has been successful in the treatment of other diseases as well.

The governments of all capitalistic countries grant patent rights and trade-marks to these great companies that they might recover their research costs and go on to further developments. The manufacturer has the right to set his own prices to the wholesaler. In many cases he suggests the minimum retail price. It seems reasonable that if the manufacturer is allowed to set prices so that he can recover costs and a reasonable profit that the pharmacist who maintains a public health station and occupies an unique position in retail trade should not be allowed to likewise recover his costs plus a reasonable profit without the interference of the predatory price-cutter.

As evidence that these manufacturers actually reduce their list prices, and hence the retail price to the consumer, as they are able to devise chemical processes and equipment to produce the substance on a large-scale, low-cost basis Merck & Co. Inc. reduced the price of

Cortisone 90 per cent in two years
Vitamin B12 96 per cent in two years
Streptomycin 97 per cent in five years

Further Sodium Penicillin, 100,000 units, vials, each, dropped from prices ranging from $1.20 to $2.50 in 1946 to 30 cents in 1949.

In modern manufacturing, a firm's level of costs per unit of product is influenced considerably by its scale of output.[4] It would be futile to set resale prices at levels that would not clear their outputs through the channels of distribution.

The manufacture and distribution of drugs and pharmaceuticals is essentially competitive. Anti-trust and anti-monopoly laws sometimes even tend to prevent the economical production and marketing of goods. On January 29,

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[1] Olsen, Paul C.—Marketing Drug Products, 1948, p. 38.
[2] Oxenfeldt, A. R., op. cit., p. 205.
[3] *New York Times*, November 11, 1951.
[4] Lester, Richard A.—Shortcomings of Marginal Analysis for Wage Employment Problems, American Economic Review, Mar., 1946, Vol. 36.

1951 Federal Judge William F. Smith opened the way for mass production of cortisone to bring the cost within the reach of most arthritis victims. The new order will permit the companies, Schering Corporation of Bloomfield, Organon, Inc., of Orange, Ciba Pharmaceutical Products Inc., of Summit and Merck & Company Inc., of Rahway, and Research Corporation of New York to execute an agreement to pool their cortisone patents and to license the patents to other manufacturers. The Department of Justice reserved its right to prosecute any antitrust violations that may occur in the pooling and licensing operations.[1]

Sixty per cent of the pharmaceuticals on the market today are new since 1945. These products originate from research. Thirty-five million dollars was spent on research in 1949 and this is a conservative estimate. Pricing problems for manufacturers of new products are tough. New products develop rapidly to take the place of the old. The expected life of the product must, therefore, be taken into consideration when setting the price. Sometimes development costs must be taken out in a hurry. Manufacturers must maintain adequate channels of distribution if these new and often life-saving drugs are to be marketed. Stable and organized channels must be established as part of the manufacturers marketing policy. As Grether has shown, "Under former circumstances the most strongly entrenched manufacturers often were able to obtain dealers' services for little or no reward, or even enjoyed a begrudged subvention; now dealers demand that the brands of these manufacturers pay their way".[2]

It is a well established fact that few pharmacists could survive if their sole business consisted of pharmaceuticals and the dispensing of physicians' prescriptions. The pharmacist must sell many other products such as proprietary medicines, household remedies, toilet articles, and others in order to defray his expenses so that he can maintain a public health station for pharmaceuticals and the dispensing of physicians' prescriptions when occasion demands. If he must compete with cut-throat competition of chains and department stores in the sale of many of these items he must charge a higher price for his professional services else go out of business. If many pharmacists are forced out of business many communities would be without the services of pharmacists entirely. Department stores and grocery stores that sell a limited line of drug store items are not open in the evenings, holidays, Sundays, nor do grocery store selling such wares perform the professional services of the pharmacists.

Hence resale price maintenance aids in the maintenance of adequate pharmacies with adequate stocks of pharmaceuticals and prescription services in each community and is an invaluable asset to every community. This problem was recognized hundreds of years ago when in the beginning of the seventeenth century, the Lord of the County of Schleiz gave an order to the Council of Schleiz to make the merchants and pedlars obey the laws and "not to seize this valuable and useful jewel for town and country and thereby damage it for the apothecary"[3] but much more to be satisfied with the articles which they are authorized to carry.

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[1] *New York Times*, January 30, 1951.

[2] *Grether, E. T.*—Price Control Under Fair Trade Legislation, p. 294.

[3] "In dem 1585 Joachim Kestner in Landsberg a.w. angstellten Apothekenprivileg wird das Verbot des Materialien-und Gewdrz-handels sowie des Wein—und Aquavitausschanks ausserhalb der Apotheke damit begrundet, dass letztere "von den Medizinalein night leben konne." Anfang des 17 Jahrunderts befiehlt der Landesherr des Herrschaft Schleiz dem Schleizer Rate, die Kramer und Storer "Dazu anzuhalten, der Apotheke" diesem kostbarlichen und gemeinen Staft und Land sehr nutzbaren Kleinod keinen Eingriff zu tun and dadurch in Verderben zu setzen," sich vielmehr an denjen Stucken, die sie zu fuhren befugt sind, genugen zu lasen."—Adlung A. and Urdang, G.,—Gundriss der Geschichte der Deutschen Pharmazie, p. 101.

The results of more than ten years' permissive resale price maintenance in the United States has had a dramatic effect and produced a marked change in the drug store itself. There has been a marked drop in "tonnage". Chiefly responsible for this drop are four departments, namely, fountain, confectionery, liquor-wine-beer, and tobacco. On the other hand today health departments produce more than 50 per cent of total store sales for the first time in decades. This is as it should be. Of all drug store departments the biggest gain in dollars was shown last year by prescriptions; the biggest gain in percentage was manifested by first aid goods.[1] There is a compensatory action here for as the pharmacist regains his rightful position and prestige in the community and eliminates departments not logically allied to pharmacy other retailers receive the business the pharmacist gives up.

It has been said that resale price maintainance denies the right of those customers who do not wish the services offered by service stores to obtain goods at a lower price. On the surface there appears some truth in this statement but we have already shown that when some goods are lower priced others must be, and have been, overpriced, with a resulting overall no gain to the customer or society. Even if so it would not be sufficient reason to upset present marketing arrangements and would have no effect on reducing the cost of living which is the stated purpose of the government in requesting anti-resale price maintenance legislation. Those who advertise "cut prices" cut only certain articles to attract trade. If their expenses are lower than others they should be forced to sell ALL merchandise at lower prices. However, it has not been shown that there is any marked difference among retailers in the costs of running a business.

A recent study of operating costs in Fair Trade and Non-Fair trade areas (Fair Trade is the term used in the United States for resale price maintenance) showed:[1]

1. The operating costs of drug stores in the Fair Trade states are 26·17 per cent of sales; whereas the comparable cost for drug stores in the non-Fair Trade area is 27·57 per cent of sales.

2. The Fair Trade drug stores show a better efficiency record of 1·4 per cent of sales; but, expressed in terms of comparison as between stores in the two areas, those in the Fair Trade states are 5·35 per cent more efficient than those in the non-Fair Trade area.

3. The operating efficiency of drug stores throughout the country—taking both areas—is considerably lower than that of many large retail establishments which depend on loss leaders to attract patronage. (Incidentally, the continuing studies of the Harvard Graduate School of Business Administration show that the operating expenses of all department stores in the United States, as an average, was 31·15 per cent of sales in 1948.)

The operating expenses of H. R. Macy & Co. of New York increased from 13·65 per cent in 1888 to over 30 per cent in 1930.[2]

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[1]Current Research Studies On Fair Trade, p. 5 (Complete study attached).

[2]Phillips, Charles F. and Duncan, Delbert J.,—Marketing, Principles and Methods, p. 14.

OPERATING EXPENSES OF CHAIN STORES AND ALL STORES IN SELECTED FIELDS 1935[1]

Net Sales equal 100 per cent

Field	Chain	All Stores
AVERAGE	24·9	22·9
Grocery	16·7	12·8
Grocery and meat	17·4	14·9
General Merchandise	22·9	20·7
Department Store	23·1	29·2
Variety	26·9	26·6
Men's Clothing and furnishings	29·7	26·8
Shoe	29·7	27·9
Automobile Accessory	30·0	28·9
Filling station	30·0	18·1
Drug (with fountain)	26·7	23·9

SOURCE: Census of Business; 1935, Retail Chains (1937), pp. 33–37, and Retail Operating Expenses (1937) p. 8.

* No allowances included for proprietor's salary in unincorporated enterprises.

SALES AND OPERATING EXPENSES OF CHAINS COMPARED WITH ALL OTHER STORES BY SELECTED KINDS OF BUSINESS, 1935[2]

Kind of Business	Per Cent of Total Net Sales	Operating Expenses: Per Cent of Net Sales
United States Total—all kinds of business	100·0	27·5
Chains	22·8	25·0
Independents and all others	77·2	28·3
Independents	73·1	28·4
All others	4·1	26·2
Groceries (without meats)		
Chains	2·5	15·6
All others	4·1	22·8
Combination stores (groceries and meats)		
Chains	4·9	17·5
All others	7·6	19·0
Department Stores—		
Chains	2·7	24·7
Mail-order (catalog only)	1·2	23·7
All others	6·1	32·2
Variety stores—		
Chains	2·1	27·2
All others	0·2	26·5
Men's clothing-furnishing stores—		
Chains	0·4	31·0
All others	1·6	28·5
Women's Ready to wear—		
Chains	0·6	28·8
All others	1·8	28·9
Shoe Stores—		
Chains	0·8	29·6
All others	1·8	28·9

[1]Ibid, p. 222.

[2]Stewart, Paul W. and Dewhurst, Frederic,—Does Distribution Cost Too Much? pp. 138-9.

Kind of Business	Per Cent of Total Net Sales	Operating Expenses: Per Cent of Net Sales
Filling Stations—		
Chains	1·3	29·9
All others	4·6	25·4
Furniture Stores—		
Chain	0·3	36·3
All others	1·8	34·6
Restaurants, Cafeterias, Lunch Rooms—		
Chains	0·7	54·5
All others	4·3	49·2
Jewelry stores—		
Chain	0·1	49·1
All others	0·6	41·2
Drug Stores—		
Chains	0·1	26·1
All others	0·6	28·1

The above figures from Does Distribution Cost Too Much? were compiled by the Committee on Distribution of the Twentieth Century Fund who employed a special research staff. The work as a whole is the most comprehensive study of the costs of distribution ever made in North America. The figures reveal that only grocery stores, variety stores, and filling stations (independent) have lower operating costs than independent drug stores. I doubt very much that the community wishes its medicines distributed through such outlets. Further, chain drug stores accounted for nine tenths of one per cent of the total national retail trade at a time when very few states had Fair Trade laws. However, chain drug stores accounted for approximately twenty-five per cent of the total retail drug business and their cut price tactics seriously threatened the future of many independents.

Resale Price Maintenance Reduces the Cost of Living

If goods in the 'free market' had not gone up any higher than prices of goods sold under resale price maintenance, today, there would be no such problem as the one now confronting our government concerning the cost of living.

We present as evidence the results of various studies:

TABLE 2

PRICE INDEXES OF FIFTY LEADING DRUG STORE ITEMS BEFORE AND AFTER[1] DISTRIBUTION UNDER FAIR TRADE CONTRACT FOR CHAINS AND VARIOUS SIZES OF INDEPENDENTS

List Price Equals 100

Size Store type (annual volume)	Before Fair Trade	1939	Change
1. Independent—less than $10,000	93·1	90·6	−2·5
2. " $10,000 to $20,000	92·7	89·3	−3·4
3. " $20,000 to $30,000	91·7	88·2	−3·5
4. " $30,000 to $50,000	90·6	87·3	−3·3
5. " $50,000 and over	85·8	85·4	−0·4
6. Chain stores—all sizes	78·6	83·5	4·9
Weighted Average	87·9	87·0	−0·9

[1]Ostlund H. J. and Vickland, C.R.—Fair Trade and the Retail Drug Store, 1940, p. 11.

How Fair Trade Has Checked Price Increases[2]

Drugs and toiletries sold under Fair Trade contracts have increased in price by only 1·39% from 1939 to June 1, 1947, according to a thorough survey made by the National Association of Chain Drug Stores. When the increase in prices is weighted according to the public's actual purchases in drug stores, the rise in prices from 1939 to 1947 stands at an average of only 3·12 %.

The study is based on Fair Trade minimum prices of 7,334 drug and toiletries items, sold in drug stores, which were on Fair Trade in 1939 and still are on Fair Trade. These items are unchanged, in size and quality, since 1939 so the price comparison is accurate. These items are from 250 manufacturers. The 250 manufacturers account for approximately 85 % of all Fair-Traded drugs and toiletries sold in chain drug stores.

The cost of purchasing one of each of these items, at Fair Trade retail prices, in 1939 would have been $14,403.29. The cost of purchasing one of each of the same items at Fair Trade retail prices on June 1, 1947, would have been $14,603.56. Thus the net increase in the price of all of these 7,334 Fair Traded items has been only $200.27 or 1·39%.

Comparison between 1939 and 1947

Food	up 103·7%	
Apparel	up 85·1%	
House Furnishings	up 81·5%	*All items*
Rent	up 4·7%	*up*
Fuel, ice, electricity	up 20·7%	*59·3%*
Miscellaneous	up 38·5%	
Fair Trade Prices on Drugs and Toiletries	up	*3·1%*

The National Association of Chain Stores engaged Joseph A. Fletcher, consultant, to make an impartial study.

	Items	*No Change*	*Down*	*Up*
Drugs	4299	2674	340	1205
Vitamins	455	93	269	93
Cosmetics	1814	1213	61	540
Toiletries	541	356	22	163
Miscellaneous	225	41	5	179
Summary	7334	4377	697	2260

Drug Store Fair Trade Prices Up Only 7·4% as Others Soar 14·8%[1]

Prices of fair traded merchandise in the drug store have risen only 7·4% in the past 35 months, or exactly half the 14·8% increase registered by consumer goods in general.

This was revealed last week by the Bureau of Education on Fair Trade when it released the results of a survey conducted for the Bureau by McKesson & Robbins.

Products included in the comprehensive study represent more than 90% of the drug store sales, exclusive of fountain, tobacco, and magazine volume.

Non-fair traded drug store items increased 13·3% from January 1, 1947 to December 1, 1950, or almost at the same rate as the consumer price index.

[1]*Chain Store Age*, October 1947.

"Covered in the study were the lines of

53 Pharmaceutical manufacturers

51 proprietary manufacturers

51 toiletry manufacturers

74 sundries producers

whose total volume represents more than 90% of the $2,400,000,000 worth of business done in the drug stores".

These figures are not subject to most of the limitations (before and after legislation, between geographical areas where price maintenance is legal and areas where it is not, differences in class of store, size of community, income of class of neighborhood, and spotty sampling of a limited number of articles as 54 and 117) as are those of Grether and Oxenfeldt.

Reinhold P. Wolff contends that fixed retail prices in Europe have not raised general price levels, nor created price uniformity to any considerable extent, nor prevented the growth of large-scale retailing.[1]

"To the opponents of fair trade the most disturbing findings of the surveys, findings that they seem to prefer not to discuss, are the following:[2]

1. The prices of drug products sold under fair trade have, on the whole, been lower in fair trade states than in non-fair trade states.

2. Fair-traded articles have risen less in price than non-fair-traded articles.

3. Fair-traded articles have risen a very small fraction of the general rise in cost of living. Here is really dramatic evidence. In the period 1939-1950, while the cost of living was rising 76 per cent, the cost of non-fair traded drug items rose 29 per cent but the cost of fair-traded drug items rose only 10½ per cent."

Since Oxenfeldt's book "Industrial Pricing and Market Practices" is the *only* evidence quoted by the Committee to Study Combines Legislation in its Interim Report to support its view that resale price maintenance increases the cost of living, we submit that the only statement to that effect that we can find in the book is found on page 429, as follows: "Both facts reinforce the slender empirical evidence that shows average retail prices to have been increased by resale price maintenance.

The popular notion is that resale price maintenance is "pricefixing." Such is not the case. The prices established by the Milk Control Board of Ontario is an illustration of price fixing. The Board fixes the price of all milk regardless of the producer or the distributor. No distributor can deviate from the established price without the penalty of the law. Adequate alternatives do not exist. A mother's only alternative is canned milk which may not be suitable for her baby. An adult has various alternatives to choose from. Under resale price maintenance, a producer of a trade-marked or branded article only may

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[1]Wolff, Reinhold, P.,—Price Control under "Fair Trade" legislation, Round Table, The American Economic Review, Vol. XXX, No. 1, Supplement, March 1940, pp. 115-117.

[2]Perry, Kenneth—"The Fair Trade Situation Today" in the Journal of the American Pharmaceutical Association, Practical Pharmacy Edition, Vol. XII, No. 10, October, 1951, p. 619.

or may not, depending on his marketing policy, set the price of the things he produces. He does not in any sense set the price of other producers. (see page 25) The consumer has a choice among many brands at a variety of prices. Price fixing usually raises the cost of living. Resale price maintenance does not.

It is natural for people to assume that if the retailer likes resale price maintenance, it must be because he is able to get higher prices. It has been shown that this is not true. Retailers do not get higher prices under resale price maintenance. They, however, get higher margins from the manufacturer than formerly. If a product is subject to severe cut-pricing, the non cutters put it under the counter and push other goods. This reflects eventually on the sales of the manufacturers. If the manufacturer can show the retailer that the price will be maintained and the retailer can earn a normal margin, the retailer will promote its sale and as a result the manufacturer will increase his volume. It is the expectance that volume will be increased with dealer co-operation which makes the manufacturer willing to grant adequate margins. Margins are not profits to the retailer. They are income. His demand that manufacturers allow him an adequate income for his services is similar to labour unions bargaining collectively with employers.

Oxenfeldt states:[1]

> If resale price maintenance resulted in a substantial and prolonged change in distributors' margins, it would almost certainly have a parallel effect on prices to the consumer. As already indicated, manufacturers tended to set the minimum retail price on their product close to the price at which many mass distributors had been selling it and therefore below the prices charged by the independents. Retailers' margins—even including those of the average independent—did not decline, however. Manufacturers tended to lower price to the retailer when they priced their products under resale price maintenance. The Federal Trade Commission concluded:
>
> > ... reductions made by some druggists in prices of some price-maintained commodities in 1939 were in reality reductions in manufacturer's prices of such magnitude that retailers, after reducing prices, were realizing as large, or in some cases, even larger margins than were realized previously when the items were sold at higher retail prices.

The key words in the above quotations are *change* and *margins*. To say that if distributors' margins *changed* there would be a parallel effect on prices to the consumer is only to say that there was a change in consumer prices. The quotations go on carefully to say "that retailers, after reducing prices. . ." This is not saying prices went up to the consumer as the Interim Report implies. Distributors' margins could go up and consumer prices down and the changes would still be parallel

Before Fair Trade	*After Fair Trade*
consumer prices / retailer's cost	consumer prices / retailer's cost

[1]Oxenfeldt, A. R.—op. cit., p. 428.

Margin is the difference between the two lines

E.T. Grether appraises the situation correctly when he says,

> Although the movement for the control of price competition arises out of conflicts within industry and trade and finds its deepest meaning in the play of these forces, the public presentation of the case for and against it are often couched in terms of consumer welfare.[1]
>
> The unique aspect of the present movement is the bargaining juxtaposition of manufacturers with monopoly rights in their brands and organized retailers . . .[2]

As the biographer of Louis D. Brandeis has recorded,

> It (the Supreme Court Decision against price maintenance in 1913) was widely applauded by consumers, who felt that price maintenance was a device of monopoly, born of desire to make them pay more; by merchants, who felt they had a right to set their own selling price on articles they bought; and by anti-monopolists, who considered price-fixing a tool on monopolistic oppression. Brandeis was certain that both Court and people were unwittingly fostering the thing they wanted abolished—monopoly. Confusion had resulted, he believed, from inadequate knowledge of the facts.[3]

Discriminatory Effects of Anti-resale Price Maintenance Legislation

The Committee to Study Combines Legislation in its Interim Report recommended "that it should be made an offence for a manufacturer or other supplier:

1. To recommend or prescribe minimum resale prices for his products." This would be discriminatory. It would permit to the owners of Private Brands what it would deny to the owners of National Brands.

Many manufacturers own their own retail stores. Some retail stores organizations own their own manufacturing plants. There is both backward and forward integration. According to the suggested law Rexall Drug Inc., manufacturers and owners of their own chain of stores the L. K. Liggett Stores could not determine the minimum prices at which their own merchandise would be sold in their own stores. Hundreds of pharmacists are Rexall agents. According to the suggested law they would be able to sell Rexall products at prices lower than the Liggett Stores. There are many other like situations.

Department stores, and others who own but do not manufacture, their own private brands, as owners could set minimum prices while owners of national brands would be denied a like privilege.

Comment on Maximum Prices

In its Interim Report, the Committee state, "It is to be noted that the Committee does not recommend that it be made an offence to prescribe and enforce resale prices which are not minimum. It follows that suppliers would be free to suggest and enforce maximum resale prices." The Committee further states that "it is useful to compare these recommendations with the British proposal . . ." The "maximum" price idea is contained in the British proposal.

We find it difficult to reconcile the logic of this notion with the logic of the rest of the report. It would be lawful for a manufacturer to set

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[1]Grether, E. T.,—Price Control Under Fair Trade Legislation, p. 294.
[2]Ibid, p. 311.
[3]Mason, Alpheus Thomas,—B randeis A Free Man's Life, p. 424.

maximum prices but unlawful for a manufacturer to set minimum prices. Further the manufacturer is to be given the power to enforce maximum prices. This would give the manufacturer unlimited power. He now has the power to set the prices at which he sells to the retailer. If he could also set the maximum prices the retailer could sell at, he could definitely prescribe the maximum margins of the retailer. The retailer could be "squeezed" from both ends. We would be exchanging "cut-pricing" for "black-markets."

Summary

Effective competition is the desired norm—not pure competition. Adam Smith's economics knew nothing of the baffling problems that our machines have created. The early pioneer had only a few rather simple problems to solve; but today's interdependance of men, of classes of men—pounding engines and whirling wheels—corporations, holding companies, and industrial empires have created problems that Adam Smith never dreamed of happening.

"Exchange effectuates the trading of equivalents only when the powers behind the exchange are equivalent. The relations of supply and demand remain important, to be sure, not because they determine price, but because they strengthen or weaken one side in the conflict over price"[1]

Trade-Marked and branded goods are the only types of goods that can be marketed under resale price maintenance. They are marketed under conditions of imperfect competition which is essentially competitive because there are many producers and the consumer has adequate alternatives. "Business decisions today are predominately competitive in orientation."[2] The financially powerful are not necessarily the most efficient. Likewise, size alone is no measure of efficiency. Resale price maintenance strengthens the side of the independent retailer in the conflict over price with the manufacturer.

It has been shown in the preceding pages that resale price maintenance assists the consumer in making shopping a venture not a technological ordeal, that it provides orderly channels of distribution providing the retailer with an adequate share in the national income in return for the services he performs both for the manufacturer and consumer, that it fosters competition, and that it reduces the cost of living.

The pharmacists of Canada are not asking for a privilege. They are asking for the freedom to enjoy a right commonly enjoyed in the leading commercial countries of the world.

Conclusion

Louis D. Brandeis, who took up the fight in the United States for resale price maintenance lived to see the Supreme Court which in 1913 ruled "that manufacturers of patented articles could not fix the price at which retailers sold their products to the consumer" reverse that decision with the words (among others):

> The primary aim of the law is to protect the property—namely, the good will—of the producer, which he still owns. The price restriction is adopted as an appropriate means to that perfectly legitimate end, and not as an end in itself . . .
>
> We are here dealing not with a commodity alone, but with a commodity plus the brand or trade-mark which it bears as evidence of its origin and of the quality of the commodity, for which the brand or trade-mark stands. Appelants own the commodity; they do not own the mark

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[1]Gambs, John S.—Beyond Supply and Demand, 1946, p. 14.

[2]Dean, Joel,—(Graduate School of Business, Columbia University) Managerial Economics, 1951, p. 47.

or good will that the mark symbolizes. And good will is property in a very real sense, injury to which, like injury to any other species of property, is a proper subject for legislation.

In a decision in Superior Court in Montreal on November 14, 1951, Mr. Justice Elphage Marier upheld theright of the Frosst Company to refuse to deliver merchandise because the Montreal Pharmacy had sold identical products at a price lower than that fixed by the Frosst Company to the public. The judge upheld the claim that a contract existed between the parties, but found that it also contained a condition that the merchandise would besold by the retailer at a price not lower than that stated in the catalogue. That condition had been known to Montreal Pharmacy for the last 20 years . . . In any event, the court held, other products were available than those made by the Frosst Company.

A reversal of this decision by legislation to outlaw resale price maintenance would be a backward step in terms of marketing practices recognized as economically sound in all commercial countries of the world.

The preceding arguments, discussions, and data are presented for your careful consideration.

HORACE J. FULLER.

APPENDIX II

REPRESENTATIVE LIST OF DRUG STORE ITEMS SHOWING WHOLESALE LIST PRICE, USUAL RETAIL PRICE AND PERCENTAGE OF PROFIT

LIST OF NATIONALLY ADVERTISED PRODUCTS

Quantity Unit	Description	Size	Usual Retail	List	Dis.	Amount	Percentage Profit
			$ cts.	$ cts.		$ cts.	
1/12 doz.	AQUA VELVA WMS	5 oz.	0.65	6.06		0.51	21·53
1/12 doz.	AQUA VELVA WMS	11 oz.	1.30	12.12		1.01	22·31
1/12 doz.	BAYER ASPIRIN	12S	0.19	1.60		0.14	26·31
1/12 doz.	BAYER ASPIRIN	24S	0·29	2.54		0.21	27·58
1/12 doz.	BAYER ASPIRIN	100S	0.79	7.34		0.61	22·78
1/12 doz.	BAYER ASPIRIN CHILDREN	30	0.29	2.54		0.21	27·58
1/12 doz.	AIRWICK	5½ oz.	0.89	7.35		0.61	31.46
1/12 doz.	AIRWICK	10 oz.	1.39	11.45		0.95	31.65
1/12 doz.	AIRWICK	15½ oz.	1.89	15.60		1.30	31·21
1/12 doz.	AIRWICK	16 oz.	1.75	14.30		1.19	32·0
1/12 doz.	AIR WICK MIST BOMB	5½ oz.	1.39	11.68		0.98	29.43
1/12 doz.	ABSORBINE JR	Trial	0.15	1.25		0.10	33·33
1/12 doz.	ABSORBINE JR	4 oz.	1.19	11.25		0.94	21·0
1/12 doz.	ABSORBINE JR	12 oz.	2.39	22.50		1.87	21·75
1/12 doz.	ABSORBINE VET	12 oz.	2.39	22.50		1.87	21·75
1 CS	PABLUM MIXED CEREAL	12 x 8 oz.	0.25	2.25	2	2.21	26·33
1 CS	PABLUM MIXED CEREAL	12 x 16 oz.	0.48	4.30	2	4.21	26·9
1 CS	PABLUM OATMEAL	12 x 8 oz.	0.25	2.25	2	2.21	26·33
1 CS	PABLUM OATMEAL	12 x 16 oz.	0.48	4.30	2	4.21	26·9
1 CS	PABLUM BARLEY	8 oz. 12	0.25	2.25	2	2.21	26·33
1 CS	PABLUM RICE	8 oz. 12	0.25	2.25	2	2.21	26·33
1/12 doz.	MODESS JUNIOR	12	2/79	3.84		0.32	18·98
1/12 doz.	MODESS REGULAR	12	2/79	3.84		0.32	18·98
1/12 doz.	MODESS SUPER ORCH AND WH.	12	2/79	3.84		0.32	18·98
1/12 doz.	MODESS REGULAR FAMILY	48S	1.53	14.52		1.21	20·91
1 CN	KLEENEX EYEGLASS TISSUE	48	2/25	4.30		4.30	28·33
1 CN	KLEENEX POCKET 1900 1 CTN	12	0.59	0.50		0.50	15·25
1 CS	KLEENEX CHUBBY 300	72	2/43	12.80		12.80	17·31
1 CS	KLEENEX REGULAR 200	72	2/43	12.80		12.80	17·31
1 CS	KLEENEX MENS 200	36	2/71	10.47		10.47	18·07
1/12 doz.	KOTEX JUNIOR	12	2/79	3.96		0.33	16·45
1/12 doz.	KOTEX REGULAR	12	2/79	3.96		0.33	16·45
1/12 doz.	KOTEX ECONOMY	48S	1.53	15.12		1.26	17·64
1/12 doz.	KOTEX SUPER	12	2/79	3.96		0.33	16·45
1/12 doz.	TAMPAX JUNIOR	5	0.25	2.32		0.19	24·0
1/12 doz.	TAMPAX JUNIOR	10	0.43	4.00		0.33	23·25
1/12 doz.	TAMPAX REGULAR	10	0.43	4.00		0.33	23·25
1/12 doz.	TAMPAX REGULAR	40	1.49	14.90		1.25	16·10
1/12 doz.	TAMPAX SUPER	5	0.25	2.32		0.19	24·0
1/12 doz.	TAMPAX SUPER	10	0.43	4.00		0.33	23·25
1/12 doz.	TAMPAX SUPER	40	1.49	14.90		1.25	16·10
1 CS	FACE ELLE MENS	48	2/71	13.50		13.50	20·77
1 CS	FACE ELLE EN PASTELS 201C	36	2/55	7.60		7.60	23·23
1 CS	FACE ELLE PINK BOX 300S	72	2/49	14.10		14.10	20·06
2 CS	FACE ELLE PK CUSH 270 NEW	48	2/59	11.20		22.40	20·9
1/12 doz.	DETTOL ANTISEPTIC	1-1/3 oz.	0.39	3.15		0.26	33·33
1/12 doz.	DETTOL ANTISEPTIC NO. 4	33/4 oz.	0.65	5.20		0.44	32·3
1/12 doz.	DETTOL ANTISEPTIC	7-3/4 oz.	1.15	9.20		0.77	33·04
1/12 doz.	SETTOL ANTISEPTIC	15 oz.	1.90	15.20		1.27	33·15
1/12 doz.	LAVORIS	Sml	0.32	2.88		0.24	25·0
1/12 doz.	LAVORIS	Med	0.63	5.64		0.47	25·39
1/12 doz.	LAVORIS	Lge	1.09	9.84		0.82	24·77
1/12 doz.	LISTERINE ANTISEPTIC	3 oz.	0.37	3.40		0.29	21.62
1/12 doz.	LISTERINE ANTISEPTIC	7 oz.	0.73	6.70		0.56	23.28
1/12 doz.	LISTERINE ANTISEPTIC	14 oz.	1.10	10.10		0.85	22·72
1/12 doz.	LYSOL	Sml	0.43	3.92		0.33	23·35
1/12 doz.	LYSOL	Med	0.79	7.17		0.60	24·05
1/12 doz.	LYSOL	Lge	1.50	13.80		1.15	23·33
1/12 doz.	MILK OF MAGNESIA PHILLIP	4 oz.	0.24	2.20		0.19	20.83
1/12 doz.	MILK MAGNESIA PHILLIP	12 oz.	0.46	4.34		0.37	19·56
1/12 doz.	MILK MAGNESIA PHILLIP	26 oz.	0.71	6.54		0.55	22·52
1/12 doz.	MILK MAGNESIA TAB PHILLIP	Sml	0.24	2.20		0.19	20.83
1/12 doz.	MILK MAG, TAB PHILLIP	Med	0.46	4.34		0.37	19·56
1/12 doz.	MILK MAG, TAB PHILLIP	Lge	0.92	8.68		0.73	20·65
1/12 doz.	NOXEMA SKIN CREAM	3/4 oz.	0.26	2.26		0.19	26·92
1/12 doz.	NOXEMA SKIN CREAM	21/4 oz.	0.65	5.66		0.48	26·56
1/12 doz.	NOXEMA SKIN CREAM	4 oz.	0.89	7.86		0.66	25·84
1/12 doz.	NOXEMA SKIN CREAM HOSP	14 oz.	1.69	14.26		1.19	29·58
1/12 doz.	MUM	Med	0.53	4.44		0.37	30·18
1/12 doz.	MUM	Lge	0.75	6.28		0.53	29·33
1/12 doz.	ALKA SELTZER	Lge	0.68	6.05		0.51	25·0
1/12 doz.	ALKA SELTZER	Sml	0.34	3.02		0.26	23·52

LIST OF NATIONALLY ADVERTISED PRODUCTS—*Continued*

Quantity Unit	Description	Size	Usual Retail	List	Dis.	Amount	Per-centage Profit
			$ cts.	$ cts.		$ cts.	
1/12 doz.	Andrew Liv Salt	Sml	0.45	3.89	.....	0.33	26·66
1/12 doz.	Andrew Liv Salt	Lge	0.75	6.48	.....	0.54	28·0
1/12 doz.	Bromo Seltzer	Sml	0.29	2.60	.....	0.22	24·13
1/12 doz.	Bromo Seltzer	Reg	0.55	5.00	.....	0.42	23·63
1/12 doz.	Bromo Seltzer	Family	0.98	9.00	.....	0.75	23·46
1/12 doz.	Bromo Seltzer	Dispen	1.89	18.00	.....	1.50	20·63
1/12 doz.	Baby Cream Jars J & J	.....	0.65	6.00	.....	0.50	23·07
1/12 doz.	Baby Oil J & J 5 oz.	Sml	0.69	6.00	.....	0.50	27·53
1/12 doz.	Baby Oil J & J 12 oz.	Lge	1.25	11.40	.....	0.95	24·00
1/12 doz.	Baby Powder J & J	Sml	0.33	2.95	.....	0.25	24·24
1/12 doz.	Baby Powder J & J	Lge	0.63	5.64	.....	0.47	25·39
1/12 doz.	Brylcreem Jar	6 oz.	0.79	6.40	.....	0.54	31·64
1/12 doz.	Brylcreem Jar Lge	13 oz.	1.23	10.00	.....	0.84	31·7
1/12 doz.	Brylcreem Tube	Med	0.43	3.60	.....	0.30	30·23
1/12 doz.	Brylcreem Tube	Lge	0.69	5.60	.....	0.47	31·88
1/12 doz.	Buckley Mixture	Sml	0.50	4.26	.....	0.36	28·0
1/12 doz.	Buckley Mixture	Lge	0.85	7.14	.....	0.60	17·64
1/12 doz.	Castoria Lge New Size	.....	0.40	3.96	.....	0.33	17·5
1/12 doz.	Castoria	Family	0.70	6.60	.....	0.55	21·42
1/12 doz.	Enos Fruit Salt	Sml	0.69	6.30	.....	0.53	23·18
1/12 doz.	Enos Fruit Salt	Lge	1.09	9.90	.....	0.83	23·85
1/12 doz.	Drene	Travel	0.39	3.50	.....	0.30	23·07
1/12 doz.	Drene	Med	0.69	6.20	.....	0.52	24·63
1/12 doz.	Drene	Lge	1.09	9.80	.....	0.82	24·77
1/12 doz.	Hair Tonic Kreml	8 oz.	1.19	10.52	.....	0.88	26·05
1/12 doz.	Hair Tonic Kreml	16 oz.	1.79	16.08	.....	1.34	25·13
1/12 doz.	Hair Tonic Kreml	1 1/2 oz.	0.35	3.12	.....	0.26	25·71
1/12 doz.	Hair Tonic Kreml	4 oz.	0.71	6.30	.....	0.53	25·35
1/12 doz.	Halo	Lge	0.39	3.66	.....	0.31	20·51
1/12 doz.	Halo Cream Shamp	4 oz.	1.10	9.84	.....	0.82	25·45
1/12 doz.	Halo	Giant	0.69	6.48	.....	0.54	21·73
1/12 doz.	Dextri Maltose No. 1	1 lb.	0.80	7.50	.....	0.63	21·25
1/12 doz.	Dextri Maltose No. 1	5 lb.	3.45	33.00	.....	2.75	20.28
1/12 doz.	Dextri Maltose No. 2	5 lb.	3.45	33.00	.....	2.75	20·28
1/12 doz.	Dextri Maltose No. 2	1 lb.	0.80	7.50	.....	0.63	21·25
1/12 doz.	Dextri Maltose No. 3	1 lb.	0.80	7.50	.....	0.63	21·25
1/12 doz.	Dextri Maltose No. 3	5 lb.	3.45	33.00	.....	2.75	20·28
1/12 doz.	Dextri Maltose Yeast	1 & B 1 lb.	0.80	8.00	.....	0.67	16·25
1/12 doz.	Hair Tonic Vaseline Personal	.....	0.43	3.84	.....	0.32	25·58
1/12 doz.	Hair Tonic Vaseline Sol	.....	0.65	5.82	.....	0.49	24·61
1/12 doz.	Hair Tonic Vaseline	4 oz.	0.95	8.40	.....	0.70	26·31
1/12 doz.	Hair Tonic Vaseline	Lge	1.15	10.32	.....	0.86	25·21
1/12 doz.	Hair Tonic or Vaseline	1¾ oz.	0.43	3.72	.....	0.31	27·90
1/12 doz.	Hair Tonic or Vaseline	4 oz.	0.69	6.00	.....	0.50	27·53
1/12 doz.	Vicks Cough Syrup	4 oz.	0.59	4.72	.....	0.40	32·20
1/12 doz.	Vicks Inhalers	.....	0.43	3.60	.....	0.30	30·23
1/12 doz.	Vicks Vaporub	.....	0.53	4.84	.....	0.41	22.64
1/12 doz.	Vicks Vatronol	.....	0.53	4.84	.....	0.41	22·64
1/12 doz.	Vaseline Borated Tube	.....	0.35	3.30	.....	0.28	20·00
1/12 doz.	Vaseline Camphorated Tube	.....	0.35	3.30	.....	0.28	20·0
1/12 doz.	Vaseline Carbolated Jar 2	.....	0.20	1.84	.....	0.15	25·0
1/12 doz.	Vaseline Carbolated Tube	.....	0.30	2.82	.....	0.24	20·0
1/12 doz.	Vaseline Eucalyptol Tube	.....	0.30	2.76	.....	0.23	23·33
1/12 doz.	Vaseline Mentholated Tube	.....	0.35	3.30	.....	0.28	20·00
1/12 doz.	Vaseline Pomade	.....	0.25	2.20	.....	0.19	24·00
1/12 doz.	Vaseline White	2 oz.	0.20	1.70	.....	0.15	25·0
1/12 doz.	Vaseline White	4 oz.	0.33	3.12	.....	0.26	21·21
1/12 doz.	Vaseline White Tube No. 1	.....	0.30	2.64	.....	0.22	26·66
1/12 doz.	Vaseline White Tube No. 2	.....	0.35	3.30	.....	0.28	20·0
1/12 doz.	Vaseline Yellow	2 oz	0.15	1.38	.....	0.12	20·00
1/12 doz.	Vaseline Yellow	4 oz.	0.23	2.16	.....	0.18	21·73
1/12 doz.	Vitalis H Tonic 2 oz. 29	.....	0.40	3.48	.....	0.29	27·5
1/12 doz.	Vitalis Med	4 oz.	0.70	6.10	.....	0.51	27·14
1/12 doz.	Vitalis Lge	9 oz.	1.30	12.48	.....	1.04	20·0
1/12 doz.	Perm Hud Whirlawave Kit 982	.....	3.25	26.00	.....	2.17	33·23
1/12 doz.	Home Perm Refill Hudnut	.....	1.75	14.00	.....	1.17	33·14
1/12 doz.	Home Perm Refill Rayve New	.....	1.49	11.92	.....	1.00	32·88
1/12 doz.	H Perm Tone Spin Kit New	.....	3.00	24.00	.....	2.00	33·33
1/12 doz.	Hair Tonic Wildr No Oil	5 oz.	0.73	6.00	.....	0.50	31·5

LIST OF NATIONALLY ADVERTISED PRODUCTS—*Continued*

Quantity Unit	Description	Size	Usual Retail	List	Dis.	Amount	Percentage Profit
			$ cts.	$ cts.		$ cts.	
1/12 doz.	Hair Tonic Wildr Oily	5 oz.	0.73	6.00		0.50	31·5
1/12 doz.	Cream Oil Wildroot	2 oz.	0.43	3.60		0.30	30·23
1/12 doz.	Cream Oil Wildroot	4 oz.	0.73	6.00		0.50	31·5
1/12 doz.	Cream Oil Wildroot	8 oz.	1.23	10.00		0.84	31·7
1/12 doz.	Cream Oil Wildr Tube 1	½ oz.	0.43	3.60		0.30	30·23
1/12 doz.	Cream Oil Wildr Tube	4 oz.	0.73	6.00		0.50	31·5
1/12 doz.	Home Perm Refill Toni		1.50	12.00		1.00	33·33
1/12 doz.	Italian Balm Campana	2 oz.	0.35	3.60		0.30	14·28
1/12 doz.	Italian Balm	4 oz.	0.53	5.46		0.46	13·2
1/12 doz.	Italian Balm	9 oz.	1.09	11.16		0.93	14·67
1/12 doz.	Jergens Lotion	Trial	0.15	1.32		0.11	26·66
1/12 doz.	Jergens Lotion	3 oz.	0.37	3.36		0.28	24·32
1/12 doz.	Jergens Lotion	6 oz.	0.65	5.88		0.49	24·61
1/12 doz.	Jergens Lotion	13½ oz.	1.15	10.26		0.86	25·21
1/12 doz.	Kkovah Salts	4 oz.	0.35	2.90		0.25	28·57
1/12 doz.	Kkovah Salts	7 oz.	0.59	4.80		0.40	32·20
1/12 doz.	Kkovah Salts	12 oz.	0.89	7.20		0.60	32·58
1/12 doz.	Minards Liniment	Sml	0.33	2.75		0.23	30·30
1/12 doz.	Minards Liniment	Lge	0.63	5.20		0.43	31·74
1/12 doz.	Ovaltine Plain	4 oz.	0.49	5.04		0.42	14·28
1/12 doz.	Ovaltine Plain	8 oz.	0.73	7.32		0.61	16·43
1/12 doz.	Ovaltine Plain	16 oz.	1.23	12.60		1.05	14·63
1/12 doz.	Ovaltine Choc	8 oz.	0.73	7.32		0.61	16·43
1/12 doz.	Ovaltine Choc	16 oz.	1.23	12.60		1.05	14·63
1/12 doz.	Sal Hepatica	Sml	0.43	3.70		0.31	27·90
1/12 doz.	Sal Hepatica	Med	0.85	7.35		0.62	27·05
1/12 doz.	Sal Hepatica	Lge	1.45	12.60		1.05	27·58
1/12 doz.	Suave Helen Curt Reg	2 oz.	0.60	4.32		0.36	40·00
1/12 doz.	Suave Helen Curt Reg	4 oz.	0.95	6.84		0.57	40·00
1/12 doz.	Suave Helen Curt Reg	16 oz.	2.25	16.20		1.35	40·0
1/12 doz.	Suave Helen Curt Men	2 oz.	0.60	4.32		0.36	40·0
1/12 doz.	Suave Helen Curt Men	4 oz.	0.95	6.84		0.57	40·0
1/12 doz.	Suave Helen Curt Men	16 oz.	2.25	16.20		1.35	40·0
1/12 doz.	Sloans Liniment	Sml	0.50	4.08		0.34	32·0
1/12 doz.	Sloans Liniment	Med	0.90	7.34		0.62	31·11
1/12 doz.	Skin Bracer Mennen	Sml	0.75	6.64		0.56	25·33
1/12 doz.	Skin Bracer Mennen	Lge	1.48	13.17		1.10	25·67
1/12 doz.	Honey & Almond Cr Hinds	Med	0.37	3.10		0.26	29·72
1/12 doz.	Honey & Almond Cr Hinds	Lge	0.65	5.46		0.46	29·23
1/12 doz.	Honey & Almond Cr Hinds	8 oz.	0.79	6.40		0.53	32·91
1/12 doz.	Honey & Almond Cr Hinds	Gnt	0.98	8.23		0.69	29·59
1/12 doz.	Prell	5/8 oz.	0.35	3.15		0.27	22·85
1/12 doz.	Prell	1 1/2 oz.	0.69	6.20		0.52	24·63
1/12 doz.	Prell	2 1/2 oz.	1.09	9.80		0.82	24·77
1/12 doz.	Rayve Shampoo	Med	0.37	3.36		0.28	24·32
1/12 doz.	Rayve Shampoo	Lge	0.65	5.94		0.50	23·07
1/12 doz.	Rayve Cr Shamp Tube	Gnt	1.09	10.40		0.87	20·18
1/12 doz.	Shampoo Lustre Cr	Jar	1.09	9.78		0.82	24·77
1/12 doz.	Shampoo Lustre Cr Tube	Med	0.37	3.32		0.28	24·32
1/12 doz.	Shampoo Lustre Cr Jar	2 oz.	0.65	5.88		0.49	24·61
1/12 doz.	Shampoo Lustre Cr Tube	Lge	0.65	5.88		0.49	24·61
1 pk.	Shampoo Lustre Cr	9 oz.	2.75	2.06		2.06	25·09
1/12 doz.	Shav Cr Brushless Colg		0.60	5.62		0.47	21·66
1/12 doz.	Shav Cr Brushless Colg	Lge	0.43	4.02		0.34	20·91
1/12 doz.	Shav Cr Colgate	Lge	0.43	4.02		0.34	20·91
1/12 doz.	Shav Cr Colgate	Gnt	0.60	5.62		0.47	21·66
1/12 doz.	Shav Cr Ingram Tube		0.60	5.22		0.44	26·66
1/12 doz.	Shav Cr Ingram	Jar	0.60	5.22		0.44	26·66
1/12 doz.	Shav Cr Gillette Br Less		0.43	3.75		0.32	25·58
1/12 doz.	Shav Cr Gillette		0.43	3.75		0.32	25·58
1/12 doz.	Shav Cr Lifebuoy		0.63	6.00		0.50	20·63
1/12 doz.	Shav Cr Lifebuoy		0.41	3.90		0.33	19·51
1/12 doz.	Shav Cr Mennen Plain	Sml	0.49	4.38		0.37	24·48
1/12 doz.	Shav Cr Mennen Plain	Lge	0.75	6.64		0.56	25·33
1/12 doz.	Shav Cr Mennen Br Less	Sml	0.47	4.19		0.35	25·53
1/12 doz.	Shav Cr Mennen Br Less	Lge	0.69	6.12		0.51	26·08
1/12 doz.	Shav Cr Mennen Menthol	Sml	0.49	4.38		0.37	24·48
1/12 doz.	Shav Cr Mennen Menthol	Lge	0.57	6.64		0.56	25·33
1/12 doz.	Shav Cr Nox 3-Way Tube	3 oz.	0.45	3.60		0.30	33.33
1/12 doz.	Shav Cr Nox 3-Way Jar	6 oz.	0.69	5.52		0.46	33·33
1/12 doz.	Shav Cr Palm Lather	Med	0.33	3.08		0.26	12·21
1/12 doz.	Shav Cr Palmolive	Lge	0.47	4.40		0.37	21·27

LIST OF NATIONALLY ADVERTISED PRODUCTS—*Concluded*

Quantity Unit	Description	Size	Usual Retail	List	Dis.	Amount	Per-centage Profit
			$ cts.	$ cts.		$ cts.	
1/12 doz.	Shav Cr William	Lge	0.45	4.08	.....	0.34	24·44
1/12 doz.	Shav Cr William	Dble	0.65	6.06	.....	0.51	21·53
1/12 doz.	Shav Cr Glider Wms	Lge	0.45	4.08	.....	0.34	24·44
1/12 doz.	Shav Cr Glider Wms	8 oz.	1.00	9.24	.....	0.77	23·00
1/12 doz.	Shav Cr Glider Wms	Dble	0.65	6.06	.....	0.51	21·53
1/12 doz.	Shav Cr Br Less Wms	Dble	0.65	6.06	.....	0.51	21·53
1/12 doz.	Tooth Paste Sqiubb	Reg	0.55	4.40	.....	0.37	32·72
1/12 doz.	Tooth Paste MacLean	Lge	0.69	5.60	.....	0.47	31·88
1/12 doz.	Tooth Paste MacLean	Med	0.43	3.60	.....	0.30	30·23
1/12 doz.	Tooth Paste Pepsodent	Med	0.33	3.14	.....	0.27	18·18
1/12 doz.	Tooth Paste Pepsodent	Lge	0.60	5.70	.....	0.48	20·00
1/12 doz.	Tooth Paste Pepsodent	Gnt	0.95	9.05	.....	0.76	20·00
1/12 doz.	Tooth Paste Kolynos	Sml	0.33	3.08	.....	0.26	21·21
1/12 doz.	Tooth Paste Kolynos	Lge	0.60	5.58	.....	0.47	21·66
1/12 doz.	Tooth Paste Kolynos Gnt.	5 oz.	0.95	8.82	.....	0.74	22·10
1/12 doz.	Tooth Paste Listerine	Dble	0.55	4.95	.....	0.42	23·63
1/12 doz.	Tooth Paste Listerine	Lge	0.33	2.95	.....	0.25	24·24
1/12 doz.	Tooth Paste Ipana	Med	0.33	2.88	.....	0.24	27·27
1/12 doz.	Tooth Paste Ipana	Lge	0.60	5.22	.....	0.44	26·66
1/12 doz.	Tooth Paste Ammident	Sml	0.35	2.92	.....	0.25	28·57
1/12 doz.	Tooth Paste Ipana	Econ	0.95	8.28	.....	0.69	27·36
1/12 doz.	Tooth Paste Ammident	Lge	0.65	5.42	.....	0.46	29·23
1/12 doz.	Tooth Paste Ammident	Econ	0.97	8.10	.....	0.68	29·89
1/12 doz.	Tooth Paste Colgate	Med	0.25	2.34	.....	0.20	20·00
1/12 doz.	Tooth Paste Colgate	Gnt	0.60	5.62	.....	0.47	21·64
1/12 doz.	Tooth Paste Colgate	Fml	0.95	8.88	.....	0.74	22·10
1/12 doz.	Tooth Paste Iodent 1	.....	0.69	5.60	.....	0.47	31·88
1/12 doz.	Tooth Paste Iodent 2	.....	0.69	5.60	.....	0.47	31·88
1/12 doz.	Tooth Powder Lyons	Reg	0.30	2.76	.....	0.23	23·33
1/12 doz.	Tooth Powder Lyons	Lge	0.50	4.68	.....	0.39	22·00
1/12 doz.	Tooth Powd Lyons Ammon.	4 oz.	0.55	4.74	.....	0.40	27·27
1/12 doz.	Zonite Antiseptic	Sml	0.35	2.92	.....	0.25	28·57
1/12 doz.	Zonite Antiseptic	Med	0.63	5.25	.....	0.44	30·15
1/12 doz.	Zonite Antiseptic	Lge	0.98	8.30	.....	0.70	28·57
1/12 doz.	Zonite Ointment	.....	0.50	4.00	.....	0.34	32·00
1/12 doz.	Zonitors	12	1.09	8.50	.....	0.71	34·86
1/12 doz.	Waterbury Co Plain	16 oz.	1.25	10.20	.....	0.85	32·00
1/12 doz.	Waterbury Co C & G	16 oz.	1.25	10.20	.....	0.85	32·00

COMMENTARY

on the

INTERIM REPORT

of the

COMMITTEE TO STUDY
COMBINES LEGISLATION

Prepared by
Horace J. Fuller
Professor of Pharmaceutical Administration
Ontario College of Pharmacy
on behalf of the
Canadian Pharmaceutical Association.

November 1, 1951

96256—6

Comments

on

The Interim Report

of

The Committee to Study Combines Legislation

and

Comments

on

Proposed Legislation Resulting from the Interim Report

prepared for
The Canadian Pharmaceutical Association

by
Horace J. Fuller
Assistant Professor of Pharmacy
in charge of Pharmaceutical
Administration
Ontario College of Pharmacy

November 1, 1951

FOREWORD

The purpose of this brief is twofold:

1. To show that legislation to make resale price maintenance illegal will not appreciably reduce the cost of living which is the avowed aim of the government suggesting such legislation.

2. To defend current pricing policies and practices of the retail drug industry of Canada as being economically sound, and free from any charge that it exploits the consumer or adds to his cost of living.

It is not the purpose of this brief to either condemn or condone either price-fixing or resale price maintenance *per se*.

96256—6½

Documents and the Extent of Their Use in the Committee's Report

Board of Trade—"A Statement on Resale Price Maintenance" (Great Britain) June 1951

4	lines	from	page	3	quoted	on	page	6	of	the	Committee's	Report
8	"	"	"	5	"	"	"	21	"	"	"	"
11	"	"	"	4	"	"	"	23	"	"	"	"
5	"	"	"	11	"	"	"	28	"	"	"	"

Report of the Committee on Resale Price Maintenance,
London, June 1949.
7 lines from page 1 quoted on page 13 of the Committee's Report

Edwards, Corwin D.—"Maintaining Competition", 1949
3 lines from page 73 quoted on page 22 of the Committee's Report

Behoteguy, W. C.—"Resale Prices and the Tire Industry's Big Headache" —speech before the Akron Chapter of the American Marketing Association, 1948.

5 lines from page 6 quoted on page 24 of the Committee's Report.

Oxenfeldt, A. R.—"Industrial Pricing and Market Practices", 1951.

25 lines from page 427 quoted on page 23 of the Committee's Report.

The above five documents are the total printed documentation used in the report. One of these references states the terms of reference of the British Committee. All the others are used against resale price maintenance. Not a single reference from the literature favouring resale price maintenance is quoted. It is our contention that the quotations are not at all representative of the existing literature on the subject.

There is no evidence in the report that a scientific study of the effects of resale price maintenance was made either on individual sectors of the economy or the national economy as a whole. There are no statistical data in the report, yet such data do exist. No comparison of the movement of prices of non-price maintained goods and price maintained goods, nor their relation to the price index, appears in the report.

The General Conclusions and Recommendations of the Committee fail to disclose even a cursory perusal of the vast literature on the subject published both in Europe and the United States.

Criticism of the Committee's Methodology

The methodology of the Committee is stated in the Report as follows: "Early in July, through the press and by letter, widespread notice throughout Canada was given that the Committee was anxious to receive from individuals, firms and organizations whatever views they might wish to express upon the matters within the terms of reference.

National organizations were asked to inform their affiliate groups and individual members of the desire of the Committee to secure as wide an expression of opinion as possible. In this, as throughout our work, the press gave most helpful co-operation. Many submissions were received by the Committee in the succeeding months. In addition to the written submissions, opportunity was given for all interested persons to meet with the Committee to discuss and amplify any matters arising out of their representations. Many such meetings were held and, together with the written submissions, were of great assistance."

It is our opinion that this methodology is unscientific, and non-factual. The evidence against resale price maintenance is solely that of *opinions* of interested parties.

The methodology also includes the habit of lifting lines out of context, for example:

Under the heading THE COMMITTEE'S VIEWS, item 4, pages 23 and 24, of the Report:

"Comparisons between competitive prices and maintained prices are difficult to make and must be interpreted with prudence. One of the most serious attempts to effect such comparisons was made in the United States by the Federal Trade Commission. Although the study was made with special reference to the drug trade, similar results were observed in other sectors. It led to several conclusions which are reproduced by A. R. Oxenfeldt in his book "Industrial Pricing and Market Practices".

1. ". . . when resale price maintenance becomes effective, it forced chain stores to increase their prices, while individual drug stores, on the average showed price reductions which, however, varied considerably with the size of stores, and, for all independent store groups, the percentage decreases shown were less than the percentage increases made by chain stores".
2. ". . . resale price maintenance affected the prices of different brands in quite different ways in different types of stores and even the same type of store operating in cities of vary-sizes." The price increases were greatest in large cities and in large stores.
3. The range of prices charged for the same brand in various kinds of stores became smaller. After the passage of resale price maintenance laws, generally speaking, the stores that reduced their prices ". . . were not the stores that had been charging the highest prices: the reduction in the (price) spread was accomplished through compulsory increases from the lowest previous price".
4. ". . . in the drug trade, chain and department store groups that were forced to increase prices, generally were realizing substantial gross margins usually averaging 20 per cent or more on sales and sometimes 30 per cent or more before resale maintenance became effective".
5. "The price increases forced upon the chain and department stores were accompanied usually by reduction in volume of the price maintained brands sold by these stores."

The Committee omitted the 6th and final conclusion of the Federal Trade Commission as reported by A. R. Oxenfeldt in Industrial Pricing and Market Practices, pp. 427, 428. It reads:

6. "The manufacturers of the price-maintained brands of drug store items covered in this study generally named minimum prices that were within

the range of prices actually charged by their large-volume customers just prior to the time they placed their trade-market products under minimum resale price contracts,"

The omission of this final conclusion of the Federal Trade Commission as reported by Oxenfeldt is unfortunate since the Committee, after injecting 5 lines of a statement made by a manufacturer, immediately concluded that "In the light of this evidence and of current information presented to the Committee, it seems clear that, while most schemes of maintained prices may provide only fair margins to the high-cost distributor, the general level of prices is higher with resale price maintenance that (sic) it would be if competition existed".

Had the Committee included item six of the Federal Trade Commission Report as reported by Oxenfeldt and the three following paragraphs in Oxenfeldt, we do not see how the Committee could have arrived at the conclusion stated above.

The omitted paragraphs in Oxenfeldt are as follows:

> If resale price maintenance resulted in a substantial and prolonged change in distributors' margins, it would almost certainly have a parallel effect on prices to the consumer. As already indicated, manufacturers tended to set the minimum retail price on their product close to the price at which many mass distributors had been selling it and therefore below the prices charged by the independents. Retailers' margins—even including those of the average independent—did not decline, however. Manufacturers tended to lower price to the retailer when they priced their products under resale price maintenance. The Federal Trade Commission concluded:
>
> > . . . reductions made by some druggists in prices of some price-maintained commodities in 1939 were in reality reductions in manufacturer's prices of such magnitude that retailers, after reducing prices, were realizing as large, or in some cases, even larger margins than were realized previously when the items were sold at higher retail prices.
>
> A broad survey of 718 products sold in California drug stores yielded similar results. It showed that "the burden of the price decline on these items was not absorbed by the retailers but by manufacturers and/or wholesalers, presumably the former".[89] (Footnote 89—Grether, op. cit., p. 312)[1]

This is a far cry from the conclusions drawn by the Committee. In fact it weakens and makes them untenable.

At this point the methodology only is being criticized. Later, item 4 of the COMMITTEE'S VIEWS will be analyzed.

The committee is also remiss in its duty in still another way. The terms of reference were: "to study in the light of present day conditions, the purposes and methods of the Combines Investigation Act and related Canadian Statutes, and the legislation and procedures of other countries, in so far as the latter appear likely to afford assistance..."

A total of 35 lines as quotations from two English sources and 33 lines from three United States sources does not indicate an exhaustive study of the literature in these two countries. The quotation on page 22 of the Report, consisting of three lines from page 73 of a book *Maintaining Competition* by

[1]Oxenfeldt, Alfred R.—Industrial Pricing and Market Practices, p. 428.

Corwin D. Edwards, is quoted in support of the Committee's views which are against resale price maintenance, but the Committee did not know or cared to ignore the fact that Corwin D. Edwards also said:

> Except for the harassment and abuse which may develop under minimum price laws, there is little reason to believe, that in their present form, they will do much either to harm the consumer or to help the groups which have advocated them.[1]

The Committee states that besides the views expressed in submissions "We have also cited views from other sources equally relevant". Views cited from other sources may be used provided that all existing views as published in the literature here, abroad, and in the United States are represented. To repeat, the Report contains only a few sources of information, the sampling appears inadequate since only sources supporting the conclusions of the Committee are expressed.

As "legislation and procedure of other countries"...likely to afford assistance" and "as relevant material", I offer the Proprietary Articles Trade Association of Great Britain. This association was formed in England in 1896. The legal status of resale price maintenance in the *Report of Committee Appointed by the Lord Chancellor and the President of the Board of Trade to Consider Trade Practice. Restraint of Trade,* 1931, p. 7:

> A man has the right to trade as he pleases. A manufacturer or merchant may refuse to sell his goods to anyone who wishes to buy them, or he may sell them on such conditions as he thinks fit to impose. If the buyer of goods who has acquired those goods subject to the terms or conditions subsequently deals with them in a manner contrary to the terms of his agreement he commits a breach of his contract with the seller, and the seller has a right of action against him...

The same report also states on page 28:

> The evidence before us did not show that up to the present any of the bodies to which we refer have developed their organization in such a way as to create a dangerous condition approaching monopoly.

The Board of Trade Committee on Restraint of Trade reported in favour of the continuance of the system of resale price maintenance.

The relevancy is that the Board of Trade since this report in 1931 has changed its political complexion under the Labor Government and as June 1, 1951 states:

> The Government proposes to provide in the legislation to be introduced that manufacturers shall be entitled to indicate, recommend or prescribe only maximum prices for the resale of their goods and it will be unlawful to give any indication of resale price unless it is clearly stated that the price indicated is a maximum.

This is identical with the proposals and recommendations of the Interim Committee under discussion.

Also relevant to the subject is the decision of the Supreme Court of the United States on December 7, 1936, unanimously upholding the Fair Trade Law of Illinois permitting resale price maintenance. Part of the text of the decision is as follows:

> The primary aim of the law is to protect the property—namely, the good will—of the producer, which he still owns. The price restriction is adopted as an appropriate means to that perfectly legitimate end, and not as an end in itself.

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[1]*Edwards, Corwin D.*—American Economic Review, Supplement, March 1940, p. 112.

Appelants here acquired the commodity in question with full knowledge of the then existing restrictions in respect of price which the producer and wholesale dealer had imposed, and, of course, with presumptive if not actual knowledge of the law which authorized the restriction. Appelants were not obliged to buy; and their voluntary acquisition of the property with such knowledge carried with it, upon every principle of fair dealing, assent to the protective restriction, with consequent liability under (paragraph) 2 of the law by which such acquisition was conditioned.

We find nothing in this situation to justify the contention that there is an unlawful delegation of power to private persons to control the disposition of the property of others...

We are here dealing not with a commodity alone, but with a commodity plus the brand or trade-mark which it bears as evidence of its origin and of the quality of the commodity, for which the brand or trade-mark stands. Appelants own the commodity; they do not own the mark or good will that the mark symbolizes. And good will is property in a very real sense, injury to which, like injury to any other species of property, is a proper subject for legislation...

There is nothing in the laws of Great Britain or the laws of the United States or the laws of Canada prohibiting resale price maintenance.

Criticism of the Material Contained in the Introduction of the Committee's Report

Definition of resale price maintenance

Among restrictive trade practices, resale price maintenance is probably the best known and has been widely analyzed and discussed. By resale price maintenance we understand the practice designed to ensure that a particular article shall not be resold by retailers, wholesalers or other distributors at less than the price prescribed by the supplier, that is, in most cases, the manufacturer".—page 6.

The word "restrictive" stigmatizes the trade practice even before it is defined. Resale price maintenance is prejudged at the outset by the use of this word.

Customary definitions of resale price maintenance:

Resale price maintenance "designates a system whereby the manufacturer endeavors to keep at a level prescribed by him the price of his product charged by retailers and other distributors".[1]

...resale price maintenance—by which the manufacturer or owner of a trade-marked product may dictate the price below which it may not be resold by distributors.[2]

that price policy under which the manufacturer of a branded product establishes the price (or the minimum price) at which such product shall be resold to the consumer.[3]

No such word as "restrictive" is used by these authors. Further, the Committee left out the word "trade-marked" or "branded".

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[1]*Seligman, Edwin R. A. and Love, Robert A.*—Price Cutting and Price Maintenance, p. 1, 1932.

[2]*Stewart, Paul W. and Dewhurst, Frederic*—Does Distribution Cost Too Much? 1939, p. 271. A Study made by the Twentieth Century Fund, Committee on Distribution.

[3]*Phillips, Charles F. and Duncan, Delbert J.*—Marketing, Principles and Methods, 1948, p. 677.

The extent of the practice

The Committee quotes a British White Paper as estimating that in 1938 about 30 per cent of the public's expenditure on consumer goods was on price-maintained articles. "Estimates for Canada which we have received from private sources of "about 500 items", "2,000 to 3,000 articles" and "12 to 15 per cent of department store sales" are obviously not based on accurate or comparable definitions...if not quite as comprehensive as in the United Kingdom, it is yet of significant and growing proportions"—Committee's Report, pp. 6-7.

It is estimated that in the United States in 1947 department stores accounted for about 10 per cent of total retail sales.[1] That is one and a half per cent of total retail sales under resale price maintenance sold through department stores if we take the Committee's highest figure of 15 per cent.

> Although resale price fixing may make progress in other fields, to date, resale-price fixing by the manufacturer has made its greatest advance in such fields as drugs, toilet goods and cosmetics, books, sporting goods, and liquor, where price cutting has been prevalent and where well-advertised brand names are common. Although resale-price fixing may make progress in other fields, it has been estimated that not over 15 per cent of the dollar value of goods sold at retail will ever be subject to manufacturer resale-price control.[2]
>
> Although it is impossible to know the exact proportion of the retail volume of sales under effective resale price control in Great Britain, a strong indication is the percentage of the total volume of business obtained from controlled goods by Harrod's, London's largest department store. In 1933 executives of this firm estimated that 10 per cent, or perhaps slightly more, of the London's store volume was from brands for which prices were fixed by manufacturers. The writer's opinion, after checking over estimates for all the departments of the store, was that not more than 12 to 15 per cent of the sales were controlled brands... Most probably the total proportion of the volume of consumers' goods under control in Great Britain is somewhat larger than that of Harrod's, but it is a comparatively low percentage figure, very likely under 20 per cent.[3]

Speaking of the United States,

> Although the exact percentage of the total volume of retail sales now controlled cannot be known, it is small, possibly no more than 5 per cent and certainly under 10 per cent.[4]
>
> As far as the ultimate coverage is concerned it has been estimated by a number of authorities that no more than 5 to 10 per cent of the country's retail sales will be brought within the jurisdiction of resale price maintenance laws.[5]

Total retail trade in Canada for the first half of 1951 amounted to $4,761,370,000.[6] Taking the highest figure of the authorities quoted above, namely 10 per cent, as the amount of Canada's retail sales under price maintenance, we arrive at the figure $476,137,000. Let us assume, *merely for*

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[1] *Weiss*—"How to Sell To and Through the New Department Store", *Printer's Ink*, November 28, 1947, p. 31.

[2] *Phillips, Charles F. and Duncan, Delbert J.*—Marketing, Principles and Methods, 1948, p. 678.

[3] *Greher, E. T.*—Price Control Under Fair Trade Legislation, p. 335.

[4] *Ibid*—p. 322.

[5] *Stewart, Paul W. and Dewhurst, Frederic*—op. cit., p. 276.

[6] *Dominion Bureau of Statistics, Retail Trade*, August 1951.

the sake of argument[5], that the retail prices of goods sold under price maintenance are 10 per cent higher than they would be without price maintenance, then the total reduction possible by the elimination of price maintenance would be $47,613,700 in six months. Considering the population of Canada to be approximately 14 million, this means a possible reduction in the cost of living of $3.33 for each man, woman and child, $6.66 per year, or 55½ cents per month. For a family of four, it would be $26.64 a year, $2.22 a month, or 51 cents a week—hardly more than the price of a package of cigarettes.

On October 15, 1951, Prime Minister St. Laurent reasserted that the government was not prepared to submit to parliament any measures to curb the cost of living other than the resale price maintenance legislation promised in the throne speech.

In other words, the government is prepared to reduce the cost of living by 13 cents per week per person or 51 cents per week per family of four. This only, *if* the 10 per cent *assumed for the sake of the argument* should prove correct in the face of Oxenfeldt's statement that the empirical evidence that shows average retail prices to have been increased by resale price maintenance is slender.[1]

THE COMMITTEE'S VIEWS

Criticism of View Number 1.

> The direct and immediate effect of resale price maintenance is the elimination of price competition among retailers in price-maintained goods; this is one of the main objectives of the practice. The cost of distribution is a very substantial part of the price which the consumer pays. Changes which remove that part of the consumer price from the influence of competition seriously restricts the working of a competitive system.—p. 21, 22.

This statement shows a lack of even a superficial knowledge of the economics of distribution. It assumes that as long as competition exists, prices will be lower. Such a rule cannot be applied universally to the marketing of all goods. A few illustrations should point this up.

> While much space has been devoted in this chapter to the policy of the Dominion government in promoting competition, it must not be supposed that this is the sole element in Canadian policy in relation to combines. An examination of the policies of the provinces would reveal an astonishing variety of governmental restriction of competition, and permission to associate voluntarily to restrict competition is granted by the Dominion government to trade unions and co-operative associations of farmers, fishermen, etc. The problem here is too much competition and the policy is one of restriction.[2]

> *Milk Control Board of Ontario.* This Board determines for ninety-two urban markets in Ontario the price at which the distributors must buy milk from the farmer and the price at which they must resell to the consumer. This price may be the result of an agreement between the milk producers' association and the distributors approved on behalf of the consumer by the Board, or, in the absence of an agreement between the parties or where the parties agree on a price considered unfair to the consumers, may be the result of arbitration by the Board. It is an offence to sell milk for less than the established price; the farmer may

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[1]*Oxenfeldt, A. R.*—Industrial Pricing and Market Practices. This writer says that the *empirical evidence* that shows average retail prices to have been increased by resale price maintenance is *slender*. p. 429—italics mine.

[2]*Bladen, V. W.*—An Introduction to Political Economy, Toronto, 1948, p. 238.

> not compete for a bigger outlet by offering milk cheaper, nor may the distributor compete for a bigger share of the market by offering milk cheaper at retail. . . In many markets, however, the number of distributors is unduly large and the wastes of a competitive struggle which must take the form of offering more service, or differentiated milk, instead of standard milk at a lower price, are considerable.[1]

In the United States, one authority claims that lower costs and prices can be secured in the milk industry by less government setting of prices. Frequently such prices are established at levels which protect inefficient operators; thus they prevent competition from serving its function of eliminating the high-cost distributors.[2]

In contrast with this point of view, some writers believe the logical approach is through less competition and more government regulation.[3]

The British Labour Government which believed in the nationalization of some industries thus eliminating competition altogether produced the British White Paper, quoted by the Committee to support its own view. The British White Paper: (p. 21, the Committee's Report).

> It is often said that the practice does not prevent traders from competing in the services they give. But this begs the question. It is true that, in order to attract more customers, a trader may increase the amount and quality of his service. But the potential customers may be comparatively indifferent to extra service, whereas they would be glad of the original amount of service at a lower price. It is this alternative which resale price maintenance stops the trader providing.

A United States writer levels the same charge against *competition* as the British White Paper levels at resale price maintenance:

> During the war many manufacturers, wholesalers, and retailers reduced their marketing costs quite substantially . . . governmental regulations of credit under Regulation W, curtailed deliveries, reduced advertising expenditures, and fewer selling events resulted in lower operating costs in most retail stores. At this time, considerable attention was given to the question: "Can distribution costs be reduced postwar?" Moreover many retailers and wholesalers, as well as manufacturers, expressed the desire to avoid returning to the numerous and varied services which they had performed in the years before the war and which were partially to blame for high marketing costs. Despite this expressed desire, the increase in competition which followed the end of the war and the relaxation of governmental controls brought a resumption of many practices that resulted in higher costs.[4]

No more comprehensive study of the costs of distribution has ever been made in North America than that made by the Committee on Distribution of the Twentieth Century Fund. Its findings were first published in August, 1939. This committee found that:

> Competition in production generally has had the effect of decreasing costs as the pressure for lower prices spurs mechanization and improved operating methods. But in distribution competition frequently tends to increase costs.[5]
>
> Taking the field of distribution as a whole the process undoubtedly costs too much. But how much too much is impossible to say. In other

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[1] *Bladden, V. W.*—op. cit., p. 240.

[2] *Bartlett, R. W.*—The Milk Industry, 1946, pp. 82-84.

[3] *Journal of Marketing*, Vol. XII, No. 2 (October 1927) "Connecticut Studies Milk Delivery", pp. 211-219.

[4] *Phillips, Charles F. and Duncan, Delbert J.*—op. cit., p. 15.

[5] *Stewart, Paul W. and Dewhurst, Frederic*—Does Distribution Cost Too Much?, p. 339.

words we can say with confidence that there is waste in distribution, but we cannot reduce it to a percentage figure—as a whole, or in any of its parts. Nor can we say that distribution is more or less wasteful than production.[1]

Reconsidering the milk industry—milk is a standardized product. The government of Ontario not only sanctions price-fixing, it makes it mandatory. Different brands of milk must all sell for the same price. It is illegal to sell milk for less. The consumer has a choice among producers' brands but no choice, no alternative concerning price.

Considering the drug industry—Aspirin for example. It is a standardized product. Regardless of brand name it must conform to the standards set by the British Pharmacopoeia and it is not possible, chemically speaking, to set them higher. In the United States the standard is the United States Pharmacopoeia. The consumer can purchase Bayer Aspirin under the Fair Trade Laws for 15 cents a package of 12 tablets or he can purchase a package of 12 tablets of St. Joseph's Aspirih for 10 cents, or he can purchase 100 tablets of Bayer Aspirin for 59 cents under resale price maintenance and aspirin in 100's, same standard, down as low as nine cents a hundred. He is not forced to buy Bayer. If he does it is his choice. He can purchase cheaper brands in almost any drug store whether chain or independent. This is very different from the method by which milk and a number of other goods are marketed. There is no horizontal fixing of prices. The customer always has an adequate alternative if he does not desire the price-maintained article.

One other observation should be made concerning the market for drugs. Like salt, one does not take more medicine merely because it is cheap. The demand for drugs in inelastic. People take medicines because they are ill or to prevent illness. They do not take them because the price has been reduced.

Criticism of View Number 2.

> Resale price maintenance facilitates and makes more effective horizontal agreements (open or tacit) among manufacturers. The practice may easily help to produce an effect similar to that which would result from direct collusion . . . Moreover, resale price maintenance is very often a necessary complement to agreements among manufacturers, because it would be quite useless for manufacturers to agree on a certain price for their respective products, if price competition at the retail level disturbs the whole agreement.

There is no room for the use of the word *may* in a scientific discussion. It must be proven to be a fact to be valid. In support of their *may*, the Committee quotes Corwin D. Edwards,

> Pressure from distributors promotes uniformity in the discounts; the self-interest of manufacturers may easily lead to uniformity in factory prices.

Corwin does not say that *it does*. He says it *may*. Another authority, E. T. Grether, says,

> It is dubious to assume that in most instances formal or informal collaboration among competitive manufacturers need wait for resale price maintenance.[2]

> There are a number of industries in which one or a few concerns completely monopolize production. (Those engaged in producing shoe machinery, Pullman cars, cash registers, typewriters, electric accounting machinery, fire-extinguishing apparatus, linoleum, rayon yarn,

[1] *Ibid*—p. 348.

[2] *Grether, E. T.*—Price Control Under Fair Trade Legislation, p. 309.

aluminum, tungsten-carbide, photographic supplies, molybdenum, magnesium, beryllium, anthracite, iron ore, building plaster, linseed oil, nickel, sulphur, industrial alcohol, synthetic nitrogen, fertilizer, plumbing supplies, farm implements, air brakes, glass containers, heat-resistant glassware, optical glass, washing machines, sewing machines, sewing thread, electric lamps, ball bearings, heavy electrical equipment, electric motors and meters, locomotives, naval vessels, bananas, canned soups, biscuits and crackers, and trans-oceanic aviation and communication services. (This is only a partial list). And even a larger number of industries are characterized by some degree of monopoly control. In 1935 there were 54 industries in which the four largest firms produced more than two-thirds of the total product and in 1937 there were 121 products in the manufacture of which the four largest firms produced more than three-fourths. Inevitably there will be a large measure of monopoly control, perhaps almost complete control, in such industries."[1]

The above quotation applies to the United States but many United States producers have subsidiaries in Canada. Obviously, none of these giants have to wait for resale price maintenance in order to make tacit horizontal agreements. To blame horizontal agreements on resale price maintenance appears illogical.

In the drug field there are so many brands of many items that horizontal agreements among manufacturers would be unthinkable e.g.,

> in the 1937 Hearings on the Miller-Tydings bill, E. L. Newcomb, Executive Vice-President of the National Wholesale Druggists' Association, testified that there were 200 brands of toothpaste on their list and that a complete enumeration would probably exceed 1,000; also that partial listings a few years ago for face powders and laxatives carried 1,200 and 2,000 brands respectively. At the same hearings, C. F. Welch, of the Toilet Goods Association, Inc., stated that the Association's compilation of trade-marks for cosmetics and toilet soaps numbered 28,000. 75th Congress, 1st Session on H.R. 1611, Serial 1, January 27, 29, 1937, pp. 26, 58.[2]

Criticism of View Number 3.

> However, when measures of enforcement are involved, resale price maintenance establishes a private system of law allowing no appeal to the courts of justice, as it is clearly shown in the British White Paper.

This statement is incorrect. The facts do not bear out the statement. There have been hundreds of cases in the United States courts in the past half century involving resale price maintenance, one way or the other. These cases involve prosecution by the government for alleged resale price maintenance policies and cases brought by manufacturers against distributors, and cases brought by distributors against manufacturers. Over 300 cases are listed on pages 527-533 of "Price Cutting and Price Maintenance" by Edwin R. A. Eeligman and Robert A. Love, Harper & Bros., New York, 1932.

An interesting case is described by these authors as follows:

> Prior to 1915 the subject of resale-price maintenance had, with a single exception, been brought before the courts voluntarily by the firms which were undertaking to maintain prices. In the Keystone and Kellogg cases the government took the initiative and the price-maintaining firms were placed on the defensive. They were also defendants in the next federal case when, for the first time, a customer brought suit against

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[1] *Ise, John*—Economics, 1946, p. 140.

[2] *Grether, E. T.*—op. cit., p. 226.

a seller who was attempting to compel adherence to fixed resale prices. The basis for the suit was found in the Clayton Act which had been passed less than a year before, (October 15, 1914).

The Great Atlantic and Pacific Tea Company, owning and operating a system of chain stores, instituted a suit for an injunction and damages against the Cream of Wheat Company on the grounds that by refusing to sell to it the Company had violated that part of the Clayton Act forbiding price discriminations which would either lessen competition or tend to create a monopoly. Action was brought by the company for the purpose of compelling the Cream of Wheat Company to sell to it.

In denying relief to the plaintiff the court pointed out that while the system tended to lessen competition it did not constitute a restraint of trade so unreasonable as to entitle the plaintiff to relief under the Clayton Act; on the contrary, the court was of the opinion that the effect of an injunction would be to restrain trade to the extent of aiding the price cutter to eliminate competition by making it impossible for other retailers to handle the article at a profit. In other words, the court viewed price cutting rather than price maintenance as the weapon of the monopolist.

This is a court decision, *not an expression of opinion.*

It was just such a suit that brought about the recent United States Supreme Court decision invalidating the non-signer clause of the Fair Trade laws. It was a retail whisky dealer who fought the case through the courts.

The legal position of resale price maintenance in Great Britain is quite different from that of either Canada or the United States. I quote the legal position in Great Britain at some length:

A Trade Association is then a Trade Union, as defined in the Trade Union Act, 1876, Section 16. The term "Trade Union" means "any combination, whether temporary or permanent, for regulating the relations between workmen and masters, or between workmen and workmen, or between masters and masters, or for imposing restrictive conditions on the conduct of any trade or business, whether such combination would or would not... have been deemed to be an unlawful combination by reason of some one or more of its purposes being in restraint of trade". In so far as a trade association has for its principal objective the imposition of restrictive conditions on the conduct of trade it is a Trade Union within the meaning of this Act.

"Certain important results follow. Trade Associations enjoy the protection of the whole series of Trade Union Acts from 1871 to 1927 and Section 2 and 3 of the 1871 Act read: "The purposes of any trade union shall not, by reason merely that they are in restraint of trade, be deemed to be unlawful, so as to render any member of such a trade union liable to prosecution...:" and "the purposes of any trade union shall not by reason merely that they are in restraint of trade be unlawful so as to render void or voidable any agreement or trust," An important legal disability is, however, imposed on Trade Association by Section 4 of the Act of 1871 which renders "an agreement between members of a trade union concerning the conditions on which any members shall or shall not sell their goods..." not directly enforceable in Courts of Law.

The Trade Associations can thus obtain immunity against actions for damages which might (if they were not deemed trade unions) have been brought against them for committing what would otherwise have been

actionable wrongs in the exercise of price maintenance. Effective price maintenance, however, requires that sanctions should be applied against those who sell below the permitted price. Yet there is no contractural obligation enforceable in the ordinary courts on the seller to conform to the agreed price. Trade Associations have, therefore, devised their own sanctions; the so-called "Stop List", a very powerful sanction indeed, whereby supplies are withheld from sellers adjudged by the association to have infringed the regulations for price-maintenance. Trade Union status permits the withholding of supplies to such traders except where, in the view of the ordinary courts of law the association has been guilty of "restraint of trade."

"The current law with respect to restraint of trade was settled in 1894 by a House of Lords' decision which reads as follows:

The public has an interest in every person's carrying on his trade freely; so has the individual. All interference with individual liberty of action in trading, and all restraints of trade themselves, if there is nothing more, are contrary to public policy, and, therefore, void. That is the general rule. But there are exceptions: restraint of trade and interference with individual liberty of action may be justified by the special circumstances of a particular case. It is sufficient justification, and, indeed, it is the only justification if the restriction is reasonable—reasonable, that is, in reference to interests of the parties concerned and reasonable in reference to the interests of the public, so framed and so guarded as to afford adequate protection to the party in whose favour it is imposed, while at the same time, it is in no way injurious to the public." The courts have not, in fact, excluded the enforcement of price-maintenance by the "Stop List" as restraint of trade...[1]

To say that "resale price maintenance establishes a private system of law allowing no appeal to the courts of justice" is incorrect. Through the years, as indicated in the foregoing quotations, it may have amounted to that in *England* but only because of the nature of English law and custom. Resale price maintenance *per se* does not produce that. English law has. Canadian and United States law *has not.* Witness the case described in the Globe and Mail of October 31, 1951—"A $6,000,000 treble damage suit was filed today in Federal Court by the Sunbeam Corporation of Chicago, makers of household appliances, against R. H. Macy & Company and four officers of the department store as a result of the price war last May." At this point, it is of no interest who might win the case. The point is that resale price maintenance practices do not establish a law allowing no appeal to the courts of justice.

It was on the method of enforcement that the Proprietary Articles Trade Association of Canada made its mistake.

"The sixth report (1927) was concerned with an association of wholesale and retail drug stores and manufacturers of proprietary articles sold by them (Proprietary Articles Trade Association). The association proposed to enforce maintenance of resale prices by retail druggists by a system of boycott. The report held the arrangement to be in contravention of the Act (Combines Investigation Act) and the Association dissolved."[2]

It is my understanding that no case has ever proceeded through the Canadian Courts involving retail price maintenance because to date there is neither permissive or prohibitive law regarding it. It would be unwise to pass prohibitive legislation in Canada *because* of trade practices in Great Britain. No parallel structure is involved.

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[1] *Hall, Magaret,* (Fellow and Tutor in Economics at Somerville College, Oxford)—Distributive Trading, Hutchinson's University Library, pp. 148-150.

[2] *Bladen, V. W.*—An Introduction to Political Economy, University of Toronto Press, 1948, p. 210.

Criticism of View Number 4.

> Although precise information is lacking, there is some evidence that resale price maintenance contributes to price stability but that the general level of prices, thus stabilized, is higher than it would be under competitive conditions and production more stable.

In support of this view the Committee quotes 5 out of the 6 conclusions made by the Federal Trade Commission of the United States as reported in *A. R. Oxenfeldt's* book "Industrial Pricing and Market Practices".

The question of the moment is how large is the "some" evidence? Also, how much higher is the present level of prices as a result of present resale price maintenance as disclosed by the "some" evidence. Since the government is basing its proposed legislation to reduce the cost of living on this evidence, it must be both conclusive and substantial.

Oxenfeldt spends less than four and a half pages of his 602 page book on the "Economic Effects of Resale Price Maintenance", pp. 425-429, one page of which is the six conclusions of the United States Federal Trade Commission. There is nothing in these four and a half pages to give the Committee more than the thinnest thread on which to hang their statement quoted above.

Oxenfeldt's concluding paragraph reads:

> In estimating the effect of resale price maintenance legislation upon price, two facts stand out. First, independent distributors as a group are still strongly in favor of it and very probably not because it tends to lower their margins. Second, it greatly limits the range of price-cutting and so restricts the price inducements that mass distributors can offer. Both facts reinforce the *slender empirical evidence* (italics mine) that shows average retail prices to have been increased by resale price maintenance. Third, prices have increased most to those buyers who have previously been economical enough to patronize mass distributors and who are compelled by low incomes to patronize cut-price stores. Consequently, resale price maintenance appears to be regressive in its effects. Fourth, resale price maintenance has restricted price-cutting by the large retailers more than by the small independent stores. Small distributors generally can get away with a fair amount of price-cutting, but large distributors are under careful surveillance by the manufacturers and rival retailers. Thus resale price maintenance tends to favor the small distributor in two ways: he cannot be undercut by the large distributor, and he is left considerable room in which to undercut the large distributor.

I would like to emphasize the statement "the slender empirical evidence that shows average retail prices to have been increased by resale price maintenance" because it on such *slender evidence* that the government has based its proposal to outlaw resale price maintenance.

While Oxenfeldt[1] states that there is slender empirical evidence, he produces none whatsoever. Because the evidence is so important in any court of law, it perhaps is best to quote almost the balance of the four and a half pages Oxenfeldt spends on the "Economic Effects of Resale Price Maintenance."[2]

"1. *Difficulties in empirical estimates of influence of resale price maintenance.* To determine the effects of resale price maintenance legislation, it is necessary to compare actual conditions after this legislation with conditions that would have existed if the legislation had not been passed. Of course, it is impossible to turn back the clock for this purpose.

[1] Oxenfeldt is being laboured because his is the only evidence submitted by the Committee in support of their view.

[2] *Oxenfeldt, A. R.*—op. cit., pp. 425-426.

"Several methods may be used to obtain suggestive evidence about the influence of resale price maintenance legislation on retail prices. First, comparisons can be made between prices in states where resale price maintenance is legal and in states where it is not. Second, the changes in prices of products under resale price maintenance can be compared with the changes in prices of products not priced under resale price maintenance. Third, the prices of goods under resale price maintenance after the legislation was passed can be compared with the prices of the same products before the legislation was passed.[1]

"*These comparisons are risky* (italics mine) because of the likelihood that dissimilar things will be compared. Brands of goods for which manufacturers set a minimum retail price may be essentially different from other brands of the same goods that manufacturers do not price under the resale price maintenance laws. The difference in the actions of manufacturers creates a presumption that their brands have an essential economic difference. *Comparisons of prices before and after legislation are not reliable on two counts.* First, the conditions under which legislation is passed generally are those of rapid economic change. For example, most laws legalizing resale price maintenance were passed during years when general business conditions changed more or less suddenly. Many of the state resale price maintenance laws were passed in 1933 and 1944" (26 of the state fair trade laws were not passed until the first half of 1937)" ' years when business had sudden ups and downs, largely resulting from the N.R.A. and the A.A.A. programs of the government. The Miller-Tydings Act also became law at the beginning of one of the steepest downswings in the nation's history. Second, the response of prices soon after the passage of legislation may not be the same as it would be after manufacturers, retailers, wholesalers, and consumers have become familiar with the workings of the legislation.

"Comparisons of prices in states where resale price maintenance is legal with prices of identical products where it is not are also difficult. Almost invariably, many prices will be charged at any time for a particular brand in states where resale price maintenance is illegal; price variations will be accounted for partly by difference in class of store, size of community, income class of neighborhood, and the like. With which of the many prices in such states are the prices set by manufacturers under resale price maintenance laws to be compared?

"Despite these difficulties in obtaining reliable empirical evidence of the effects of resale price legislation, the conclusions that may be drawn from the available evidence will be briefly summarized. The effects of resale price maintenance legislation upon retail prices will be described. Also pertinent to an evaluation of resale price maintenance, but mentioned only incidentally, are its effects on retail outlets, and the number and sales volume of wholesalers." "II *Effect of resale price maintenance on prices paid by consumers.* Several studies wherein prices in fair trade states were compared with prices of identical brands in nearby states where resale price maintenance is illegal may be summarized:

1. A comparison of 117 branded items showed that thirty-five cost about one-third less in Washington, D.C., which has no fair trade law, than in Maryland, where resale price maintenance is legal; thirty-eight cost about one-quarter less, and twenty-nine cost one-seventh less.

2. Fifty-four fair trade drug items cost an average of 16.2 per cent more on the east bank of the Mississippi, where fair trade is legal, than on the St. Louis side, where it is not.

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[1] *These are virtually the only methods used by E. T. Grether in his Price Control Under Fair Trade Legislation.*

(These results were reported in "The Not-So-Fair-Trade-Laws," *Fortune*, January, 1949, p. 70. It is not clear whether in places where resale price maintenance is illegal these studies reported the average price in all kinds of stores, or the lowest or highest price at which the product was sold. The dates of these surveys were not given in the article)

3. On isolated items, the following differences in price between the District of Columbia and Maryland were reported (in dollars);
   (*a*) Barbasol Shaving Cream: District of Columbia, .29; Maryland, .39
   (*b*) Lilly's Lextrol (sic) Pulvules (84's): District of Columbia, 2.29; Maryland, 3.15
   (*c*) Old Grand-dad (whisky): District of Columbia, 5.45; Maryland, 6.55, (before state tax)
   (*d*) BC Headache Powders: District of Columbia, .10; Maryland, .19"

The material quoted above, plus the quotations on pages 7, 8, and 28 of this brief is the total of the material presented by Oxenfeldt, with one exception, under the heading *Economic Effects of Resale Price Maintenance.*

The one exception, which is not pertinent at the moment, is:
"In Great Britain, where resale price maintenance has been practiced for a relatively long time, two governmental committees concluded that retailers were allowed relatively small margins (Grether, op. cit., pp. 314-315). The British experience suggests, as do other considerations, that retailers "... may lose part or all of this initial bargaining advantage as the system matures. (Grether, op. cit., p. 312)"

Despite his own criticism of the methodology of obtaining empirical evidence, Oxenfeldt states "the conclusions that may be drawn from the available evidence will be briefly summarized." They have been given on page 21 of this brief. His criticism of the methodology of obtaining the evidence makes "the slender empirical evidence" even more slender.

Oxenfeldt's book was published in 1951. His *available* evidence consists of quotes from Grether's "Price Control Under Fair Trade Legislation", the *Fortune* article of January 1949, and the Report of the Federal Trade Commission on Resale Price Maintenance, 1945. On the following pages, we offer other *available* evidence, which was equally available to Oxenfeldt, and to the Interim Committee for that matter. We do not maintain that this additional evidence, which we are presenting, is more valid than that used by Oxenfeldt and the Committee. We do claim that it is equally valid.

How Fair Trade Has Checked Price Increases[1]

Drugs and toiletries sold under Fair Trade contracts have increased in price by only 1.39 per cent from 1939 to June 1, 1947, according to a thorough survey made by the National Association of Chain Drug Stores. When the increase in prices is weighed according to the public's actual purchases in drug stores, the rise in prices from 1939 to 1947 stands at an average of only 3.12 per cent.

The study is based on Fair Trade minimum prices of 7,334 drug and toiletries items, sold in drug stores, which were on Fair Trade in 1939 and still are on Fair Trade. These items are unchanged, in size and quality, since 1939 so the price comparison is accurate. The items are from 250 manufacturers. The 250 manufacturers account for approximately 85 per cent of all Fair-Traded drugs and toiletries sold in chain drug stores.

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[1] *Chain Store Age*, October 1947.

"The cost of purchasing one of each of these items, at Fair Trade retail price, in 1939 would have been $14,403.29. The cost of purchasing one of each of the same items, at Fair Trade retail prices, on June 1, 1947, would have been $14,603.56. Thus the net increase in the price of all of these 7,334 Fair Traded items has been only $200.27 or 1·39 per cent.

COMPARISON BETWEEN 1939 AND 1947

Food	up	103·7%	
Apparel	up	85·1%	*All items*
House Furnishings	up	81·5%	*up*
Rent	up	4·7%	*59·3%*
Fuel, Ice, Electricity	up	20·7%	
Miscellaneous	up	38·5%	
Fair Trade Prices on Drugs and Toiletries	up	3·1%	

The National Association of Chain Drug Stores engaged Joseph A. Fletcher, consultant, to make an impartial study. The results of the study were presented by Fred J. Griffiths, secretary of the National Association, at a meeting of Associated Chain Drug Stores on September 9, 1947, at the New Yorker Hotel, New York.

	Items	*No Change*	*Down*	*Up*
Drugs	4299	2674	340	1285
Vitamins	455	93	269	93
Cosmetics	1814	1213	61	540
Toiletries	541	356	22	163
Miscellaneous	225	41	5	179
Summary	7334	4377	697	2260

TABLE 2

PRICE INDEXES OF FIFTY LEADING DRUG STORE ITEMS BEFORE AND AFTER DISTRIBUTION UNDER FAIR TRADE CONTRACT FOR CHAINS AND VARIOUS SIZES OF INDEPENDENTS[1]

List Price Equals 100

Store Type	*Size (Annual Volume)*	*Before Fair Trade*	*1939*	*Change*
1. Independent	—less than $10,000	93.1	90.6	—2.5
2. "	$10,000 to $20,000	92.7	89.3	—3.4
3. "	$20,000 to $30,000	91.7	88.2	—3.5
4. "	$30,000 to $50,000	90.6	87.3	—3.3
5. "	$50,000 and over	85.8	85.4	—0.4
6. Chain stores	—all sizes	78.6	83.5	+4.9
Weighted Average		87.0	87.0	—4.9

DRUG STORE FAIR TRADE PRICES UP ONLY 7.4% AS OTHERS SOAR 14.8%[2]

"prices of fair traded merchandise in the drug store have risen only 7.4 per cent in the past 35 months, or exactly half the 14.8 per cent increase registered by consumer goods in general.

"This was revealed last week by the Bureau of Education on Fair trade when it released the results of a survey conducted for the Bureau by McKesson & Robbins.

[1] *Ostlund, H. J. and Vickland, C. R.*—Fair Trade and the Retail Drug Store, 1940, p. 11.
[2] *Drug Topics*, New York, January, 1951.

"Products included in the comprehensive study represent more than 90 per cent of the drug store sales, exclusive of fountain, tobacco, and magazine volume.

"Non-fair traded drug store items increased 13.3 per cent from January 1, 1947, to December 1, 1950, or almost at the same rate as the consumer price index.

"Covered in the study were the lines of

53 pharmaceutical manufacturers
51 proprietary manufacturers
51 toiletry manufacturers
74 sundries producers

whose total volume represent more than 90 per cent of the $2,400,000 worth of business done in the drug stores."

These figures are not subject to most of the limitations (before and after legislation, between geographical areas where price maintenance is legal and areas where it is not, difference in class of store, size of community, income of class of neighbourhood, and spotty sampling of a limited number of articles as 54 and 117) as are those of Grether and Oxenfeldt.

Reinhold P. Wolff contends that fixed retail prices in Europe have not raised general price levels, nor created price uniformity to any considerable extent, nor prevented the growth of large-scale retailing.[1]

> . . .prices have increased most to those buyers who have previously been economical enough to patronize mass distributors and who are compelled by low incomes to patronize cut-price stores.[2]

also

> All the evidence available and *a priori* theorizing point indubitably to the conclusion that the patrons of lower price, limited service firms are forced to pay higher prices for the goods under control than previously[3]

but

> Thus consumers who patronize the outlying dealers are least injured, or may gain by resale control because they have been paying high prices[4]

and

> In general, however, it appears that resale price maintenance in the drug trade to date has been advantageous to the patrons of outlying stores because of the tendency for these dealers to reduce prices somewhat[5]

It is statistically impossible to measure these two tendencies and measure one against the other. Therefore, it is not valid to say that the one has increased the price level without at the same time saying the other has lowered the price level. No conclusion for or against resale price maintenance is possible from this data. Prices only have been considered. Volume of goods bought by both these classes of consumers would have to be considered also to make the data valid. This has not been done.

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[1] *Wolff, Reinhold P.*—Price Control Under "Fair Trade" Legislation Round Table. The American Economic Review, Vol. XXX, No. 1, Supplement, March 1940, pp. 115-117.

[2] *Oxenfeldt, A. R.*—op. cit., p. 429.

[3] *Grether, E. T.*—op. cit., p. 298.

[4] *Ibid*—p. 306.

[5] *Ibid*—p. 306.

It is interesting to note what some of the prices were *previously.*

> Two cases illustrate the type of raw material from which the 1933 price tabulations are built. Table I, in summary form, compares the advertised prices of a San Francisco firm in 1933 with published wholesale prices and with the then recommended prices of the Northern California Retail Druggists' Association. Only 8 of the 106 items were offered for sale at prices above the regular wholesale list price, and only 6 at the wholesale list, whereas 92 were offered below the wholesale list. The arithmetic mean of the prices of the 106 items was 11.9 per cent below the mean of wholesale prices, and 36.9 per cent below the mean of the recommended retail prices of the Northern California Retail Druggists' Association. The prices recommended by the Association would have provided an average margin of 30.1 per cent of sales if dealers had purchased at regular wholesale prices.
>
> The second example is from Los Angeles. In November 1933 a Los Angeles retail drug firm famous for price cutting offered in three advertisements in the Los Angeles *Evening Herald* to sell seventeen drug articles below the published wholesale price. The price of these articles varied from 52.9 per cent to 88.6 per cent of the regular wholesale list; the arithmetic average was 74.2 per cent of it. This firm offered these items from 47.1 per cent to 11.4 per cent below the regular wholesale prices; on the average it had cut 25.8 per cent below the wholesale list[1]

This lengthy quotation qualifies considerably conclusion number 1 of the Federal Trade Commission Report as reported by Oxenfeldt and appearing on page 23 of the Interim Report.

1. ". . . when resale price maintenance becomes effective, it forced chain stores to increase their prices, while individual drug stores, on the average, showed price reductions which, however, varied considerably with the size of stores, and, for all independent store groups, the percentage decreases shown were much less than the percentage increases made by chain stores."

In 1931 there were approximately 4,000 chain drug stores in the United States. Forty per cent of these were operated or controlled by four companies, the L. K. Liggett Company, the Walgreen Company, the Whelan Drug Company, and the Peoples Drug Store of Washington. During 1933 or 1934 the Liggett Company, largest chain of them all, the Whelan Drug Company, the Owl Drug Company, largest drug chain on the Pacific Coast, and the Mayflower chain all were in the bankruptcy courts. In 1933 the United Drug Company, an operating and holding company, reorganized the L. K. Liggett Company under the name Liggett Drug Co., Inc. and in the same year purchased the assets of the bankrupt Owl Drug Co. In 1944 it purchased the stock of the Sontag Chain Stores, Ltd. of California, a chain of some 48 drug stores.

In November of 1949, *Time* magazine reported that the Ligget Drug Co. had slipped in net earnings from $4,048,403 in 1946 to $1,415,869 in 1948, and in the first nine months of 1949 reported a loss of $1,167,125. Also, they reduced the number of their stores from 540 in 1946 to 340 in 1949 and planned to level off at about 300 stores in 1950. Further, they trimmed their staff by 2,500 in 1949.

Conclusion number 6 of the Federal Trade Commission Report as reported by Oxenfeldt was omitted by the Committee from the Interim Report. It reads:

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[1] *Grether, E. T.*—op. cit., pp. 86-87.

> The manufacturers of the price-maintained brands of drugstore items covered in this study generally named minimum prices that were within the range of prices actually charged by their large-volume customers just prior to the time they placed their trade-marked products under minimum resale price maintenance.

Perhaps the Committee left this out because on the surface it looks inconsistent with conclusion number one of the Federal Trade Commission. However, it is not inconsistent, when we realize the chain stores mentioned in conclusion one must have been the ones who were cutting prices below the wholesale level and using them as "loss-leaders".

On the other hand, if the manufacturers named minimum prices that were within the range of prices *actually charged* by their large-volume customers, then resale price-maintenance did not increase the price level as charged by the Committee, nor force patrons of lower price, limited service firms, or buyers who had previously been economical enough to patronize mass distributors, to pay higher prices. The only deprivation it caused was to deprive patrons of "loss-leaders" only of their bargains. How much bargain was there when the major chains, mentioned on the previous page, went into bankruptcy?

The Committee copied the first three lines of Oxenfeldt, page 428, into their report but failed to mention the middle of the page which states, "The Federal Trade Commission concluded:

. . .reductions made by some druggists in prices of some price-maintained commodities in 1939 were in reality reductions in manufacturer's prices of such magnitude that retailers, after reducing prices, were realizing as large, or in some cases, even larger margins than were realized previously when the items were sold at higher prices."

The facts mentioned in the Federal Trade Commission Report Conclusion number 6 and the one quoted above and the methodology of the Committee in not caring to include evidence before them seriously damage their claim that resale price maintenance raises the price level.

Grether appraises the situation correctly when he says,

> Although the movement for the control of price competition arises out of conflicts within industry and trade and finds its deepest meaning in the play of these forces, the public presentation of the case for and against it are often couched in terms of consumers' welfare[1]

and

> The unique aspect of the present movement is the bargaining juxtaposition of manufacturers with monopoly rights in their brands and organized retailers with monopoly power derived from combination superimposed upon their individual 'partial monopoly' controls. Under former circumstances, the most strongly entrenched manufacturers often were able to obtain dealers' services for little or no reward, or even enjoyed a begrudged subvention; now dealers demand that the brands of these manufacturers pay their way[2]

The Twentieth Century Fund Committee on Distribution has summed the situation up admirably when it says,

> As is always true in such institutional conflicts, the defense unconsciously keeps running back and forth between broad public interests and private desire of individuals to be saved by law.

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[1] *Grether, E. T.*—op. cit., p. 294.

[2] *Ibid*—p. 311.

Opponents of price maintenance rest their case on a similar mixture of noble and "me first" oratory. Being big distributors, they are outnumbered by the samll, but they have powerful means of expressing their views. Through the loud-speakers of advertising, radio and artful display, they inform the world that through price maintenance:

(1) efficiency is being hamstrung;

(2) savings from low costs must be hoarded instead of passed on to the public;

(3) operating margins are so unequal in different types of outlets and different communities that only at a handful of points can a fixed minimum price be appropriate;

(4) that which is judicially approved in the name of the manufacturer's goodwill is really foisted upon him to his own disinterest by distributors who are already too numerous and who are literally going on "commercial relief" at public expense . . . "[1]

Further evidence that resale price maintenance does not necessarily increase the price level is offered in the following:

> Some little evidence on the shifts in price levels that have resulted is being accumulated. One fairly elaborate summary appeared in an article by Reinhold Wolff and Duncan Holthausen in the July 1938 issue of Dunn's Review. This was based on a voluminous collection of New York State prices filed with the New York State Pharmaceutical Association, others secured with the help of the National Independent Pharmacists, Inc., and partly checked by independent sampling by the authors . . .
>
> On speculative grounds only, it seems likely that the increase in cut-rate stores measured the rebound from "deep loss leaders" and price advertising. It seems at least credible, on the other hand, that the relief from this pressure made it more worthwhile for small neighbourhood dealers to push the affected lines instead of merely carrying them as necessary convenience goods. This last possibility must certainly have been supplemented to some degree by the tendency of the minimum price to become standard.
>
> One weakness in these returns is that there is no measure of the relation of sales volume to the different adjustments. Assuming that the total public bill for these popular goods was higher as a result of the laws, it is still an open question whether the increased cost was more or less important than its value as leverage toward better balanced competition on an efficiency basis.[2]
>
> A footnote to the above reads, "The results of these several inquiries naturally varied according to areas, types of stores studied, and the interests of the surveyors, but in the main they confirm at least the existence of conflicting trends similar to those pictured by Wolff and Holthausen.[3]"

The fourth conclusion of the Federal Trade Commission Report should be analysed since it is used by the Committee in support of its views.

4. ". . . in the drug trade, chain and department store groups that were forced to increase prices generally were realizing substantial retail

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1 *Stewart, Paul W., and Dewhurst, Frederic*—Does Distribution Cost Too Much? pp. 271-272.
2 *Ibid*—pp. 274-275.
3 *Ibid*—p. 275.

gross margins, usually averaging 20 per cent or more on sales and sometimes 30 per cent or more before resale price maintenance became effective."

If department stores and chain stores were averaging *only* 20 per cent on sales on drug trade items, then they were using them as loss-leaders. "The operating expenses of R. H. Macy, a New York department store, increased from 13.65 per cent in 1888 to over 30 per cent by 1930."[1]

OPERATING EXPENSES OF CHAIN STORES AND ALL STORES IN SELECTED FIELDS[2] 1935

Net Sales equals 100 per cent

Field	*Chain*	*All stores**
Average	24.9	22.9
Grocery	16.7	12.8
Grocery and meat	17.4	14.9
General merchandise	22.9	20.7
Department Store	23.1	29.2
Variety	26.9	26.6
Men's clothing and furnishings	29.7	26.8
Shoe	29.7	27.9
Automobile accessory	30.0	28.9
Filling station	30.0	18.1
Drug (with fountain)	26.7	23.9

Source: Census of Business: 1935, Retail Chains (1937), pp. 33-37, and Retail Operating Expenses (1937) p. 8.

* No allowances included for proprietor's salary in unincorporated enterprises.

OPERATING EXPENSES OF THE DIFFERENT TYPES OF RETAIL OUTLETS AND[3] COMPARISON OF OPERATING EXPENSES BETWEEN SPECIALTY CHAINS AND CORRESPONDING GROUPS OF DEPARTMENTS IN DEPARTMENT STORES WITH

Sales of More than One Million.
Year 1933

	Basis net sales 100%
House-to-House Selling	45.3
Independent Department Stores	35.4
All Independent Stores	33.6
Mail-Order Houses	28.1
Chain Stores	27.1

Department Store Chains	27.4	Independent Department Store	36.9
Men's & Boys' Clothing & Furnishing Chains	35.4	Men's & Boys' Clothing & Furnishing Departments	36.1
Women's Ready-to-Wear Chains	30.7	Women's Ready-to-Wear Departments	36.3
Shoe Chains	31.8	Shoe Departments	37.2
Furniture Chains	41.9	Furniture Departments	43.1

[1] *Phillips, Charles F. and Duncan, Delbert J.*—Marketing, Principles and Methods, p. 14.
[2] *Ibid*—p. 322.
[3] *Filene, Edward A.*—Next Steps Forward in Retailing, 1937, p. 44.

SALES AND OPERATING EXPENSES OF CHAINS COMPARED WITH ALL OTHER[1] STORES BY SELECTED KINDS OF BUSINESS, 1935

Kind of Business	*Per Cent of Total Net Sales*	*Operating Expenses: Per Cent of Net Sales*
United States Total—		
all kinds of business	100.0	27.5
Chains	22.8	25.0
Independents and all others	77.2	28.3
Independents	73.1	28.4
All others	4.1	26.2
Groceries (without meats)		
Chains	2.5	15.6
All others	4.1	22.8
Combination stores (groceries and meats)		
Chains	4.9	17.5
All others	7.6	19.0
Department stores		
Chains	2.7	24.7
Mail-order (catalog only)	1.2	23.7
All others	6.1	32.2
Variety stores		
Chains	2.1	27.2
All others	0.2	26.5
Men's clothing-furnishing stores		
Chains	0.4	31.0
All others	1.6	28.5
Women's ready-to-wear stores		
Chains	0.6	28.8
All others	1.8	28.9
Shoe Stores		
Chains	0.8	29.6
All others	0.8	32.0
Filling stations		
Chains	1.3	29.9
All others	4.6	25.4
Furniture stores		
Chains	0.3	36.3
All others	1.8	34.6
Restaurants, cafeterias, lunch rooms		
Chains	0.7	54.5
All others	4.3	49.2
Drugstores		
Chains	0.9	26.1
All others	2.8	28.1
Jewelry stores		
Chains	0.1	49.1
All others	0.6	41.2

[1] *Stewart, Paul W. and Dewhurst, Frederic*—op. cit., pp. 138-9.

MINIMUM RETAIL MARGINS ON PRODUCTS IN THE DRUG TRADE IN CALIFORNIA[1] UNDER THE CALIFORNIA FAIR TRADE LAW, JULY 1934

Classes of Products	*Number of Items*	*Class averages*
Antiseptics (including contraceptives)	62	29.07
Cosmetics	335	28.46
Cod liver oils	49	30.28
Cough and cold preparations	24	34.79
Dentifrices	34	27.79
Deodorants	14	25.29
Effervescent salts	13	24.91
Eye preparations	6	28.66
Food, tonics, etc.	55	27.91
Foot remedies	51	30.44
Hair preparations	40	25.29
Hospital supplies	37	36.05
Household remedies	13	33.31
Laxatives	24	30.97
Liniments	13	26.52
Mineral oils	10	30.29
Miscellaneous	42	30.73
Nasal preparations	6	30.60
Ointments	30	29.06
Patents	43	31.74
Pharmaceuticals	24	28.37
Pills, tablets, capsules	42	31.19
Salts	4	41.45
Shaving supplies	58	22.64
Soaps	18	31.94
Sundries	113	41.85
Suppositories	8	34.23
Tobacco	44	18.95

Regardless of which one of the three sources of "operating expenses" we use, it is clear that 20 per cent or more on sales would not pay the operating expenses. Therefore, "chain and department store groups that were forced to increase prices" after fair trade had been using drug trade items as "loss-leaders". Further, even with the minimum fair trade prices net profit would be very moderate.

The imputed implications of conclusion number 4 of the Federal Trade Commission Report are not revealed by these figures.

Criticism of View Number 5.

The Committee admits that resale price maintenance "prevents two possible forms of monoplastic practices which tend to reduce unreasonable retail prices, namely the use of monopoly power at the retail level and the "loss-leader" device".

However, the committee believes that more direct and desirable weapons can be found to curb "loss leaders" but fails to give indications of its thinking in this respect.

The committee appears to be casting about for some sort of a reason for introducing the completely impractical device of *maximum* prices.

[1] *Grether, E. T.*—op. cit., 480-481.

The committee states on page 22, "Changes which remove that part of the consumer price from the influence of competition seriously restrict the working of a competitive system". *Maximum* prices certainly "remove that part of the consumer price from the influence of competition . . ."

The manufacturer of branded or trade-marked goods who already sets the price of his goods to the wholesaler, under maximum prices, would be given the right to prescribe and *enforce* the maximum price at which the retailer could sell his merchandise. This would give the manufacturer an absolute power over the margins of the retailer. This is inconsistent with the notion of a free economy and would give the manufacturer undreamed of power. We would be exchanging cut-pricing for "black markets".

Criticism of View Number 6.

> Resale price maintenance no doubt encourages the operation of more retail outlets and exerts an influence against the concentration of economic power in the retail field . . . first, the high margins determined by resale price maintenance . . . second, high margins merely transfer competition from prices to services and often result in wasteful forms of competition in services thus increasing costs. Moreover high margins provide a strong inducement to enter the retail field, so that a too great number of outlets, coupled with the consequent reduction in the individual volume of sales and profits, may result. Thus resale price maintenance may perhaps contribute more to discourage efficiency than to protect small business.

The committee has not produced a single piece of evidence to support their claim that high margins exist under resale price maintenance. This, I think, was adequately shown in the criticism of view number 4.

To the charge that resale price maintenance unnecessarily increases the number of outlets, let us look at the figures, keeping in mind Oxenfieldt's statement that "the greatest effect of resale price maintenance probably occurred in the drug trade."[1] United States figures are used because comparable figures exist for before and after the passage of Fair Trade laws.

In 1925 there were 60,000 drug stores in the United States—approximate figures based upon the 1925 estimates of the Statistical Abstracts of the United States, 1930.

In 1931, there wre 61,000 drug stores—Practical Druggist, October, 1937, p. 37.

Year	*Population of U.S.*	*No. of Drug Stores*	*Population Per Drug Store*
1880	50,000,000	28,000	1800
1900	75,000,000	38,000	2000
1932	120,000,000	61,000	1967

from *American Druggist,* March, 1932, p. 25

Year	*Population*	*No. of Drug Stores*
1929		58,258
1935		56,697
1939	(130,000,000)	57,903

From *Nolan, Herman C. and Maynard, Harold H.*—Drug Store Management, 1941, p. 5.

There were 50,000 drug stores in the United States in 1948 according to *Paul C. Olsen* in Marketing Drug Products, p. 104.

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[1] *Oxenfeldt, A. R.*—op. crit., footnote bottom of page 427.

According to the National Association of Boards of Pharmacy there were 49,060 drug stores in the United States on January 1, 1950.

The population of the United States in 1950 was slightly over 150,000,000.

These figures reveal that since the passage of the Fair Trade laws there has been a decrease of nearly 8,000 drug stores instead of the contemplated increase as suggested by the Committee.

Moreover, these 49,060 drug stores, most of which are operating under Fair Trade laws, are serving an average of more than 3,000 persons per drug store against a maximum of 2,250 in any previous year (1939). *This certainly indicates greater rather than less efficiency under resale price maintenance.*

Almost 9 per cent of all drug stores are operating at a loss now, compared with 4 per cent in 1942. Approximately 10 per cent of these stores have a net profit of less than 2 per cent of sales, compared with 8 per cent in this category in 1942. Those with a net profit of 2 per cent to 4 per cent approximate 18 per cent of the total, compared with 17 per cent in 1942, and those with a net profit of more than 5 per cent approximate 63 per cent of the total, compared with 71 per cent in 1942.[1]

To interpolate, costs—rent, fuel, electricity, phone rates, wages, taxes have increased for the proprietor of a drug store. While the cost-of-living index has skyrocketed, prices of fair trade merchandise have been sticky,[2] thus reducing net profits in the retail drug field.

Criticism of View Number 7.

> Resale price maintenance no doubt helps to protect the reputation of branded goods . . . However, the Committee is not convinced by the argument that the reputation of branded goods suffers from normal price variations . . . normal price reductions will not cause serious problems to the manufacture.

Protection from normal price reduction has never been a claim of those who have urged resale price maintenance. It is the abnormal price reductions such as "loss-leaders" and predatory price-cutting that resale price maintenance seeks to prevent. No better illustration is available than the current suit of the Sunbeam Corporation of Chicago against the R. H. Macy & Company of New York for $6,000,000. The suit charges that the defendants "conspired to restrain and monopolize trade by using their vast economic power to cut and fix prices of Sunbeam's products at a level where it has become unprofitable for their competitors to handle them."[3]

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[1] *Andrews, B. B.*—(Former Economic Adviser, United States Government) The Merck Report,, January 1950, p. 12.

[2] See page 22.

[3] *Globe and Mail*, Toronto, October 31, page 1.

Conclusion

The preceding pages show that the Interim Report of The Committee to Study Combines Legislation presents inadequate evidence on which to base legislation for the outlawing of resale price maintenance as an effective instrument for the lowering of the cost of living.

HORACE J. FULLER

APPENDIX B

Presentation

by

The Ontario Retail Druggists' Association

to

The Joint Parliamentary Committee
Appointed to Study
The MacQuarrie Committee Interim Report

on

Resale Price Maintenance

To the Joint Parliamentary Committee
appointed to Study the MacQuarrie
Committee Interim Report on Resale
Price Maintenance

The Ontario Retail Druggists' Association appreciates the opportunity to make representation to your Committee and to express its views on "Resale Price Maintenance".

There are about 1800 druggists in the Province of Ontario, of which 1418 have paid the Annual Membership Fee in this Association. The object of the Ontario Retail Druggists' Association is—to advance the scientific and professional aspects of Pharmacy and to promote the mutual rights and interests of Retail Druggists in Ontario and to develop methods and ideals in merchandising.

Without canvassing the opinion of each of our members on the question at this time, we believe we can say from the evidence of former opinions expressed, that every druggist in Ontario feels that retail price stabilization gives small business a chance of survival without detriment to the consumer.

Our membership represents the neighbourhood druggist who we feel, is most useful to consumers in his district, through convenient availability of goods and through actual services rendered. He must, of course, have a fair margin of profit on his sales to carry his overhead and cover the services he renders.

If the manufacturer is prohibited by law from establishing a resale price on his product and the large operator resorts to price cutting, the power of dollars alone will destroy the small independent retailer. The small independent retailer cannot compete with the big operator in a price war because his resources run out. If he does not meet the slashed prices of the price cutter, his customer will desert him; if he does meet them, he either sacrifices the honest profits he needs to keep his business going, or he has to cut wages or resort to mark-up practices of the price cutters on other merchandise of which his variety is smaller. And if he discontinues the sale of cut-price goods, his customers will go elsewhere to fill their needs. Whatever he does he stands to lose and our economy stands to lose with him.

Business men generally from experience know that no one can take a loss consistently and continue to cover his operating costs to say nothing of making a profit, yet that is what price-cutting merchants profess to do.

As retailers and consumers we believe that price-cutting has been a potent weapon of monopoly—a means of killing the small rivals, injurious to the good-will and business of the producer and distributor of identified goods and injurious to the general public as well. It deceives the customer when used as a bait for the purpose of getting customers away from a competitor, creating the false impression that since he undersells a particular item identified by a trade name and a standard price, he sells all other items at a similarly low price. This incites retaliatory cutting to below cost, preventing each one from earning a reasonable profit in the sale of the item, and consequent impairment of the manufacturer's trademarked goods, especially when the price level reached is so low, that no dealer will be interested in handling the goods. This may permanently cut off some of the manufacturer's avenue of distribution; his advertising is wasted, because it may become ineffective through lack of distribution and he faces all this because at the outset his products are in demand, are of recognized value and are known to be worth the normal price.

Price cutting injuries the consumer. The use of loss leaders builds up phoney bargain psychology in consumers and they eventually are persuaded to buy goods which are not so well known on which the retailer must make a larger mark-up in order to replace the loss on items sold at cost or less.

We believe retailers are continually studying ways and means of distributing merchandise efficiently and economically in order to retain sufficient consumer patronage and to remain in business, and the right of a manufacturer to stipulate the conditions under which his products are to be distributed should be recognized, subject to the reservation that he may be required to discontinue his policy if a competent authority concludes that it is against the public interest.

In the past years a number of laws supported by public opinion have permitted prices to be set. For instance—Minimum Hour and Wage Law, Milk and Butter Prices, Freight and Passenger Rates, War Time Prices and Trade Board and Wheat Boards. A policy found to stabilize business in Government operation, should, we think, be extended to a manufacturer who wishes the right to prevent his product being consistently sold at less than the overhead cost of efficient retail operators, and to provide an orderly flow of his commodity through the distributive channels.

The position of the independent producer who establishes the price at which his own trade-marked article shall be sold to the consumer, we think should not be classed with that of a combination or trust which controls the market and fixes the price of other than his own product.

The independent producer establishes the price at his peril—the peril that—if he sets it too high, either the consumer will not buy, or, if the article is popular and the profits high, he will invite even more competition, which will regulate his set price.

The Consumer pays the price asked because he deems the article worth that price as compared with the costs of other competitive articles.

If the producer of a trade-marked article is prohibited from maintaining his established price, competition is created to such a ruinous extent that no retailer will want to handle the product and the producer will be forced to sell to the consumer direct or establish agencies, thereby imposing upon the small retailer a serious handicap and the resulting displacement of small business would be a serious economic loss.

We believe the manufacturer's fixed resale price constitutes a code of business morality which provides the following tangible benefits for consumers:

It keeps prices down;

It prevents deliberate deception of the public;

It helps to preserve the efficient retailer, and through him, our system of mass distribution;

It helps to keep quality trade-marked brands available to consumers at low mass produced costs;

It preserves the consumer's power as a final arbiter of prices;

It is one of our most effective safeguards against monopoly by preserving the greater number of outlets.

From all the evidence we can gather we think that the principle of resale price maintenance is not detrimental to the public and we would not be in favor of legislation which would deprive an individual producer of the right to prescribe and enforce resale prices for goods bearing his trade mark and brand name.

To summarize—Where Government meets commerce two tendencies are seen—*First*—Liberty of action to individuals; *Second*—Regulation to protect the public. The Pharmacists usually think that (1) should be left all possible latitude and that (2) should only enter where the public interest is quite clearly invaded. They think that "Fair Trade" programmes used in America to combat dangerous monopoly, should be avoided as long as possible, and that it is better to maintain the health of distribution through the play of free effort. The Pharmacists believe, that Regulation, such as "Fair Trade", may not be needed in Canada, so long as nothing is done that prevents the individual manufacturer acting alone, from stabilizing the terms and prices at which his brand name products shall be handled at wholesale and retail, his right to choose his customers for any reason, and to use that freedom of choice to regulate commerce in his own brand name item.

The Pharmacists do not think there is any chance that a "Combines Act" will prejudice the liberty of individual manufacturers in this matter.

And if this liberty is assured, the disorders of excessive price and publicity competition at the retail level, which raises the average costs of distribution, and seems to prejudice rather than to further the interest of the consumers as a whole, are not so likely to multiply and the need for regulation, such as "Fair Trade", with all its expensive processes, will probably not arise.

Respectfully submitted,

HAROLD SMITH,

Secretary-Treasurer and Business Manager,

Ontario Retail Druggists' Association.

Submitted November 21st, 1951.

HOUSE OF COMMONS

Fifth Session—Twenty-first Parliament

1951

(Second Session)

JOINT COMMITTEE OF THE SENATE AND THE HOUSE OF COMMONS

ON

COMBINES LEGISLATION

Joint Chairmen—The Honourable Senator A. L. Beaubien
Mr. James Sinclair, M.P.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 5

FRIDAY, NOVEMBER 23, 1951

WITNESSES:

Mr. R. A. Harris, Managing Director, C. H. Smith Company, Windsor, Ontario; Mr. Arnold Rands, Food Consultant, National Food Division, Retail Merchants Association; Mr. Milton Shaeffer, Vice-President, Retail Men's Wear Association of Canada; Mr. Lloyd McKee, Electrical Housekeeping, Toronto, Ontario; Mr. R. S. Tinsley, Assistant General Manager, Canadian Retail Federation, Toronto, Ontario, all representing the Canadian Retail Federation.

OTTAWA
EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY
1951

MINUTES OF PROCEEDINGS

FRIDAY, November 23, 1951.

The Joint Committee of the Senate and the House of Commons on Combines Legislation met at 10.30 o'clock a.m. The Joint Chairmen, The Honourable Senator A. L. Beaubien and Mr. James Sinclair, M.P., were present, Mr. Sinclair presiding.

Also present:

For the Senate: The Honourable Senators Aseltine, Hawkins, Lambert.

For the House of Commons: Messrs. Beaudry, Boucher, Carroll, Carter, Dickey, Fulton, Garson, Harkness, Harrison, Hees, Jutras, MacInnis, Mott, Shaw, Stuart (*Charlotte*), Thatcher.

In attendance: Mr. R. A. Harris, Managing Director, C. H. Smith Company, Windsor, Ontario; Mr. Arnold Rands, Food Consultant, National Food Division, Retail Merchants Association; Mr. Milton Shaeffer, Vice-President, Retail Men's Wear Association of Canada; Mr. Lloyd McKee, Electrical Housekeeping, Toronto, Ontario; Mr. R. S. Tinsley, Assistant General Manager, Canadian Retail Federation, Toronto, Ontario, all representing the Canadian Retail Federation.

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

Your Sub-Committee on Agenda and Procedure met on November 22 and recommends:

1. That there be no sitting of the Committee on Wednesday, November 28.

2. That the representatives of the Canadian Electrical Manufacturers Association be heard on Monday, November 26; of the Trades and Labor Congress of Canada on Tuesday, November 27; of the Canadian Pharmaceutical Association on Thursday, November 29, and of the Toilet Goods Manufacturers Association on Friday, November 30.

The said report was concurred in.

Mr. Harris was called, tabled a brief on behalf of the Canadian Retail Federation, which is printed as *Appendix A*, to this day's Minutes of Proceedings and Evidence; was heard and questioned thereon.

Messrs. Rands, Shaeffer, McKee and Tinsley were called and questioned.

At 1.00 o'clock p.m., the Committee adjourned until 3.30 o'clock p.m. this day.

AFTERNOON SITTING

The Joint Committee resumed at 3.30 o'clock p.m. The Joint Chairmen, The Honourable Senator A. L. Beaubien and Mr. James Sinclair, M.P., were present, Mr. Sinclair presiding.

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Also present:

For the Senate: The Honourable Senator Lambert.

For the House of Commons: Messrs. Beaudry, Boucher, Carroll, Carter, Dickey, Fulton, Garson, Harkness, Hees, Jutras, MacInnis, Mott, Shaw, Stuart (*Charlotte*), Thatcher.

In attendance: As listed for the morning sitting.

Questioning of the witnesses was continued.

The witnesses retired.

At 5.20 o'clock p.m., the Committee adjourned until Monday, November 26, at 10.30 o'clock a.m.

A. L. BURGESS,
Clerk of the Committee.

EVIDENCE

NOVEMBER 23, 1951.

10:30 a.m.

The CHAIRMAN: Gentlemen, we have a quorum. Come to order please.

Our subcommittee on agenda and procedure met after the meeting yesterday and our first recommendation is that there should be no meeting on Wednesday, November 28, to give one break in the week. The second suggestion of the subcommittee on agenda and procedure was that the representatives of the Electrical Manufacturers' Association should be heard on Monday, November 26; that on Tuesday, November 27, we should hear the Trades and Labour Congress of Canada; that on Thursday, November 29, we should have the Canadian Pharmecutical Association back again to complete their submission; and that on Friday, November 30, we should have the Toilet Goods Manufacturers' Association.

At the meeting of the steering committee there was quite a bit of discussion as to whether it is going to be possible for us to finish our work at this session. I think that most of the members were rather daunted by the size of the brief presented by the druggists. I might say that as far as I know it is by far the largest brief that will be presented. It covers the field in which there is the highest degree of price maintenance, sixty per cent, as mentioned by the witness here yesterday.

But the point which bothered me, which I discussed with the subcommittee, and which I have been considering since that time, is just to what extent and in what direction is this present inquiry going. In the views of some of the members now we are having a full dress inquiry into every phase of resale price maintenance; in other words, that we are duplicating the work of the MacQuarrie committee. So I went back to *Hansard*, to the debate on the setting up of this committee, and I noticed that the reason why this parliamentary committee was set up was that after the government had announced its intention in the speech from the throne of giving legislative effect to the conclusions of the MacQuarrie committee they received requests from many individual merchants, manufacturers and executives of trade associations for an opportunity to present their views, and the setting up of this committee was an attempt to meet their requests that they be given an opportunity in an open committee to present their views as to whether or not resale price maintenance was in the public interest. I might refer the committee to the remarks of the Minister of Justice (Hon. Mr. Garson) page 664 of *Hansard* of November 2, on the appointment of this committee, and on page 783; and the remarks of the Prime Minister on page 672 are to the same effect. That was the genesis of this inquiry and it seems to me that our primary function, therefore, is to allow these groups who have asked for a chance to state their case in public to appear here. I must confess that, in my view, if we are to hear all the groups who want to be heard and who have filed briefs or who have been asked to file briefs or who have indicated their desire to appear, we will be here until next summer. I myself feel, in view of this study and from talking to members that the primary purpose of this committee, in view of the fact that the government has indicated its intention of introducing legislation, is that we should give an opportunity to those particular associations who are desirous of coming forward to show us or convince us that resale price maintenance is something

which is not just in their interests but in the interest of the public; that they should be heard, and that in the light of the evidence heard we may suggest to the government amendments to the legislation.

And now, I throw the meeting open. I think it is a very important matter for us to see whether or not it will be possible for us to complete our work this session and make a report to the House of Commons. If, on the other hand, it is the thought of the members that we are going to have a full, wide open inquiry, similar to that of the MacQuarrie committee, on this matter of resale price maintenance, then I do not know when we will finish.

Mr. THATCHER: Mr. Chairman, if we are going to hear the briefs which are already turned in—I understand there are a good many of them—I certainly suggest that it is not possible for us to complete our deliberations within the next three weeks. This is a matter which has waited for years, I suppose, to be solved. Surely no good purpose can be served by rushing legislation through in the three weeks that are left before a proper examination has been made. I could understand the government fears that they are going to be accused of stalling; yet I do not see any way in which we could possibly finish this work before Christmas and do it thoroughly. I submit that we might go ahead examining the many briefs before Christmas and then, as soon as the House reconvenes after the New Year, we might start calling in individual companies from each of the major industries. For instance, I suggest General Motors from the automobile industry; with respect to the tobacco industry we might call the Imperial Tobacco; and in connection with the large retailers possibly we might call the T. Eaton Company; and perhaps the Frosst Company of the drug business—firms of that kind who use price resale maintenance, and have them justify their case. Surely if we are going to make a proper examination of this problem from the practical point of view, we must reconvene next session. Understand me, please, I am speaking personally;—I have not talked to Mr. MacInnis—but I for one simply do not see how, in three weeks, we are going to deal with this problem. That is why I say that we should carry it over to the next session. But I am not going to be one who accuses the government of stalling if we are not through in three weeks.

The CHAIRMAN: Your view then is that it should be a wide open inquiry in every phase of resale price maintenance, notwithstanding the fact that this committee was set up to give manufacturers and retailers who desire to protest against the conclusions of the MacQuarrie committee an opportunity to come forward and present their views to a parliamentary committee.

Mr. THATCHER: I certainly think the committee should have a chance to do its job properly. The members cannot reach a conclusion on this matter in three weeks.

Mr. SHAW: Mr. Chairman, it occurs to me that what we are discussing right now is something which should have been discussed ten days or two weeks ago, although, possibly, it is not yet too late to make a decision on this aspect of the matter. Provided we have not put ourselves in the position where we are going to be unfair to someone.

I was under the impression from the beginning that we were not to canvass the entire field canvassed by the MacQuarrie committee. In fact, I personally felt that that would be ridiculous, but it appears that thus far that is exactly what we have undertaken to do. Now, if it is not too late let us make a decision.

Mr. BEAUDRY: On a point of privilege, Mr. Chairman. Yesterday you found it necessary and made it known extremely politely that I curtail my examination of a witness after, roughly, twelve minutes. I think every member of the committee feels as I do that that did not allow me to bring out some facts which I thought were salient and I for one very definitely feel that if

we have to rush the conduct of our affairs to the point where members of the committee will leave sessions or the entire series of sessions and not feel satisfied that they have explored all the avenues of truth, I think our committee so far as I am concerned will not have been conclusive and fully satisfactory to each member.

The CHAIRMAN: At the moment I am puzzled about this point of privilege. You are just speaking the same way as anyone else would want to speak. I cannot follow your point of privilege.

Mr. BEAUDRY: Well, my privilege is that yesterday while asking questions the Chair suggested to me that I stop asking question because other members wanted to ask some.

The CHAIRMAN: Yes, I did.

Mr. BEAUDRY: Which I agree was quite honest and polite procedure. Well, I submitted to that but I had not finished asking questions of that particular witness and if we have to hurry our examination of witnesses to the point where we have a deadline, I and other members of the committee will not be able to ask the witnesses questions we want to ask.

Hon. Mr. BEAUBIEN (*Joint Chairman*): Is that not why we arranged to recall the witnesses next week?

Mr. BEAUDRY: I agree, but I do not think we can finish in time unless we abrogate the members' privileges of examining to the fullest extent.

The CHAIRMAN: Mr. Beaudry has made a suggestion which I do not think is a point of privilege. What I would want the members to act upon is whether this is to be a full, all out inquiry. If it is there will be tremendous questioning, but if we are getting down to the point of resale price maintenance and the reasons for it, the points are almost identical by each witness as he comes forward, and in the briefs which we have received from the other groups opposed to the practice their arguments are almost identical too. I would think next week we will have exhausted the case for and against resale price maintenance.

Mr. FULTON: Well, isn't that what makes it imperative that not the scope of the committee be widened but the details be very exhaustive? I do not take it—and certainly hope I should not take it from what you have said—that in your view this committee was set up to afford a sounding board to hear those who are opposed or in favour of resale price maintenance because it is not necessary to use members of parliament in that way; nor do I take it that the intention was simply to have us approve the proposal that legislation should be introduced. In other words, sit here for three weeks and then provide the facilities for the government to say, "Well, we did not do this ourselves; we had the approval of a parliamentary committee." I do not believe that either of those purposes was the reason why this committee was set up. Surely the committee was set up not to directly criticize the MacQuarrie report but nevertheless to satisfy ourselves whether or not we agree with the MacQuarrie report and its recommendations, and the MacQuarrie report recommends that there be introduced legislation making resale price maintenance illegal. Now, that is a very, very big question and the only way it seems to me in which we can satisfy ourselves as to whether that recommendation is sound and should be acted on is, firstly, to hear the views for and against the proposal, as you have stated; and as you have stated there is a striking similarity in those views. But merely for us to hear the views of those such as trade organizations and labour unions who are opposed or in favour of the MacQuarrie recommendations does not, I think, assist us to make up our own minds. In my view that process can only be done properly if we send for

representatives of the automobile industry, representatives of the tobacco industry, representatives of various individual industries, to get down to hard facts and figures as to the experience and the practice in their industry as to what would be the effect of eliminating resale price maintenance, what would be the effect of that on prices, how would that affect the consumer initially and in the long run. It seems to me that only as a result of that sort of process will I be prepared, as far as I am concerned, to say whether I approve or reject the recommendations of the MacQuarrie Committee. It seems to me that was the process we were asked to undertake when we were set up to review the MacQuarrie report. Therefore, I do not see there is any possibility of concluding that sort of an inquiry before Christmas, and I agree with Mr. Thatcher that although there may be, superficially, some suggestion if we delay our report that we are sort of stalling, but I will be one who cannot make that criticism, for I do not believe we should rush this matter. If the MacQuarrie report had not been referred to us it would be different, but now we are committed to a long study, because once having embarked on this inquiry we will not be doing ourselves justice, and the economy of the country may be done a great harm were we not to go into the details and make a sound recommendation.

Mr. MACINNIS: As Mr. Thatcher says, I have not even discussed this matter with my colleagues on the committee, but it seems to me that what this committee was appointed to do, as the chairman said, is stated on page 664 of *Hansard* of November 2. I am quoting:

> "The joint committee will therefore be directed to consider the MacQuarrie Committee's interim report and to consider appropriate amendments to the Combines Investigation Act based thereon."

In considering that report we were to hear, if they cared to make representation, some of those who made representation to the MacQuarrie Committee, and the purpose in setting up this committee was that those representations would get publicity which they did not get from the MacQuarrie Committee. In my opinion we are not here to discuss every phase and every item that is covered by resale price maintenance. We are here to consider the principle of resale price maintenance and it is the same principle whether it is in the drug store, clothing business, or whatever it may be, and after we have considered its effect on one industry we have its effect in all industries, and that should not take us until Christmas. I took this position when speaking on the question in the House, and I must take the same position now, that there is enough evidence not only before this committee but before the government and before parliament through all the investigations that have taken place from 1926 on to enable us to make a decision in the matter and I think that it would be bad policy indeed to keep on hearing these representations till the House would have to close in order to let us get home for the Christmas holidays.

Mr. BEAUDRY: We are appointed to inquire into the interim report of the MacQuarrie Committee. I submit that if we try to accelerate or try to complete our investigation at a definite date we might find ourselves in a position of having determined on a principle on which the original body appointed to examine the principle might not yet have made a final report.

Hon. Mr. GARSON: Well now, Mr. Chairman, that is entirely contrary to the facts because—

Mr. BEAUDRY: I did not know.

Hon. Mr. GARSON: If my honourable friend does not know, he would have known about it if he had listened to what went on in the House because it was explicitly stated, not once but several times, that while this was an interim

report in the sense that it was made before the final report was received, as far as resale price maintenance was concerned it is the final report of the MacQuarrie committee. So that my hon. friend need be under no such apprehension as that which he has just voiced.

Mr. BEAUDRY: I was not in the House at that time, but I am glad to have that explanation.

The CHAIRMAN: Mr. Carroll?

Mr. CARROLL: Might I ask to whom notices were sent? To what organizations were notices sent by the secretary, or by whoever sends out such notices?

The CHAIRMAN: The procedure generally, as Mr. Garson has said, was to urge the receipt of representations primarily from those merchants and manufacturers who wrote in, or, who through the press said they felt there should be a public hearing, so that they could put forward publicly their points of view. Therefore, when we were set up, we wrote to each of the people whose names had been supplied to us by Mr. Garson, as well as to those who had publicly stated their objections to the recommendations contained in the MacQuarrie committee report. Many of those who made representations to the MacQuarrie committee gave their briefs to the press; and those groups were advised that if they cared to make representations, thier briefs would be circulated to the committee.

The briefs would fall into three categories: those which would be merely filed, and those which would be printed as an appendix to our proceedings, so that people who are not here and who had not received copies through the mail, namely, our readers across the country, might read of the proceedings and have the benefit of the views given; and finally, those briefs on which the committee might express a desire to have further information.

A brief is a submission of principles, as far as that group is concerned; but the people who submitted briefs were told that they might expect to be called, and that they should be ready to be called in case this committee decided, after reading the briefs, that it would like to have further information on certain points.

Mr. CARROLL: Have they in some way or other communicated with the committee?

The CHAIRMAN: Yes. A few have turned in briefs. Others have indicated that they did not care to turn in any briefs, and others have said that the views which they expressed before the MacQuarrie commission should stand. The people who believe there should be legislation against resale price maintenance have indicated some desire that the government go ahead with the MacQuarrie commission report. It is those people in the trade who are against resale price maintenance who have the greatest interest at the moment, since they asked for an opportunity to put forward their point of view. Therefore they are the ones who have shown the greatest interest in it.

Mr. CARROLL: Have there been any other associations, retail or wholesale, who have asked for permission to file briefs, outside of those you have notified?

The CHAIRMAN: Other briefs have come in through the publicity we got in the press. Let me say that we are more than willing to have any briefs and they will be circulated among the members.

Mr. CARROLL: I would be the last man in the world to curtail information that this committee should have; and if by going ahead in a more or less fast way we are not going to get a full picture of the whole thing, I suggest that we wait until we can get a full picture. But if, as we go along, we find out that we have everything that we have been asked to take cognizance of, I would say, if we have done that, then we have done our job. If we can do it within the prescribed time, all well and good; but if we cannot, then, that is another question.

The CHAIRMAN: Senator Lambert?

Hon. Mr. LAMBERT: Am I right, Mr. Chairman, in assuming that the MacQuarrie commission investigation was a direct result, or might one describe it as a carry-over from the price inquiry made by the Curtis Commission?

The CHAIRMAN: The Minister of Justice could answer that.

Hon. Mr. GARSON: I think probably I had better make a brief statement about the situation. I think it is only a carryover in the sense that the previous Curtis inquiry report was available to us and, in the course of reading it, naturally it would affect our opinion on the matter. Other than that, this is certainly not an outcome because the MacQuarrie committee, when set up, was instructed to cover the whole ambit of the Combines Investigation Act of which this subject of resale price maintenance is only one part.

The committee was appointed in June of 1950 and it was hoped they would have a report ready across the whole field so that we might consider legislation relating to the whole of the Combines Investigation Act.

Hon. Mr. LAMBERT: You are referring to the MacQuarrie Commission now?

Hon. Mr. GARSON: Yes, it is the MacQuarrie Commission I am referring to now. They went into these matters very thoroughly, starting in June of 1950. As Mr. Beaudry has said, they are not finished with the entire work yet, but they had their work on resale price maintenance brought very nearly to completion this fall and we asked them to let us have an interim report before the main report came. This interim report was to cover their completed work on the subject of resale price maintenance.

Now, while there may be differences of opinion as to the competence of the MacQuarrie committee we have never had any other view from the time we appointed it but that it was a thoroughly competent committee, and that it has done a thoroughly complete job. It has taken a long time to do it and has gone very thoroughly into the whole matter. It did receive extensive briefs, and had long discussions. It did not curtail discussions in any way and it has done a job which if this committee were to do it would take from now until at least next summer; and we thus could never contemplate any legislation in the main session of parliament.

We received this report and the commentaries of the various officials of the Combines Investigation Department concerning it. They perhaps have more detailed and practical knowledge than any other group of men because they make their living enforcing the Combines Investigation Act. With the advantage of their views in the matter, we fully accepted the report. As some of the speakers who have just spoken in this committee have indicated, we, in the speech from the throne and in the debate in the House of Commons, committed ourselves to the acceptance of the report and to the introduction of legislation based upon it.

Then, from organizations who had made representations to the MacQuarrie committee, we received submissions to the effect that they quite conscientiously and honestly felt we were in error in accepting the report and that the report was in error. They said: this resale price maintenance is a practice which has prevailed in business for a good many years and we would like you to hear us before you act on this report, in spite of the fact that the report is in part based upon our own representations. They said: we honestly think the MacQuarrie committee is wrong, so give us a chance to convince you that it is wrong and that you are wrong in accepting it.

Not only to them, but in the House of Commons, we said in the statements made by the Prime Minister and myself to which the chairman referred a moment ago:

All right, in view of the fact that this practice has prevailed for all these years and it is an important matter, we have no objection to hear these representations from you; but we think it would be very much preferable to have them heard by a parliamentary Committee rather than by members of the cabinet because in this way the public will have a chance to hear the merits of the pros and cons of this issue. The thought that we had in passing the resolution in the House of Commons sending this matter on to this committee was that the committee would hear these views of the various organizations. If, as Mr. Carroll said a moment ago, it appeared, during the course of the representations which they made as the hearings went on, that they were able to discharge the onus which is upon them of showing that the report is not in order, and made it appear there was some doubt about the validity of the report, then I think this committee would be warranted in digging into all the same matters the MacQuarrie Committee had considered. But if we get from the representations that are made before us no argument that convinces us that there is anything wrong with the report I cannot see where we have any conscientious duty to go over the whole field that has already been covered very thoroughly by the MacQuarrie Committee. To do so would be a gigantic job and one that was not contemplated when this committee was set up. The quotation the chairman made from my remarks in the House of Commons bears out everything I said this morning, but less there should be any misunderstanding on the very points I have been discussing, we inserted, after I cleared it with my colleagues, this paragraph:

> It is the hope and the expectation of the government that this joint parliamentary committee will get its work under way at the earliest possible moment and will proceed with sufficient dispatch to enable the appropriate legislation it is set up to consider to be dealt with by parliament before the end of this session as forecast in the speech from the throne.

Now, if there had been any doubt from my general remarks about what the intention was in setting up the committee, it was certainly cleared up by that expressed paragraph. And what is the reference itself?

> That a joint committee of both houses of parliament be appointed to consider the interim report of the committee appointed to study combines legislation, tabled in the House of Commons Friday, October 12, 1951; and to consider appropriate amendments to the Combines Investigation Act based thereon.

In other words, we were instructing the committee to implement what we had announced in the speech from the throne unless it appeared from representations made before it that there were very substantial reasons why they should not do so.

Now, I must say, speaking only for myself, that there has been nothing that has transpired in this committee up till the present time that would move me to think that the government's decision was incorrect in any way. It may be that the gentlemen we have before us here this morning or other bodies will raise a serious doubt in our minds about the validity of that report. Until that doubt is raised I am strongly of the opinion that it would be quite an improper performance of our function to go delving into all these details into which the MacQuarrie Committee went in order to reach their opinion. It is not as if the subject matter had been sent to us to make a report ourselves without the benefit of a previous detailed consideration by a highly competent body. It is not as if there were any doubt about government policy on the matter. We did not send the matter to the committee to enunciate policy. We had announced our policy before we sent it to the committee.

The whole purpose of the committee was to see whether there was some substantial reason for reconsidering the report of the MacQuarrie Committee. If no substantial reason emerges, then I say that there is no reason why we should go into these details.

Hon. Mr. LAMBERT: May I continue. I asked first of all about the Curtis Commission. My impression is that the inquiry, under the reference given to it, proceeded to a certain point. It held a wide open inquiry, free to the press, free to all the publicity that could be given to it, and it sat pretty much during 1949, I think, and its report came out in 1950. However, it left the suggestion that further inquiry might be made into the field that is now covered by the MacQuarrie Committee. I think it is very important in considering this matter now to associate the MacQuarrie report and the inquiry which we are making into the MacQuarrie report with the beginnings of this whole undertaking, which is the Curtis Commission's Prices Inquiry. Now, the essential instruction in connection with the price inquiry by the Curtis Commission, the essential instruction given by the Prime Minister of that day was that it should bring to bear upon the situation the whole moral effect of public opinion in this country and that it was not intended to legislate particularly or to witch hunt for particular factors or situations. It was, rather, an investigation of the economic situation which brought about the suggested complaints about prices, and I submit now, as I did in the beginning here, that it is a mistake to set down a deadline or attempt to set down a deadline in connection with this inquiry. I do not suggest that this committee should undertake as wide and as detailed an inquiry as the Curtis Commission did, but I do submit that the MacQuarrie report does not begin to approach, and I do not think their investigation has begun to approach, from the public point of view, and from the point of view of a democratic interest in this whole subject, the work that was done by the Curtis Commission. The MacQuarrie report is a very well stated summary; someone has compared it to an obiter dictum of the Supreme Court on arguments, and I think that is what it is. There is not a word of evidence given in it. There is a summary of arguments, pro and con, on this subject, but, to my way of thinking, it is something that invites me, as a member of parliament, to reflect back to the people of this country public opinion, to which I am responsible, some degree of evidence to support the conclusions of the MacQuarrie report. That is the only point I would like to bring out.

Mr. MACINNIS: Mr. Chairman, might I quote from the Royal Commission on Prices what they said on this point in their report. This is the report of the commission that Senator Lambert referred to as the Curtis Commission. It is to be found on page 41 of the Report of the Royal Commission on Prices. I read:

> Throughout our inquiry we have been impressed by the degree to which individual manufacturers fix the resale prices of their products and so narrow the area in which price competition amongst wholesalers and retailers is operative. In view of the extension of this practice, we recommend that the Combines Investigation Commission give careful study to this problem with a view to devising measures to deal with it.

Now, I understand and I want to say this, because there is the impression that the MacQuarrie Committee did not give this anything except superficial consideration, that if I remember the remarks of the Minister of Justice in introducing the resolution, I think he had in mind—if he did not quote from it—this recommendation, that it was what the MacQuarrie Committee was asked specifically to investigate, this aspect of resale price maintenance, and the MacQuarrie Committee, in my opinion, has done that after due consideration and investigation.

Hon. Mr. GARSON: Might I refer just for a moment to Mr. MacInnis' remarks. He is absolutely right in what he remembers. In the initial invitation for briefs in this matter the MacQuarrie Committee singled out for special consideration the subject of resale price maintenance, and what Mr. MacInnis says is quite accurate.

Mr. BEAUDRY: In dealing with an entirely different subject, I am quite in sympathy with Senator Lambert's remarks, and in order to expedite matters, since we have very little in the way of concrete evidence so far before us, and since it is a laborious task to elicit it from witnesses, I would like to know whether we could not get from official sources a definite set of figures that we would otherwise have to draw from every witness. If I may I would like to suggest some that could incorporate in the record, to which we could refer without asking witnesses for it. We should obtain information, for instance, as to the number of independent stores and independent businesses by provinces and by classification, let us say, in 1930, 1935, 1940 and 1950, and information as to the aggregate volume of business per classification. We could have the same information filed for chain and departmental stores, the volume of mail order business done in Canada in these different years, the number of bankruptcies since 1930, again by classification. Frem the Income Tax Department I would also like to have the yearly income of stores and independent businesses, and their numbers. The same for chains. So far as I am concerned, that would give me a basis of statistics to start from when a witness was being questioned, and when he says my business was hurt because there were so many bankruptcies, and so forth, I would like to have before me the figures which either substantiate or contradict these statements. If it were possible for counsel to secure these figures, either from the Bureau of Statistics or from the Income Tax Department or from other sources, it would be of great benefit to the committee.

The CHAIRMAN: You raise the point I raised a little earlier as to the purpose of this committee, which is to see whether this practice is to the advantage of the retailer or the manuafcturer or in the public interest; the sort of figures you are asking for would certainly relate that question as to the manufacturer or retailer, but not as to the consumer's interest.

Mr. BEAUDRY: I am not sure that a bankruptcy only benefits the retailer. I think it does affect consumer interest to a point.

The CHAIRMAN: You are aware of the point that an excessive number of businesses beyond the number economically required would bring about a number of bankruptcies and they are in the public interest because the cost of distribution when there are an excessive number of distribution centres has a direct relation to the cost of distribution.

Mr. BEAUDRY: I suggest that if we had these figures on the record we would not waste any time in eliciting them from the various witnesses.

Hon. Mr. LAMBERT: There is one point I referred to in my remarks that I would like to make myself clear on. There is no word of mine, I am sure, that would suggest that the MacQuarrie Committee had not done whatever work it had to do thoroughly. I am not in any way reflecting on that. What I say is the report as a document on which to make an inquiry contains no evidence. Now, the reference on which the MacQuarrie Committee was set up was this, and I think it is worthwhile putting it on the record:

> to study, in the light of present day conditions, the purposes and methods of the Combines Investigation Act and related Canadian statutes, and the legislation and procedures of other countries, in so far as the later appear likely to afford assistance, and to recommend what amend-

ments, if any, should be made to our Canadian legislation in order to make it a more effective instrument for the encouraging and safeguarding of our free economy.

Now, as I suggested in my previous remarks, the MacQuarrie Committee was set up largely as a result of the concluding suggestions of the previous commission, the Curtis Commission, largely because their reference was too wide to include a special inquiry into the Combines Investigation Act. Therefore, the suggestion was, it left it open to adopt the suggestion of that commission and it was so adopted, with specific instructions, and I submit that those instructions were considerably more specific, more definite in their point of view than the references to the Curtis Commission which preceded it and which resulted in a very wide open inquiry with evidence that was available to everybody.

The CHAIRMAN: In fairness to the MacQuarrie Committee, I think I should bring out that in the circular letter which they sent out to everybody interested, they mentioned it was set up under the Combines Investigation Act, but there was one paragraph they specifically directed attention to, and that is the sixth paragraph, which reads as follows:

> You may recall that the royal commission on prices in their examination of restrictive business practices gave particular attention to the practice of resale price maintenance and recommended that careful study be given to this problem from the viewpoint of its effect on price competition amongst wholesalers and retailers. In view of this the committee invites comments on this particular problem as well as on the Combines Investigation Act generally. In particular, the committee would appreciate receiving extended comments on the tentative conclusion of the royal commission on prices as to the effects of the practice upon the public interest. The matter is dealt with in Vol. I, pages 27, 28 and 41, and Vol. II, pages 256 to 259 of the report of the royal commission on prices as published by the king's printer in 1949.

When the MacQuarrie Committee directed such specific attention to that, we can rest assured that the people who received these letters were aware of that and brought forward evidence they thought necessary to cover that point.

Hon. Mr. LAMBERT: The MacQuarrie Committee, in other words, invites us to report on their own findings.

The CHAIRMAN: This was a letter sent by the MacQuarrie Committee to the different people who would be interested.

Hon. Mr. LAMBERT: They linked the two things up together.

Mr. THATCHER: Could the chairman tell the committee how many briefs we have now had, that is including the one today, and also how many others you have invited and expect to come in?

The CHAIRMAN: There are six briefs in at the present time other than the ones we have all received, and there are another eleven which have a possibility of being accepted. I would point out that many of these briefs will be exact duplicates of what the other briefs contained. The committee did not decide we were going to hear evidence on every brief.

Mr. THATCHER: The point I wanted to make is this: you have 17 briefs at this moment. Some of them are very important briefs. We have heard none from the farm organizations, none from the co-operatives. There are several trade unions, perhaps, to come in, and there are a good many organizations in the retail field which have not been filed. If we sit till the 15th of December, as from today we can have 12 possible meetings. I do not see how it is

physically possible for us to go over those 17 briefs, if we do it does not seem reasonable. I think this principle of abolishing price maintenance is all right, but some people have come to us and told us we are going to be hurt if you do it. I do not think that parliament can deny those people at least a hearing, and if they are going to be heard we should at least let them put their case before us.

The Minister of Justice has said that unless something substantial emerges he is certainly not going to change his opinion. I agree with him, but how can anything emerge if we do not give these people a chance to be here and make representations. In twelve meetings that just cannot be done.

The CHAIRMAN: You missed the point in my opening remarks. The labour groups, the farm groups, and so on, have all made reports to the MacQuarrie committee and they have said that they are standing by those positions and they are, in fact, upset by the fact that the government is not proceeding on the basis of the MacQuarrie Report. Those groups are quite content to have their briefs stand and that we should go on and make our recommendations to the government.

Mr. THATCHER: Just talking about the MacQuarrie committee, I do not deny that they are very able men, but I draw your attention to the fact that there was not one businessman on the committee. While they may have had the theoretical approach to the field well covered I am not so sure that they had the practical field covered, and that they were for that reason able to do a proper job. I am strongly in favour of going into the next session.

Mr. FULTON: I believe we cannot decide this unless we consider the position we are actually in. No matter what the reference to the committee may have said I believe the position actually arises out of the terms of reference. We have had referred, by the terms of the order of the House a report by a committee which made certain recommendations. We are being asked to consider those recommendations. Now, the MacQuarrie committee report says that price maintenance should be made illegal and it recommends that it be made illegal. The result of that recommendation would be to make it illegal without reference to whether it is detrimental to the public interest or not.

I may say that the MacQuarrie committee did not say that it was against the public interest, and the result of their recommendation would be to make price maintenance illegal without reference to whether it is or is not against public interest.

The MacQuarrie committee found that on balance price maintenance was against public interest and they proceeded, in their recommendations, to recommend legislation based on that finding. We are invited to approve or reject that recommendation and I do not see how we can say that the word "consider" can be interpreted otherwise. We are invited to either approve or reject their recommendation. How can we approve a recommendation without going behind the mere recommendation itself, and without concerning ourselves as to whether or not price maintenance does advance or retard public interest?

I think by the very fact that we have the MacQuarrie committee report referred to us, a report which proceeds on that basis, we are compelled at least to take a glance at the field which the MacQuarrie committee considered in arriving at their recommendations. If the evidence of the MacQuarrie committee had been summarized in their report or had been referred to us with their report we would not have to do that. Senator Lambert has put his finger on it when he says there is not a vestige of actual factual evidence in the MacQuarrie Report which is referred to us.

It seems, therefore, if this committee is to arrive at a conclusion with regard to the MacQuarrie committee report, which has recommended that price maintenance be made illegal in that it is against public interest, then we must

consider the question of the public interest. The only way we can do that is to hear the briefs and representations of those who want to come here and repeat what they have said before. It is important to my mind that we have the right to send for whoever we want to give us facts and information that the MacQuarrie committee may not have had—in order that we may make up our minds intelligently on their recommendations. The very situation that we are in, as a result of the recommendations in that report, is that we must allow ourselves time to send for persons with those facts and who will give us evidence to make up our minds. Without it, we cannot make up our minds intelligently on the job we have been asked to do—that is to consider the MacQuarrie report.

Hon. Mr. GARSON: In relation to the argument just made by Mr. Thatcher and Mr. Fulton, purely as a matter of mechanics, may I say this. This matter has been considered by a competent committee after hearing representations from highly competent bodies such as the Pharmaceutical Association, the Canadian Manufacturers' Association, the Retail Merchants Association, and others. They are not groups of moronic individuals; they are highly intelligent people who know their own business thoroughly and who have advantage of the best advice and assistance which money can buy. They presented their cases before the MacQuarrie committee and the MacQuarrie committee has made a finding.

I should think that our mode of procedure in this committee might well be that we would hear from these bodies who have asked that they be heard. If they are able to show us where serious error has been made in the MacQuarrie Committee Report, then we would be warranted in going on to make this thorough inquiry to which my honourable friends refer. But, I should also think that when you get bodies such as the Retail Merchants Association, the Pharmaceutical Association, the Canadian Manufacturers' Association, and other bodies, if they are unable, even prima facie, to show this committee that there is any reason for doubting the validity of the MacQuarrie committee report, then I for one am quite prepared to confirm by acceptance of that report without going into all of these extensive investigations to which Mr. Fulton refers. I am satisfied that if there is a serious defect in it that defect will certainly be brought out by these representations.

Surely to goodness my honourable friend does not entertain such a low opinion of the competence of these trade associations that he thinks, after they have done their utmost to show that there is something wrong with the report and have failed, that we can go digging around for a year or so and dredge up something which men who have been in business all these years have overlooked? I certainly do not entertain such an opinion.

So far we have not received proof from the Canadian Manufacturers' Association, the Retail Merchants Association, the Pharmaceutical Association, their economists and their lawyers, of any defects in the report. If they are not able to show there are defects then I am not conceited enough to think that I can dig them out when they cannot.

Mr. BEAUDRY: Would the minister allow me a question?

Hon. Mr. GARSON: Yes.

Mr. BEAUDRY: Is the minister at liberty to tell us what the procedure of the MacQuarrie committee was? We have no way of finding out from the interim report.

Hon. Mr. GARSON: I think I am at complete liberty to do so, although I cannot do so for this reason. When we set up the committee we gave it a free hand. The reason we set it up was that the Combines Investigation Act had been in existence and in operation for a period of over a quarter of a century—

without there ever having been made during that whole period an over-all review of its entire operations. We thought that review was overdue and we set up an outside body to do the job. We gave them a complete carte blanche without any limitations at all.

As Senator Lambert has stated, in the first notice they sent out, in line with the Curtis Report, and backing up its recommendations, they laid special emphasis upon the subject of resale price maintenance. I want to emphasize that at no time did we ever seek to control what they did, or in any way inspire their conclusions, or anything of that sort. They were appointed. They were free agents. We regarded them as competent and practical—as practical as any businessmen. If any person tells me that there is a businessman in Canada more practical than W. A. McIntosh I will give him an argument on the subject. He has had a great deal of practical experience and has demonstrated his practicality on many occasions. They were given a perfectly free hand and I am sorry that I cannot accommodate my honourable friend any further.

Mr. BEAUDRY: I had better explain my question so as not to leave anyone with a false impression. I am trying to find out whether the MacQuarrie committee followed the procedure of having briefs submitted only, or whether they followed our procedure of having a brief and then ferreting out some facts from the witnesses?

Hon. Mr. GARSON: Yes indeed, on that score I can, because that was mentioned in the newspapers and mentioned by me in the House.

I have said in the House on two or three occasions that the reasons why the report of the MacQuarrie committee, which is now considerably overdue, was not received before is that after they had received written briefs, these various organizations asked the MacQuarrie committee if they would hear oral presentations and recommendations. They were very glad to do that. As a matter of fact the last time I spoke of it in the House of Commons they still had a request for representations to be heard in September of this year. It has been very thoroughly considered.

Mr. BEAUDRY: But the minister does appreciate the difficulty brought up by Senator Lambert and Mr. Fulton and with which I quite agree—

Mr. THATCHER: May I ask the minister a question?

Mr. BEAUDRY: Pardon me, Mr. Thatcher. I appreciate the difficulty of coming to a decision on facts which have been appreciated by four or five gentlemen of undoubted competence, without having those facts before us.

Hon. Mr. GARSON: I agree with that and, if these gentlemen this morning, or those from other associations come and lay such facts as they in their wisdon choose to lay before us to indicate that the conclusions are wrong, then my attitude towards an extensive inquiry would certainly change. However, I think that where we have a report from a highly competent body accepted by—I will not say a highly competent government but a responsible government—

Mr. FULTON: Reservations on both points.

Hon. Mr. GARSON: —assisted by the advice of its Combines Investigation Act officials who have some modicum of knowledge of the matter themselves—this committee can very well and very safely take this position. If these people are not able to point out any serious error in that report then we are not warranted in supposing that we can dig around on the subject and turn up facts which the MacQuarrie committee did not consider. If none of the opponents of resale price maintenance can do that I am personally not conceited enough to think that I can do such a thing.

Mr. FULTON: I cannot understand why, if the MacQuarrie committee report is of such excellence, it should have been referred to a committee for consideration.

Mr. BEAUDRY: Oh, well, that has been explained.

The CHAIRMAN: Order.

Mr. FULTON: What you are doing is making parliament a sounding board for some people to come and put pressure on it. I do no believe, sir, that you have decided upon reflection to use parliament in that way. It would not have been necessary to refer the MacQuarrie committee report to this committee and to hear recommendations. However, the report has been referred to this committee—

The CHAIRMAN: Let us get back to the original point on which I opened this discussion and to which Mr. Garson has returned.

The reason for this parliamentary inquiry is that we all know that persons in the trade wanted to make representations. They said that the conclusions of the MacQuarrie committee were wrong—as Mr. Garson has pointed out already. If they can show us from their facts and from their skilled professional knowledge that the MacQuarrie committee is in error then we can certainly have this full investigation.

Mr. THATCHER: Will you give us time to do that?

Hon. Mr. GARSON: Certainly.

Mr. THATCHER: How can you do it in twelve meetings?

The CHAIRMAN: If the MacQuarrie committee is so much in error I would suggest that it is possible for these people to show it in one meeting—if the point is there. If the point is not there then it does not matter whether it is ten, twelve, or fifty meetings.

Once this parliamentary committee was established the onus, in my mind, was on the people who asked for this further investigation to show that the conclusions of the MacQuarrie committee, which have been accepted by the government, are in error. If they cannot do it we certainly will not be able to do it.

Mr. THATCHER: Not without giving them time.

Mr. FULTON: I do not see how we can say whether they are in error unless we place ourselves in a position to know. We can only do that by carrying on an investigation of our own so that we will know something of what they are talking about.

I agree with the minister that we are not experts and the only way we are going to get ourselves in a position to deal with the report is to carry on some inquiries which will make us in some part experts. We cannot do that by staying here reading briefs. We have got to be able to send for people who can give us the facts so that we can form an opinion in our minds and have the mental equipment to assess the arguments of the people coming before us.

The CHAIRMAN: If we were to start from scratch on the whole field of resale price maintenance that is so. I say that this committee has been set up primarily because of requests to the Prime Minister and the Minister of Justice in which people said that the MacQuarrie committee report is wrong, and that legislation based on it is wrong because the committee is in error.

Mr. THATCHER: Are you suggesting that we should not hear the seventeen groups?

The CHAIRMAN: I am suggesting that these major groups who have said that the principle is wrong, and that it is in the public interest to have resale price maintenance, are the people we need to hear. If they cannot show us where the error occurs then certainly we should not start at the grass roots all over again.

Mr. THATCHER: You are quite willing to hear each of these seventeen even if it takes us until Christmas? You are not going to say later that we are cut off?

The CHAIRMAN: The steering committee has already decided, as is the case with the steering committee of every major parliamentary committee in this House, that there is no need to have seventeen briefs if twelve are duplications. We want to have them and we will read them. After all, the major part of any brief is the considered opinion of the group in writing and the questioning is incidental afterwards—clearing up points not already clear to the reader of the brief. We will have an opportunity of reading every brief. Briefs on which members want further information because of some particular point can certainly be held over for hearing.

I say again that as far as my understanding is concerned the reason for this committee being set up was that these gentlemen have asked and have been granted the right to come forward and tell us why the report of the MacQuarrie committee, which the government has accepted, is wrong. Nobody is in any better position to know the details of the trade than these people who are coming before us. As Mr. Garson has pointed out they are well equipped—

Mr. THATCHER: If you give us time.

Mr. FULTON: If that is the basis of our procedure I think it should be made clear to those who give evidence that it is the procedure. The result of the policy you are suggesting is an attack on the MacQuarrie committee report—

The CHAIRMAN: Certainly.

Hon. Mr. GARSON: Yes.

Mr. FULTON: But that is not the basis on which we have so far proceeded. It was not just an attack on the report—analyzing it, disecting it, and saying here it is weak and this is a false assumption. That is the kind of argument you should ask them to bring forward, and it is not the kind of argument I understood we were primarily interested in hearing. We have had the kind of arguments that they themselves used before the committee.

The CHAIRMAN: Of defending their position of saying resale price maintenance is in their interests—

Mr. FULTON: Starting with the assumptions of the MacQuarrie committee, what you should direct their minds to is an attack on those assumptions.

The CHAIRMAN: That is exactly why they have written in to the Minister of Justice asking for this hearing—so they could officially give their views, publicly.

Mr. FULTON: It is quite obvious from the arguments we have heard already and the briefs we have heard already that they were not prepared with that in mind.

Hon. Mr. GARSON: On that very point of view, if my hon. friend will take the pharmaceutical brief which is in front of him and just go to the back of it—

The CHAIRMAN: We are having them back on Thursday because of that.

Mr. FULTON: That is one particular brief which did. I should make that reservation. Yet, there was hardly any questioning on the point of why—

Mr. FULTON: That is not why we are having them back.

Hon. Mr. GARSON: We had a detailed analysis and critique by Professor Fuller.

Mr. FULTON: They were not asked questions about that yesterday.

Hon. Mr. GARSON: They are coming back on Thursday.

The CHAIRMAN: You are a member of the committee, Mr. Fulton, and you had your share of questions yesterday.

Mr. FULTON: All I am saying is that if you are laying this down as a principle upon which we must proceed I think the members of the committee

and those who appear before the committee must recognize that their questions and their arguments should be primarily directed towards a detailed criticism of the report—rather than a general questioning on the economic set-up of the business. That is what you are confining us to.

Hon. Mr. LAMBERT: I think the time will come when we have to consider in this committee the making of a report. At that time I think it will be proper to consider whether or not this field of inquiry has been adequately covered. I would suggest that instead of trying to anticipate exactly how long it is going to take us, that we should proceed with the evidence that is to be submitted as it is arranged, and let the steering committee keep the committee as a whole thoroughly informed of those who wish to be heard. We can then make the decision about whether we should take time for further hearings. I do not think it is possible now to estimate accurately how long it will take this committee to complete its work.

Let us proceed with the briefs that are proposed and let the thing take care of itself. I do not think that Mr. Thatcher or myself will sacrifice our feelings of responsibility in any way, and I do not think any of the other members of the committee will. I think we can decide this question more satisfactorily a little later.

The CHAIRMAN: Mr. Dickey?

Mr. DICKEY: I have been trying for twenty minutes to say exactly what Senator Lambert has said. We have been discussing for an hour and ten minutes a question which we are simply not in a position to decide this morning—a question which would be most improper for us to decide one way or another at this time.

I am going to use an example that may be open to some objection but which I think is valid. We are more or less in the position of a court of appeal which has been asked to consider a case on appeal. Now, when we have heard that case we will decide whether or not we will allow the appeal, whether we will dismiss the appeal, or whether we will grant a new trial. That is our position, and I think we should hear the case of the appellant. Then we will be in a position to know what we should do from then on. I move that we should get ahead with the hearing of the briefs.

Mr. THATCHER: As long as we hear all the evidence I am all for it, but it should not be dismissed in advance.

Mr. FULTON: Courts of appeal are usually bound by the findings of fact by the lower court. I suggest we should not necessarily be bound by the findings of fact of the MacQuarrie committee.

Hon. Mr. GARSON: I entirely agree with Mr. Dickey that we are in the position of a court of appeal but not hearing an appeal—hearing an application for leave to appeal.

Mr. FULTON: But we cannot go into the facts at all? Is that your position, Mr. Garson? We cannot go into the facts at all?

Hon. Mr. GARSON: No, no.

Mr. FULTON: That is the position of a court of appeal.

Mr. DICKEY: We go on the case that is put before us and we arrive at our decision after hearing that case.

The CHAIRMAN: I hope this discussion has served a useful purpose. I am sorry that you gentlemen have been delayed but you will understand the position as far as the committee is concerned.

Mr. FULTON: If they do they are very clever.

The CHAIRMAN: I think they understand it very clearly—because this is one of the groups which asked for this committee.

Mr. Harris, the understanding is that you should make a short statement or summary of your brief and then there will be questions from the committee counsel, and after that individual members of the committee will question you on points raised.

Mr. R. A. Harris, Managing Director, The C. H. Smith Company, Windsor, Ontario, called:

The WITNESS: Mr. Chairman, Senator Beaubien, and gentlemen: associated with me in this presentation this morning are Mr. R. S. Tinsley, Assistant General Manager of the Canadian Retail Federation; Mr. Arnold Rands, who is an expert in the food distribution trades; Mr. Milton Shaffer of Shaffers Limited of Ottawa, Men's wear trade; and Mr. Lloyd McKee of Electrical Housekeeping, Toronto, who is a proprietor in the electrical appliances trade.

First of all I should like to tell you how we welcome being invited to come here to express our views. The Canadian Retail Federation, I might say for your information, was formed in 1941 at the invitation of the government, to deal with the self same probems which you are considering today, that is, the question of prices. But at that time, a slightly different aspect towards prices existed than does today.

The association has been very closely associated with the development and consideration of trade legislation during the ensuing years, and we have had the pleasure of advising the government upon many occasions with our opinions on such things as the sizing of clothing; and I seem to have some memory, last spring, of a submission concerning considered changes to the British North America Act.

The Canadian Retail Federation has certain affiliates associated with it. If you gentlemen will refer to the appendix to your briefs, I shall not attempt to read them all. But there you will see a list of affiliates of the Canadian Retail Federation.

Mr. PHELAN: Mr. Chairman, there is no appendix.

The WITNESS: There is no appendix attached? Do you wish that I read the list, Mr. Chairman?

The CHAIRMAN: Yes, I think you should read it so that we may have it in the record.

The WITNESS: Canadian Association of Radio and Appliance Dealers, Canadian Bicycle and Sports Goods Dealer's Association, Canadian Federation of Farm Equipment Dealers, Canadian Jewellers' Association, Canadian Restaurant Association, Canadian Shoe Retailers' Association, Ontario Retail Druggists' Association, Ontario Retail Feed Dealers' Association, Ontario Retail Furniture Dealers' Association, Ontario Retail Hardware Association, Retail Furriers' Guild of Canada, Retail Men's Wear Association of Canada, Stationers' Guild of Canada, Retail Merchants' Association of Canada, including the Retail Merchants' Association of Quebec, Retail Merchants' Association of Ontario, Retail Merchants' Association of Manitoba, Retail Merchants' Association of Saskatchewan, Retail Merchants' Association of Alberta, Retail Merchants' Association of British Columbia, National Food Division of the Retail Merchants' Association. City Affiliates: Fort William Retail Merchants' Association, Greater Niagara Chamber of Commerce, Importers' and Employers' Association Ltd. (St. John's, Nfid.), Retail Bureau—Regina Chamber of Commerce, Retail Section—Halifax Board of Trade, Saint John Merchants' Association Limited, Windsor Retail Merchants' Association Limited, and the Moncton Board of Trade.

Mr. MacINNIS: Are you speaking for all of these people today, for all of these trade organizations?

The WITNESS: I am speaking today on behalf of the Canadian Retail Federation who represent the voice of retailing in Canada.

Each of these associations in turn, I understand, sir, have the opportunity of requesting that they make their own submissions. We have made a canvass of opinions and we believe that we represent in our brief, which has been presented to you gentlemen, the overwhelming majority of opinion.

I should like to point out very briefly that it is not unaminous, because of the retail trade, the retailer perhaps next to the farmer is the most rugged individual that is left in the country, and it is just like an independent family, it is hard enough to get two of them to agree. But there are large stores, and there are some small stores who do not subscribe in their opinion to the brief we have submitted today. However, the overwhelming majority is in favour of price maintenance.

Now, in the brief which has been presented to you gentlemen, if I may, I would like just to review very quickly the main points upon which you may peg your questions, if you so desire.

Mr. CARROLL: Mr. Chairman, while the witness does not look unhealthy at all, I think he should have an opportunity to sit down if he so chooses.

The CHAIRMAN: Yes. You may stand or sit as you choose.

The WITNESS: Thank you, Mr. Chairman, but if I may, I prefer to stand.

Our brief brings out these points: first, that resale price maintenance is a stabilizing influence on our economy. And may I, from this point on, simply abbreviate it by referring to it as price maintenance. Secondly, the public has protection in the brand name and an assurance of quality. Thirdly, minimum resale prices tend to become maximum. Fourthly, price maintenance limits the retailers' margin of gross profit.

Our next point is: price maintenance does not lead to high prices; and again, price maintenance tends to stabilize production.

Now, in opposition to the findings of the MacQuarrie commission, we submit first that price maintenance does not restrict competition unduly.

Secondly, we maintain that price maintenance tends to equalize prices across Canada; that is, in British Columbia and the maritime provinces, they have always suffered from the disparity in freight rates. So with price maintained items the prices tend to be the same throughout Canada as a whole. That, in turn, helps to equalize the cost of living throughout the country.

We further submit—and I say this, gentlemen, with bated breath—that the consumer is not an expert in the value of merchandise, except in use, and the brand protects her and the price protects the brand.

We further believe that price maintenance helps retail advertising, or rather enables national advertising which means greater advertising economy and more economical distribution to the consumer.

We further submit that price maintenance does not mean fixed prices, because they fluctuate up and down. They are only maintained at any one time.

Those, gentlemen, are the pegs upon which we suggest to you that the discussion should fall. I would appreciate it, a little later, if I might, Mr. Chairman, adding one or two points to them, which I think may be helpful. And I would like to clarify this one point.

Gentlemen, I have read over the previous propositions. It may be that I have been rather dense, but I would like to be certain that there is no confusion concerning a combined price which is set by a group of manufacturers who agree that the price of that particular classification of items will be fixed. To that, the Canadian Retail Federation and—I speak as a retailer—

are opposed. We are in favour of price maintenance which means that any individual manufacturer may set and suggest the price to be maintained for which his product is sold. I thank you.

The CHAIRMAN: I think, Mr. Harris, you might be more comfortable if you were seated.

Now, Mr. Phelan?

Mr. PHELAN: Mr. Chairman, in view of the lapse of time, I shall ask very few questions so that I shall not trespass on the time of the members.

By Mr. Phelan:

Q. Mr. Harris, would it be my understanding that you have a council or some sort of organization? Would it be my understanding that you are a council or something of that kind, to represent the views of these different organizations?—A. You mean council spelled c-o-u-n-c-i-l?

Q. Yes. How is that elected?—A. That is made up of representatives of each of the affiliated organizations together with elected members.

Q. And this represents the Canadian Retail Federation?—A. That is correct.

Q. And you have given us the names of the different groups which are members of that organization?—A. Yes sir.

Q. I observe that you have stated, and you have also repeated it in your brief, that there is some division among the retailers as to the merits of resale price maintenance. Are you able to give the committee any idea of the percentage of division as to these different views, and how they stand?—A. I cannot give you an accurate answer to that, Mr. Phelan. But our survey showed that the great majority—I think I am correct in saying the great majority, and I refer to Mr. Tinsley—of the affiliates were in favour, making an overwhelming percentage of the members.

Q. Yes; so that the retail merchants generally are in favour of retaining the resale price maintenance practice?—A. Yes sir.

Q. And among those in the retail trade you have certain important members who are not in favour of it. Is that a correct statement?—A. That is correct, sir.

Q. Would I state the position correctly, from reading your brief, that one of the chief reasons, if not the chief reason to maintain this resale price maintenance practice is, so to speak, as an antidote against the loss-leader practice? Is that one of the chief reasons for retaining it?—A. I understand so, yes.

Q. Is it a reason?—A. Well, what is a loss-leader? I have never found that out.

Q. I shall ask you that question in a minute. I see a reference to it in your brief and in all the other briefs. And I simply ask you the question: if that is one of the grounds on which you seek to retain resale price maintenance, as an antidote or means of combating the loss-leader practice?—A. If I asked around business what a loss-leader is, I would learn that in the opinion of some dealers a loss-leader is a price at which their full mark-up is not achieved; and in the opinion of others, a loss-leader is one in which they fail to recover their costs; and in the opinion of still others, a loss-leader means merchandises which they have failed to sell to the public, and which the public has found to be unacceptable at the price at which they have offered it, and that any release from that price is a loss-leader.

I think if I were to give a personal definition of loss-leader, the closest I could come to it would be: a loss-leader is a price which does not represent the full mark-on, and which is designed to attract traffic into your place of business.

Q. And in giving that definition, would you assume that that would be a definition of your council?—A. I would not make that assumption, sir.

Q. Are you able to give any definition which would have the full approval of your council?—A. No sir, I am not.

Q. I see; yet whatever the definition may be, I see from your brief that that is one of the difficulties that you meet in the trade, and one of the difficulties of the retailer against which the loss-leader is designed to protect.—A. Let me say this: it is significant that under section 498-A of the Criminal Code, to my knowledge no prosecutions have been made with respect to that point during the period that price maintenance has been in practice. Otherwise, price maintenance has been a deterrent, if you like. I would never pretend to say that there have not been loss-leaders.

Q. But that is one method of combating price maintenance?—A. It is one stabilizing influence.

Q. You say it is one stabilizing influence. Now, one question more and I am through. Your committee may have had ample time to discuss it, but I notice you have directed your attention or objective specifically to the MacQuarrie report, as set forth on pages 3, 4, and 5 of your brief. Am I correct?—A. Yes sir.

Q. You have set them forth, and I suggest that those objections have been set forth after due examination of the MacQuarrie report and after due consideration of your trade interests, and that they represent what you want to say in opposition to the MacQuarrie report?—A. After due consideration of the interim report.

Q. After due consideration of the interim report, and of the retailers' interests, you have set forth what you believe to be the answer to the full objectives of the MacQuarrie report?—A. Yes.

Mr. PHELAN: That is all. Thank you.

The CHAIRMAN: Now, Mr. Boucher.

By Mr. Boucher:

Q. On page 1, point 1 of your brief, you say that resale price maintenance is a stabilizing factor in our economy. What does your group mean by the statement that resale price maintenance is a stabilizing factor?—A. We mean that prices, as you know, are always in movement; they are always fluctuating. Now, let us taken an example of one town or one city, and one retailer in it who cuts the price. It may be that the bank is pressing him, or he may have some other reason; but the price structure immediately is broken in that particular community.

Where price maintenance does not exist there is a strong inclination for other retailers immediately to follow, and their prices will drop. Their prices cannot remain permanently down, because it would be unsound price cutting, and their businesses could not live at such a level of prices. But, because we are human and extremely competitively inclined, a great many retailers would undoubtedly cut their prices down to the level of the first retailer, and in that way the price structure of the community would be fluctuating up and down so that the consumer does not know what the proper value is.

Q. Do you not think that at times it might bring about a reduction in the overall number of articles sold, for instance, electric refrigerators, stoves, etc., thus causing a reduction in production and consequent unemployment?—A. That price maintenance would do that, sir?

Q. Do you not think it would affect production?—A. That price maintenance would reduce employment?

Q. Reduce the total number of articles produced.—A. Reduce the total items to be made? No, sir, I do not.

Q. Would not, in many cases, resale price maintenance retain nominal profit margins to the detriment of profit volume?—A. I would like to answer that a little more fully if I may. I am very glad you asked that question. I checked with the buyers in our own business to get their views on price maintenance and some of them said "we are against it" and I said "why" and they said "beause it does not give us a sufficiently wide margin of profit". There is a very decided tendency, and it is generally recognized in the retail trade that on price-maintained items you do not get the same margin of gross profit that you do on those items which are not price maintained. It is the constant search of every buyer to find other than price-maintained items to keep his maintained mark-up, as we call it, at a level which allows his department or his store to show a profit.

By Mr. Dickey:

Q. Mr. Harris, just on that very point I note that in the second last paragraph on page 1, point No. 2, you state that resale price maintenance applies only to a minority of products sold at retail. Just what do you mean? How have you fixed that? Is that a minority of the number of products or a small proportion of the total trade in all products? — A. It is very difficult to generalize there, Mr. Dickey. In one trade group, one trade classification, the percentage of price-maintained items would be much higher than in another.

Q. What do you mean by a minority of products?—A. That in our view the majority of items are not price maintained. Does that answer your question?

Q. That is without regard to the relative volume ol trade in any particular product?—A. Without regard to classification in any particular merchandise.

Q. Perhaps you can tell us, Mr. Harris, what are the specific fields of the retail trade in which price maintenance is particularly practised?—A. I would say in those fields, those items which lend themselves to branding, which lend themselves to advertising, and where wear and use are an important factor. May I give this illustration? Every gentleman in this room probably has a preference in his brand of shirts and he probably has a preference by name, and he has built that preference out of experience with that shirt, and when he goes back to buy another shirt he wants to be sure that he gets the same satisfaction as he had in the past, so he looks for that brand name.

Q. That is a brand name. I appreciate that, but I was wondering—.—A. May I just complete that?

Q. Yes.—A. Now, he looks for the brand name. Price maintenance tends to be associated with brand names, again, in items such as a shirt which lend themselves to price maintenance. The manufacturer is jealous of the reputation of his product. He is jealous of the distribution of it, that is, that it should have adequate distribution through retail outlets. To ensure that, the manufacturer cannot afford to have his item, that shirt that you are wearing, made a football so that no longer is the retailer interested in selling that shirt on his behalf. May I extend on that a little further? Still taking the instance of the shirt, and let us say it is a price-maintained item at $4 for a shirt. The price maintenance is removed. That shirt is a most desirable one and most stores in the country would immediately take that shirt and put it on as a loss-leader, as we spoke of a little earlier; if you like, sell it for $2, because you are going to bring people flocking into the store with that shirt. However, a year from that time you are going to find it awfully difficult to buy that shirt anywhere because it is no longer profitable for the retailer to carry it.

Q. Yes, I understand your point, Mr. Harris, but what I really want to get from you as representing an association of retailers, is information on the lines of retail trade in which price maintenance is really important. I

would gather from your answer that one of them is retail clothing. Now, what are the others?—A. I would not attempt to define that because there are hundreds of classifications and I do not consider that my knowledge is sufficiently adequate, nor could I possibly be exhaustive here today to define that.

Q. Could you indicate the lines of trade in which it is really important? For instance, I certainly, from my experience in this committee, get the idea that it is of particular importance in the pharmaceutical trade, in the drug trade. What I would like to know, is it of equal importance in the grocery business or the hardware business. If you have any information of that kind it will be helpful to the committee.—A. If I could attempt to define it a little more widely. I think I said where wear and use is an important factor in the products.

Hon. Mr. LAMBERT: Would you include food products?

The WITNESS: Perhaps Mr. Rands could answer that.

Mr. ARNOLD RANDS (*Food Consultant, Retail Merchants Association*): In food it is not as widespread as it is in other articles. In food it has been used to offset, again, loss-leader selling and the removal of brands from the market.

Mr. THATCHER: Have you any percentages?

Mr. RANDS: Of the amount?

Mr. THATCHER: Yes.

Mr. RANDS: Possibly in the neighborhood of 15 per cent.

Mr. THATCHER: On groceries or sidelines?

Mr. RANDS: I am speaking only of food, shall I say food rather than groceries.

By Mr. Dickey:

Q. Mr. Harris, you have, I think, clearly pointed out to the committtee your view with respect to the importance of price maintenance in relation to branded merchandise. Can you give us any examples of well known established branded merchandise that is competing in retail trade in this country and that is not subject to price maintenance?—A. I could, but I wouldn't, Mr. Dickey.

Q. Well, I do not want to tie you down to particular brands, but there are solidly established brands in general sale in this country that are not subject to price maintenance. Is that correct?—A. Yes, that is correct.

Q. Mr. Boucher directed his questions to the reference in your brief to the resale price maintenance as a stabilizing factor in the economy. I was interested to see in point 8 on page 2, you use again the word "stabilization". Is that with respect to production? What is the effect of price maintenance in stabilizing production?

A. Well, right now and in the ensuing months we will be seeing the spring merchandise which is being offered by the manufacturers. Delivery will not be taken on that merchandise until February, March or April, in some cases. Summer bathing suits, for instance, will not be delivered until next May or June. Now, that is a long period for the retailer to be buying ahead, and yet it is necessary for the manufacturer that he should be able to spread his production out in the interest of economy of production over a period of time; so the retailer, if he has a reasonable guarantee that the price at which it will be sold when the season arrives allows him a proper margin of profit, is prepared to place part of his commitment. If, on the other hand, he has no idea what the price will be, then he is very unwise to make any commitments. The manufacturer therefore has to shut his factory down and it remains closed up till the time when there is an immediate demand for the product. That demand comes all of a sudden and he is unable to cope with it.

Q. Do I take from that, Mr. Harris, that with respect to a majority of the products in retail trade in Canada there is this instability of production and that there is not this ordering in advance?—A. It varies greatly between products, classifications of products.

Q. But you do say with regard to a majority of the products in retail trade that there is that instability of production and the unwillingness and inability of retailers to order in advance?—A. I would not answer that categorically. I would like to give it more consideration.

Q. Does that not arise from the fact that you have told us only a minority of products come within resale price maintenance and if we do not have resale price maintenance that the products not price maintained would place the retailer in that particular position and, in turn, place the producer or manufacturer in the position you indicate?—A. I think that you will find that many manufacturers have found themselves in that unpleasant position in the past six months.

Q. Is that the position of the manufacturers of brands and products that are not price maintained at the present time?—A. I do not feel qualified to speak for all manufacturers.

By Mr. Fulton:

Q. Mr. Harris, I want to ask you to make some critical analysis, probably, and therefore, if I may, I do not wish to be personal, but I would like to ask you to state your experience, firstly as a retailer for yourself and, secondly, in connection with this organization, the Canadian Retail Federation.—A. I am managing director of the C. H. Smith Company Limited, which is a small department store, as department stores go, employing a staff of some 300. For the past six years, since the conclusion of the war, I have been manager of the business. I was absent for 5½ years before that. Before that time I was sales manager for a company in Canada from 1937 to the outbreak of war. Before that I was assistant sales manager with a textile company. Before that I was associated with the electrical appliance industry, and before that I just studied.

Q. How many years altogether have you been engaged in the retail trade? —A. Associated with the retail trade?

Q. Yes.—A. For 23 years.

Q. And what is your experience with the Canadian Retail Federation?— A. I have been an officer of the Canadian Retail Federation for the past four years.

Q. Now I want you to answer a question I am coming to in the light of the discussion you heard here earlier this morning. Do you consider that the MacQuarrie Committee made an adequate and sound study of this problem, that the evidence they heard and the methods they employed were such as to enable them to arrive at an acceptable conclusion?—A. Mr. Chairman, I think it is obvious from the fact that their findings have been protested by so many people that in our opinion the subject was not given the fullest of consideration. The retail trade are not a group of rapacious individuals out to exploit the public. The retail trade is made up—and you might be interested in the figures; to the best of my knowledge there are, I believe, some 700,000 people employed in the distributive trades. There are some 160,000 retail outlets throughout Canada. Now, we are a widespread country with not a very big population, and that population requires service from the retailer and it is service of a varying degree. The retailers are not tycoons. They are the little fellow around the corner who runs a cigar store; the retailer is the widow trying to provide for two children. Retailers are made up of the veteran who has set himself up in the appliance business. Retailers are made up of just folksy people mostly, and they are a good strong background for this country of ours.

Now, they are not thinking people; half of them could not give you a proper definition of price maintenance. A lot of them could not tell you what their margin of profit is, but what they do know is that in the course of time they have learned through hard and bitter experience that if they buy at a price they must sell at a price to stay in business, and out of that they get a living, and not a very big living. I would recommend very strongly to this committee that you take the trouble to look over the balance sheets of 15 or 20 or 30 representative retailers this year and last year and see what the margin of profit is. I am quite sure that your motive, the motive of the government, is to keep the cost of living as low as possible, to deflate any excess profits that may have existed there. If you take a look at the balance sheets of retail traders I do not see where you are going to take that out, because it is not there to take out. The average profit in the retail trade, if I remember my figures correctly, after taxes, runs something like 2.9 per cent. That is not a very big profit, gentlemen, and that is in a pretty good year. It is just not there to come out.

Mr. THATCHER: Is that figure from the Bureau of Statistics, that 2.9 per cent?

The WITNESS: No, it is not, This is a figure for 1946, and, if you remember, 1946 was an awfully good year. The net profit before tax was 6.77 per cent, and after tax, 2.68 per cent.

Hon. Mr. GARSON: On capital, sales, or what?

The WITNESS: On sales.

By Mr. Fulton:

Q. Thank you, Mr. Harris. Then on the basis of your experience would you be prepared to give this committee reasons why you think that the MacQuarrie Committee erred in their methods and where it was they failed to make a complete or adequate study?—A. Since they were closed hearings, I could not.

Q. I am sorry. I should have asked you whether you appeared and gave evidence before the committee yourself?—A. No, sir.

Q. Did anyone appear on behalf of your association?—A. Our association appeared.

Q. Did anyone who is here appear?—A. No.

Q. So the answer you made to my earlier question is that your opinion is based on your reading of their report and you are not in a position to discuss the methods they followed in arriving at their conclusions. Is that right?—A. No, I am not. I think that we can only gather it. We do not know what the discussions were amongst themselves. We can only see what the conclusions were and we can make our observations upon the conclusions which they have reached.

By Mr. Shaw:

Q. Might I ask Mr. Fulton if he would ask this question: was your organization invited to appear before the MacQuarrie committee?—A. Yes.

Q. But you yourself did not appear?—A. Yes. We did appear, but I personally did not appear.

By Mr. Fulton:

Q. You yourself did not personally appear, but your organization appeared and gave evidence; and none of the gentlemen who are here with you this morning appeared. I think you said that?—A. Yes. But Mr. McKee did.

Q. I wonder then if Mr. McKee would be prepared to make any comments on the methods followed by the MacQuarrie Commission in line with the questions I have just been asking, Mr. Harris?

Mr. McKEE: I am not prepared to make any comment, because when coming here today I did not expect to have to show opposition to the methods of the MacQuarrie Commission. Is that not right?

The WITNESS: That is correct.

Hon. Mr. GARSON: Do you not know why you are opposed to the MacQuarrie Commission's report, Mr. McKee?

Mr. McKEE: Yes, I think so.

Hon. Mr. GARSON: It might be of interest then for the committee to learn your reasons.

By Mr. Fulton:

Q. The situation is that when this brief was prepared in advance, it was not prepared to show or to discuss the methods followed by the MacQuarrie Commission in arriving at its conclusions. Is that not a correct summary?—A. That is correct, sir, and might I add this: I have stated that if I might have an opportunity of making suggestions, I would make this one very strongly. The question has been asked: what proportion of items are price maintained? Now, I cannot give a satisfactory answer to that question, and I do not know of anyone who can. I would suggest, however, that the Dominion Bureau of Statistics might be able to advise you on the number of price maintained items that go into the cost of living index. That may be one approach towards your getting the more definite information which one of your members suggested. It may be that it is well worth your while to have the Dominion Bureau of Statistics make a survey to find that out.

My second suggestion which I shall repeat is that you review the profit and loss statements of a representative group of retailers. We would be very glad to make those available, to enable you to gain some knowledge of what margins you have got in there that you can equalize out of prices.

Q. Would you or any of your members desire to have an opportunity to come back before this committee at a later date to present to us, let us say, a critical analysis of the methods followed by the MacQuarrie Commission, or to criticize the policy of the report based on that approach?—A. I cannot answer for my organization in that respect without first consulting the board of directors.

The CHAIRMAN: Now, Mr. Dickey.

Mr. DICKEY: I am not quite clear on what is meant by this invitation to discuss the methods of the MacQuarrie Commission. As I understand it, this committee is sitting in order to give the gentlemen present as witnesses an opportunity to place before us their views on the findings of the MacQuarrie Commission, and the reasons, and the facts, and the arguments that they wish to place before us to show that the conclusions of the MacQuarrie Commission are wrong.

So I do not think it is fair to place these gentlemen, or any other people who come before this committee, in the position of being requested to give an opinion either favourable or unfavourable as to the methods followed by the MacQuarrie Commission, as long as it is thoroughly understood by the present witnesses and by the witnesses who are to come, and the witnesses who have already been here that this is an opportunity for them to place before us their full case against the recommendations. That I think is the kernel and the purpose of this investigation, and I do not believe we should ask them to criticize the methods of the MacQuarrie Commission because I do not think that is relevant.

The CHAIRMAN: I quite agree with you, Mr. Dickey, on this matter and I think that Mr. McKee was quite right in choosing not to comment on it. The submissions were made in confidence and I think it would be just as improper for the committee to comment on the manner in which witnesses have been giving evidence as on the manner in which the MacQuarrie Commission received its evidence. Moreover, I suggest that this particular group has already done so, because from pages 3 on in their brief they give us their views on the findings of the MacQuarrie Commission and that is the point we are now discussing. From page 3 on they start off each of their paragraphs with a statement from the MacQuarrie Commission report and a statement of whether, in their view, it is right or wrong.

By Mr. Fulton:

Q. The answers so far have indicated that these witnesses cannot go any further but the reason for the line of questions is this: Mr. Dickey has said that what we want from these witnesses is the reason why they think the conclusions reached by the MacQuarrie Commission are wrong. I quite agree, but I think one of the basic reasons put forward by many of the witnesses and many of the organizations appearing before us, that they are wrong is because the whole field is so complex; and certainly, if many of them feel that the MacQuarrie Commission did not make the adequate inquiry that they should have made, then they will feel that the conclusions reached are wrong. I shall not follow that any further this morning. But you have stated in answer to Mr. Phelan that there were some members of your organization who did not agree with the position you have taken in your brief. Do those members who do not agree with your position fall into any group or any category of retailers?—A. No. They constitute both large and small retailers. I do not know them by name.

Q. Are they a particular type of retailer, such as a department store, or just retailers?—A. No, they are just quite free-wheeling retailers.

Hon. Mr. BEAUBIEN (*co-chairman*): Are they numerous?

The WITNESS: No, they are not numerous.

The CHAIRMAN: Order, please.

By Mr. Fulton:

Q. Are there any statistics available, or have you any statistics from which we could find the percentage of volume of the total trade in Canada which is sold subject to price maintenance?—A. No sir. The only suggestion I can make is that the Dominion Bureau of Statistics might make a study of it. Every store differs in its proportion and every department of that store will differ in its proportion. There may be a statistical method of discovering it, but I am not sufficiently well informed to say.

Q. Are you in a position to give us your best judgment as the relative importance to cost of living, or to the cost of living index or to that which enters into the cost of living as we know it, of these classes of goods which are subject to price maintenance? Are they a type of goods upon which the cost of living index is based, or are they, in your judgment, just an average cross-section, or have they a relatively low importance in relation to the cost of living and the cost of living index?—A. I must plead ignorance as to the factors which go into the cost of living index but as to the price maintained items generally, let me say this: that they represent the best value that people can get, taking it over a period of time, or they would not come back and buy them again and again. They are important items in the store. Why do we like price maintained items? First of all, because they are best-sellers. You always like your best-sellers. And why are they best-sellers? Because of the device

of price maintenance, if you like, or because of the type of manufacturer who realizes the protection which is afforded to the public under price maintenance. And over a course of time, an acceptance is built up for a product which has been brought into use by the consumer.

Q. One other question and I am through. I ask you to picture in your mind an average family, and to think of the buying of that average family. It is not living in luxury; it is just an ordinary middle class family, a kind of "folksy" people. I ask you to think of the buying of that family in a year. Would it constitute a large or small percentage? What percentage of goods which are subject to price maintenance which would be purchased by that family?—A. The only guide I can give you, sir,—and I am relying entirely on memory—perhaps Mr. McKee can help me on that—but I think something like 5·7 per cent or 6 per cent of purchases from department stores are of that type of goods. Now I cannot answer with respect to the food division at all. But the others are things which go on your backs and into your homes.

Hon. Mr. BEAUBIEN (Co-chairman): You say 6 per cent are price maintained?

The WITNESS: No, 6 per cent are purchased.

By Mr. Fulton:

Q. Perhaps your answer really is that there are not sufficient statistics available for you to form an opinion; but in your opinion—you are a retailer and representing retailers, and you would know that manufacturers groups are also in favour of price maintenance—you are speaking of it as a retailer who is maintaining prices which are indicated to him by the manufacturer.—A. That is correct.

Q. Who benefits more from price maintenance, the manufacturer or the retailer?—A. I would say the consumer, really.

Q. I quite appreciate that that is your position, or the justification of your position. But, as between the manufacturer and the retailer, who benefits more? —A. You mean, who benefits most?

Q. Yes.—A. That is a tough one. But speaking for the retailer, as far as the retailer is concerned, on price maintenance items he would like to get more of a margin than he does.

Q. I did not mean simply from the point of view of profit; but you have indicated the advantages of what you call orderly marketing, particularly from that type of benefit. I do not mean profit-wise alone, but by that type of benefit, who gains more, the manufacturer or the retailer?—A. I think it benefits both of them.

Q. You would make no distinction?—A. I would make no distinction, no.

The CHAIRMAN: Now, Mr. Jutras.

By Mr. Jutras:

Q. I suppose it is natural in connection with this practice of price maintenance that for the most part you work on averages. For instance, I take it that you have a margin of profit in the case of the retailer, an average margin of profit; and I suppose it would follow that that margin of profit would be based, I mean the average margin of profit would be based on the average efficiency of the retailer, so that naturally the effect would be that in some cases in your trade, just as in any other trade, there are some who are efficient, some who are less efficient, and some who are more efficient. So, speaking of the average profit in the case of the very efficient retailer, there would be a much larger profit as far as he is concerned, than there would be with respect to the others?—A. Yes, that is conceivable; and I think that the same retailer,

if he is a small one, and I would presume that he is because he is efficient, would pass on those savings to his customer in all the products that he sells.

The CHAIRMAN: How?

By Mr. Jutras:

Q. That leads me to the other point: if he has a greater margin of profit than he really requires on account of being more efficient, naturally his desire would be to pass it on to the consumer; but under the price maintenance practice, how can he pass it on to the consumer?—A. Very easily indeed, on the items which are not price maintained. He is going to give the people that benefit.

Q. Yes. But take it as of today. Suppose the practice of price maintenance tends to become more generalized as the tendency is today?—A. Then I have no doubt that the margin of profit will narrow because in a highly competitive trade such as the retail trade, everyone is just watching for an opportunity to see that his prices are right, and that he is not higher than anyone else.

Q. And under this practice you are bound to operate on an average?—A. That is true.

Q. And if it is bound to be an average, there are the two extremes and the middle of the average, no matter what happens.—A. In my very limited experience, I can think of two fields wherein the margin of price maintenance items has narrowed very greatly. I go back to 1929 or 1930 in the radio field when I can trust only to my memory. Perhaps Mr. McKee would be able to verify it—when we were operating on a mark-up from 40 to 45 per cent.

The CHAIRMAN: Mark-up on cost or on selling price?

The WITNESS: On selling price. But that has now narrowed down to where with television we have a margin of 29 per cent; and on radio it would run, I take it, to 31 per cent or 32 per cent at the present time. And that margin has become narrowed and is continuing to narrow over the course of time.

By Mr. Jutras:

Q. What would be the percentage of price maintained goods in your organization?—A. I do not know.

Q. You say that the tendency would be in that case to cut the margin; but then, if you do that, do you not destroy the very purpose for which this practice is set up, that of helping the small businessman? Because, if you do cut your margin down, it will make it impossible for the small individual dealer to operate, and it will definitely encourage the big chain stores.—A. Can you tell me who operates more efficiently, the smaller retailer or the big one? I do not know. I think there are efficient small retailers and efficient big ones.

Q. I ask you: if the margin of profit is reduced much lower, would that not in your opinion tend to encourage the chain stores?—A. I do not think I can categorically answer you. I would not answer that question. I think you must first speak of a particular trade, of a particular type of distribution.

The CHAIRMAN: Mr. Beaudry is next.

By Mr. Beaudry:

Q. Just following up this question of Mr. Jutras', would it not be true or possible that the added volume of sales obtained through the better acceptance of a price-maintained product, if it is better accepted, would compensate for the loss provocated by the smaller margin?—A. Yes, that is very true, Mr. Beaudry. One of the chief advantages of a price-maintained item is that it is branded. There is normally a strong public acceptance for that item, and what

the retailer is interested in is not his initial margin but what he finishes up with after mark-downs. For instance, if in the ready-to-wear field, where branding is extensive, mark-downs are high—the style factor is the main one there—but on the good sound stable price-maintained articles you take very few mark-downs on them, you might take a two per cent mark-down, but where an unbranded proposition is involved you might take 10 per cent mark-downs on them and you need a good margin to overcome that.

Q. So, in effect, a greater turnover through acceptance of goods which are price maintained might far exceed a loss or a diminishing of margin to the retailer?—A. That is true.

Q. Mr. Harris, how many individuals are members of your association, including those members of groups who belong to your association?—A. We estimate that through our affiliates we represent something between 40,000 and 50,000 retailers.

Q. Would you also care to estimate how many people. By that I include, naturally, the employees of these various individuals who are represented by your federation.—A. You are talking individuals or bodies?

Q. I am still talking in figures of individual people, employees.—A. I am afraid I could not guess.

Q. Could you hazard an estimate?—A. The only figure I can give is that there are some 700,000 people in the distributive trades in Canada and there are some 160,000, I believe, outlets, and we are representing a proportion of these today.

Q. Would you care to hazard the proportion.

By Mr. Fulton:

Q. Do you mean 160,000 retail outlets or distributive outlets?—A. Distributive outlets. I would just be guessing, and I prefer not to guess, but I would say we are representing today the majority of them.

By Mr. Beaudry:

Q. May I suggest a figure in the light of the figures you already quoted. When you and your group, as a witness, come before this committee to implement the suggestion made by the minister and the chairman that you try and lay before this committee views which would tend to bring the committee to reconsider the conclusions of the MacQuarrie Committee, that you, in effect, are speaking for a body of, shall we say, 500,000 people who are directly affected by the question we are now discussing, or is the figure of 500,000 too high?—A. I would not be able to say, but I would say this, that we are discussing a problem that very directly affects 700,000 people, and I would like to point out that one is very apt to talk about the consumer as a person apart from the retailer, but there are some 5,200,000 people employed in Canada, of whom 700,000 are in the distributive trade, and each of those has three or more dependents, and there you have a very substantial part of the population of Canada who are directly connected with the distributive trades and who are consumers. They are not a group set apart.

By Mr. Fulton:

Q. You speak about the distributive trades, and you are representing the Canadian Retail Federation. I do not quite understand what you mean by that term. Would you clear up my difficulty for me.—A. The Dominion Bureau of Statistics, to the best of my knowledge, does not break down the figures so you can define the difference between a retailer and a wholesaler.

Q. When you speak of the distributive trades just now, do you use it in the sense of retailers or somebody who distributes goods amongst retailers?—A. I am speaking only on behalf of retailers.

By Mr. Beaudry:

Q. May we take your brief point by point, Mr. Harris. We will begin by statement 1 on page 1, "resale price maintenance is a stabilizing factor in our economy. It is the most effective method of curtailing the anti-social effects of loss-leader selling." Mr. Dickey brought out, in a very pertinent question following your statement, verbal or written, that price maintained goods only constitute a minority or small part of the total goods in retail trade today, and that would logically tend to make the committee believe, I would think, that in the overall structure of the retail trade, since this represents a minority factor, and perhaps a very small minority factor, you gentlemen are stressing, or overstressing, the importance of the question of price maintenance. Would it be possible to find from you, and I think Mr. Dickey tried to get it, perhaps, without satisfactory result to him and at least to me, this: Is it possible to break down that minority into groups in such a way that we might establish in some cases that what is to the whole trade a minority is to one group of retailers a majority group of goods.—A. I would agree with you, Mr. Beaudry, and if I may go back to my former suggestion that the Dominion Bureau of Statistics might very well make a survey to that effect.

Q. So, in other words, while this is a minority, or a question affecting a minority of products in some industries, it may be a question which deals with, let us say, the very life of the industry, or if you wanted to carry it that far, of a certain group of industries?—A. Let me take the illustration of one man who sells only potatoes and an other man who sells electrical appliances. There would be a very wide disparity between price maintenance as between the two retailers.

Q. You did make the statement that it is a stabilizing factor in our economy, and you gave instances as to why it was, but again comes a question to our minds of how can it be so important a factor with business, which knows and enjoys its current success—at least I think we can accept that—and which places so much importance on the stabilizing factor in what is but a very small group of goods. Consider also the assertion that in your experience and in the experience of your members, about how price maintained goods sell. I am wondering in my own mind whether you did say that price maintained goods generally sold lower than goods on which prices are not maintained, or whether you said that the margin of profit to the retailer was smaller?—A. The margin of profit.

Q. Other witnesses have told us that price maintained goods sell for lower prices than other goods, and I believe so, Mr. Chairman; but could I assume from that and from your answer that price maintained goods offered a stability to the whole trade from the manufacturer to the retailer level, which permits in turn the retailer to work on a smaller margin of profit, and gives the manufacturer a sense of stability and a regularity of production which is not obtained within other groups which are not price maintained. May I infer that from your answers?—A. That is a very embarrassing question because we always tell the manufacturers that they do not give us enough margin.

Q. Yes, I appreciate that. But I now suggest to you—and I think it is a very important point—you say, or rather your contention with respect to the MacQuarrie report, as based on the arguments presented, is that price maintenance is something which operate greatly to the detriment of the public because it tends to lessen competition. I think everyone will agree with you that that seems to be a major consideration of the MacQuarrie report.—A. Well!

Q. I am not asking you a question on that. You will pardon me. On the one hand, from your answers, we draw the conclusion that the manufacturer who deals in price maintained goods gives the retailer less of a margin, because, on the other hand, he gives the retailer an assurance of stability in prices.

Mr. THATCHER: What is the question, Mr. Chairman?

By Mr. Beaudry:

Q. I am coming to the question in a moment, Mr. Thatcher. Would it not also follow in the light of your earlier answers that, in relation to the category of goods which are not price maintained there are of necessity—again from your earlier answers—that of necessity there enters into it an element of risk both from the retailer and the manufacturers' angle which would largely and normally tend to create the necessity of a larger margin to perhaps both the manufacturer and the retailer in the eventual sale of those goods?—A. That is my opinion!

Q. Would you be able to give us the reasons, or your views, as to why in the main prices are not maintained?—A. Why prices are not maintained?

Q. I say, in the main, because you said that maintained prices were a minority group.—A. I can give you several reasons. The major one is: moving slow-moving merchandises, merchandise which the public has not found acceptable at the price at which it was offered to them. And I think you would find that the majority of stores consider that mark-downs are one of the major problems in their operation. Therefore prices are reduced in order to get rid of merchandise so that capital can be freed to purchase more acceptable merchandise for customers.

I put that as the principal reason for price reduction. And I would suggest as another reason for price reduction: the factor of creation of traffic which is important with some types of retailers but not with others.

Q. Are there any other reasons which occur to you?—A. Yes, I can think of the most common one of all, that is: someone comes in and says that he can get it cheaper down the street.

The CHAIRMAN: I wonder if I might make a suggestion.

The WITNESS: That may or may not be true; but someone may come in and say that; and the merchant will say: "I cannot let the other fellow beat me." So he brings down his price.

The CHAIRMAN: You expressed a doubt as to whether you should mention trade names before this committee. I think we are interested in having actual examples. Therefore, could you not take one group which is known, and another group which is not so well known and give us examples with respect to them?

The WITNESS: I do not think it is fair for me to mention a product; but I will mention a classification.

The CHAIRMAN: Suppose you take Proctor and Gamble's soap.

The WITNESS: I am not qualified to discuss that.

Hon. Mr. BEAUBIEN (*co-chairman*): May I ask one question, Mr. Beaudry?

Mr. BEAUDRY: Yes.

By Hon. Mr. Beaubien (co-chairman):

Q. Do I understand from the answers you have given to Mr. Beaudry that the principle behind price maintenance is to give cheaper goods, goods at a lower price, to the consumer?—A. Or better goods at the same price.

Q. No. The principle behind price maintenance as it is carried on today is that the consumer will get cheaper goods. Is that the principle behind price maintenance?—A. Yes. Each person is striving. Each manufacturer and each maker is striving to give a better product at a more acceptable price. My

opinion would be that price maintenance enables a steady program of that kind to be carried on, something which an unstable and up and down scalping type of marking would not permit.

Q. Do I understand you to say that the retailer, through the price maintenance system, is able to sell price maintained goods at a lower margin than other goods which are not price maintained?—A. That is true.

The CHAIRMAN: Gentlemen, I have a list of 7 other members who wish to ask questions of the witness. I think it is likely that the House will adjourn fairly early this afternoon. I am sure it would be a convenience to you gentlemen if your questioning could be finished today. So would the committee like to meet again at 3:30 this afternoon?

Mr. BEAUDRY: Mr. Chairman, on the day that we opened our sittings we took up the question and I think it was decided that the committee would sit every day at 10:30 in the morning with the exception of Wednesday, when we would sit at 3:30 in the afternoon. Therefore, relying on that decision I made an appointment to be in Montreal today at 3:30. I am very distressed but what can I do about it? I cannot be here this afternoon, and I cannot be here for reasons which I think will be taken as valid ones by the committee. I would certainly would like to pursue by questioning of Mr. Harris and his associates. I have always been co-operative with you.

The CHAIRMAN: I think that all points of view are fairly well represented on this committee and in view of the fact that we would like to get along with the discussion, I think it would be almost inconceivable that the wishes of one single member of the committee should prevail.

Mr. THATCHER: Well, Mr. Chairman, I must add my objection to that of Mr. Beaudry, I do not see why we should be pursuing these things as fast as we are. I have not done any questioning yet and I have a good half hour of questioning to do.

Mr. HEES: Let me suggest that we go on this afternoon, Mr. Chairman.

The CHAIRMAN: I shall put it to the committee.

Mr. BEAUDRY: On a point of order, Mr. Chairman, before you put it to a vote, let me say that I appreciate the fact that there is no appeal from your decision on a point of order; but I would repeat that it was decided that we should sit every day at a definite time. Therefore I submit, in view of the fact that we were put under such stringent operations of sitting daily, that we should be allowed some time to meet commitments of such a nature as the one I have indicated. Personally I have not missed a single session of this committee to date and I do not intend to do so. But two weeks ago I felt that I could rely on the decision made by this committee with respect to its time of sitting. I submit that it makes it extremely difficult for me to try to reconcile that fact with your position now with respect to this afternoon's sitting.

Mr. THATCHER: Mr. Chairman, I do not think you can officially call a committee meeting without first giving a certain notice.

The CHAIRMAN: I have made no decision at all. I put it to the committee whether or not, we shall go on as a convenience with these gentlemen, since they are here, and since the major part of the questioning has already been done, and since Mr. Beaudry has attended every meeting and has certainly taken his time as far as questioning is concerned.

Mr. FULTON: That is not appropriate, Mr. Chairman.

Mr. BEAUDRY: If I may say so, there is no reason why I should not take my time about it.

Mr. MACINNIS: I am quite willing to sit this afternoon but, on a point of order, I believe that the committees are governed by the house rules, and

so I do not think we could sit this afternoon unless we had the unanimous consent of the committee.

The CHAIRMAN: In that case our next meeting will be Monday. The clerk of committee advises me the point is not well taken.

Mr. STUART: I think these gentlemen have come a long way to give evidence here, and I think if we sat for an hour this afternoon we could let them go.

The CHAIRMAN: All in favour of extending this sitting, which convened at 10.30 this morning, being adjourned now and meeting at 3.30 this afternoon so we can continue the questioning of these gentlemen? Those opposed?

We will meet at 3.30.

The committee adjourned.

AFTERNOON SESSION

—Committee resumed at 3.30 p.m.

The CHAIRMAN: Gentlemen, order. The first point that Mr. Beaudry has asked me to raise is the point about which he spoke this morning. During adjournment I saw the Clerk of the House of Commons in connection with this point of order on which the clerk of our committee remarked this morning that the point was not well taken, as to whether the committee has a right to hold an adjourned meeting in the afternoon. The Clerk has drawn to my attention that committees have repeatedly done this, meeting in the morning, adjourning to the afternoon and, in some instances, adjourning to the evening. The hope of this committee is to get the work done as expeditiously as possible, and also to give some consideration to our witnesses with whom we may be able to finish this afternoon with this sitting.

Mr. Beaudry, will you please continue your questioning.

By Mr. Beaudry:

Q. I refer to your article 1 on page 1 of your brief, wherein you state that "resale price maintenance is the most effective method of curtailing the anti-social effects of loss-leader selling." This morning I understand that you gave three possible definitions, or definitions as given by three different groups of thinking people, definitions of a loss-leader. Could I conclude from that that a loss-leader is something that is hard to determine or establish?—A. That is correct.

Q. It has been suggested here, I think, by witnesses that there would be no objection to price maintenance abolition if the loss-leader practice were also legislated against. Am I fair to the committee in making that statement?

I am suggesting this now, the Commissioner of Combines has stated that vertical integration is difficult to prove under the present statute. Now, if we did have legislation covering the abolition of price maintenance and also eliminating loss-leaders, I would like to know from you, with your experience and the collective experience of your association, if you think that it would be easy to define loss-leadership and to eventually prove the practice of loss-leadership.—A. In my opinion it would be extremely difficult. I think I am correct in saying that despite the fact that it has been on the statute books for 15 years or more, there is yet to be an action employing section 498-a.

Q. Then, your answer implies that something that is not a loss-leader in at least one of the definitions that has been given of a loss-leader, which is that of an article sold below cost to the retailer, that a loss-leader which would not be a loss-leader in keeping with that definition but which would be on

fringe of that definition, which would just go over the limit imposed by the actual cost, would be for the purpose of anyone who would like to use that loss-leadership as a tool, as an instrument, would be just as effective as actual loss-leadership.—A. Yes, it is a matter of degree. If one were determining upon a loss-leader, so-called loss-leader, you would need to know what is the state of public acceptance of the product at that particular time, is it a very active market or a very dull one, and the price must be varied accordingly to achieve your objective of bringing in the traffic.

Q. Could I say when we are discussing loss-leadership, that is a word that is important now, it is mentioned in many of the briefs as such, and it is the contention of both pros and cons that you cannot determine all offences classified as loss-leadership, that it would be just about as difficult as the determination of an offence against speed regulations, motor vehicle regulations, under which you would be definitely committing an offence if you went over 50 miles an hour, but you might be guilty of a greater offence if you went at 49 miles an hour instead of 50.

Hon. Mr. GARSON: On a point of order, Mr. Chairman, I wonder if the witness is an expert on the Combines Act. If he is not he could not answer that question. It is a question of whether you can enforce it.

Mr. BEAUDRY: I stand corrected, Mr. Minister.

Mr. MACINNIS: On a point of order, Mr. Chairman. Mr. Beaudry has for the last two days been making a series of statements that superficially appear as questions. In one instance today he made one of those statements in the form of a question to the witness and then he said to the witness "I do not want an answer." In reading the record, these statements appear as if they were questions and that they were assented to by the witnesses. I do not think we should have that.

Mr. BEAUDRY: On your point of order, Mr. MacInnis. I do not think it is fair to a witness to let him answer on a question which relates to statements made by another witness and repeated correctly, when I do repeat correctly; it is a matter of record with which the witness is not familiar. That is why I do not expect an answer from him. It serves as a basis on which to ask succeeding questions.

Mr. MACINNIS: Is it, then, that certain questions are to be asked of the witness and he is not supposed to answer them, and certain other questions he is supposed to answer. Who is to decide the questions he has to answer, and otherwise?

Mr. BEAUDRY: I will pay attention to your remarks, Mr. MacInnis.

The CHAIRMAN: The witness is well qualified to answer without too much preliminary explanation of the question, Mr. Beaudry.

By Mr. Beaudry:

Q. I will deal now with page 2, article 3—"minimum resale prices also tend to become maximum prices." Would the converse be true?—A. That maximum prices tend to become minimum prices? I think that is without meaning, is it not?

Q. I am talking about set maximum prices.—A. I am not familiar in all cases of set maximum prices.

Q. The question is brought up to you by this, that there has been a suggestion in some of the briefs that people who are opposed to resale price maintenance would not be opposed, however, to this feature of resale price maintenance which would allow the manufacturer to indicate a maximum price only.—A. I go back to the point which I made this morning. I think that there is some objection to price maintenance because, in the opinion of some buyers, they are

not allowed a sufficiently great margin. They would like to see a wider margin which in operation would mean a higher price. I think that would answer your question indirectly.

Q. In that case the buyers' objection to resale price maintenance would be that it acts contrary to what he believes to be his interest, but for the public interest—A. But for the public interest. And the case of maximum prices—

Q. Mr. Harris, I am going to be rude, I hope but not too frequently. I have to leave early and I will try to restrict my questions and perhaps you could restrict your answers. Is it not true that resale price maintenance has at times the effect, or may have had at times the effect of effectively policing prices in times of scarcity in certain lines?—A. That may be true. I am not personally familiar with any instances, though.

Q. Well, we work on the assumption that resale price maintenance is only enforceable by a manufacturer through his using sanctions against the parties who deviate from the list of prices he has indicated, whether maximum or minimum, and we must take for granted that these sanctions are exercised. We must take for granted that they have been exercised in two directions. Are you familiar with the effect on the retailer when he went beyond the price fixed?—A. I can definitely answer yes to that. I have personal knowledge of it.

Q. If that is true would that not be an action from the manufacturer passed on to the retailer assuring the consumer's benefit?—A. Yes.

Q. Thank you. Part 5 on page 2 states:

"A survey of retailers' margins for price-maintained goods shows that they are by no means excessive in terms of the traditional cost of merchandising particular products." I assume that margins in various products are different.—A. That is correct.

Q. Would you care to explain the elements which are taken into consideration when a merchandiser or a manufacturer sets his margin on a product.—A. Yes, I would be glad to. These are the factors, the chief factors. First, the risk involved, and may I point out as an example the ready-to-wear field in dresses, where the risk of your choice of styles not being acceptable, or styles changing quickly, is quite different from the electrical appliance field where, because of the investment involved in equipment, dies, tooling and so on, the planning period is so much longer. That is No. 1, the greater risk. No. 2 is the cost of selling. In some departments it is simply a counter operation, practically self-service. In other departments it takes a great deal of personal attention. Another factor is service. Does a product require service after it has been sold? Another factor which is purely a matter of store policy is how free one is in the policy of exchange and refunds. Those, I would say, are the main.

Q. Would you explain what is usually understood in the trade by shelf life, the shelf life of perishable goods and the shelf life of unperishable goods?—A. Well, the object of any retailer is to achieve the fastest rate of turnover that he can. If he has $100 invested in merchandise and if he can turn that over 10 times a year then it is obvious he is going to make a profit on $1,000 of volume. If he turns it over once a year he will make a profit on $100 worth of business. Therefore, the shorter the shelf life of an article the more profit, other things being equal.

Q. There also follows from this, I would think, that the longer the shelf life or the longer the storage, the heavier the cost to the retailer and the smaller the profit, and a higher margin to obtain the same profit must prevail?—A. That is true.

Q. You represent a group of retailers interested in extremely wide and varied lines of goods. Could you tell the committee the spread between what we might term the normal standard margins with or without specifying the category of products, and that in which there is the widest margin?—A. Without too great accuracy, I believe that in the case of cigarettes the margin is about 10

per cent of selling. In the case of an item such as costume jewellery it would traditionally be in the neighborhood of 45 per cent.

Mr. HARKNESS: These are all on selling prices?

The WITNESS: Yes, all based on selling price.

By Mr. Beaudry:

Q. So these margins are based in part on the rapidity of turnover and the rapidity of profits on investment?—A. Yes, on the factors you have mentioned, Mr. Beaudry.

Q. And in one case or two with no element of risk whatsoever, in the case of cigarettes . . . —A.Well, shall we say a minimum of risk.

Mr. FULTON: Mr. Beaudry, would you like to explain what you mean by risk?

Mr. BEAUDRY: We established this morning that price-maintained goods—this has to take the form of a statement, I think you will permit it, Mr. MacInnis.

Mr. MACINNIS: I will watch you carefully.

Mr. BEAUDRY: In the case of price-maintained goods, since the retailer knows in advance the quality of the goods he is going to receive, the price at which he shall purchase and the price at which he shall re-sell competitively at any given time, within a fair period of time, the element of risk as to price and possible loss is practically eliminated, whereas, in the case of a non-maintained price, the retailer who has to stock or order six or seven or eight months in advance of the actual date of sale has no guarantee as to the actual resale price at that time. That creates an element of risk which must be paid for in the form of a premium by the consumer?

Mr. FULTON: Thank you.

Mr. MACINNIS: A very neat statement.

Mr. BEAUDRY: I think it was factual, Mr. MacInnis.

Mr. MACINNIS: The witness did not answer it though.

Mr. BEAUDRY: One of the main interests of this committee in price maintenance and its effect is a statement fairly widely circulated, at least by some groups of people in this country—many groups perhaps—that it tends to eliminate competition and therefore is detrimental in consequence, and by the application of elimination of competition, it affects the public interest.

Mr. SHAW: Mr. Beaudry, on what do you base that statement? You said it was the opinion of this committee?

Mr. BEAUDRY: No, no. I think I can refer you to every brief we have before us.

Mr. SHAW: You did not specify that it was contained in the briefs. You left the impression that members of the committee were of that opinion.

Mr. BEAUDRY: Well, we can refer to the record and see.

The CHAIRMAN: We do not have the record read back. You can repeat your statement, however.

By Mr. Beaudry:

Q. I say that one of the main questions which preoccupies this committee, in regard to the question of price maintenance, is that it is advanced by some in this country, or by many in this country, that price maintenance as currently practised eliminates competition; and that this makes it one of the many reasons why it is a detriment to the public interest? I would like to ask this question: what are the sanctions, to your knowledge, which would be applied against a violator of price maintenance, on goods which were price maintained—

sanctions which would be applied by the manufacturer? What form may that take?—A. It may take the form of first requesting that his price be restored to the price maintained price. It may take the form of the manufacturer buying up whatever stock that he may have. It may take the form of the manufacturer finding himself unable to supply in future.

Q. Is not that a slight understatement—the last part of your answer? That the manufacturer might find himself in the position of not being able to supply further goods?—A. I would not know whether it is an understatement or an overstatement, but it is a statement of fact.

Q. Well, I am not suggesting anything to you but would it not be truer to say that the manufacturer might very clearly say that unless the dealer sells at the price which he had set there would be no more goods available to the dealer?—A. I have never had any personal experience of it being stated just that bluntly.

Q. I appreciate that, but let us not quibble too much. Those are the sanctions, and the last one is very severe—whether it has been obtained in very polite terms or just in actual practice. I would think it is very severe against the offender and I would say that in his case it certainly eliminates him from competition with other retailers—as far as that particular brand of goods is concerned.

Would you tell me if these same sanctions are not at times applied for other reasons than that of price cutting or going over a price maximum. Perhaps I should make myself clearer. Has it ever been known in the trade that a manufacturer or his agent, the jobber, would refuse to sell a retailer because his shop offends the laws of cleanliness?—A. That would be possible.

Q. Do you think it has happened?—A. I cannot answer that. I am not too familiar with the food trade. I have no knowledge.

Q. You have no knowledge?—A. No.

Q. Is it possible that a manufacturer might apply all these three sanctions we mentioned earlier against someone—a retailer—whose credit does not satisfy him. I refer to good grounds, and I am not using the term "credit" as an excuse for other loopholes?—A. I would say then the ground is purely one of credit.

Q. Has it come to your attention at any time in your business life that a manufacturer might exercise some sanctions against a retailer whom he considers to be a poor merchandiser?—A. Yes, sir.

Q. Do you know whether those instances are many?—A. I am afraid I cannot answer for all the manufacturers but it would seem to me that a manufacturer has the responsibility of finding proper distribution for his product. If he finds the distribution inadequate through one outlet he must of necessity seek another.

Q. Is it not a fact, Mr. Harris—well, I will reword the question. Is not distribution one of the main preoccupations of the manufacturer?—A. Yes, sir.

Q. And if that is so—and you have said yes—as far as the retail trade is concerned is he not far less a dictator than a seeker of goodwill?—A. I would agree with that.

Q. But he seeks his goodwill in competition with others, does he not?—A. That is true.

Q. And every manufacturer is in the same position?—A. I would say, broadly yes.

Q. Broadly, yes. In your experience do maintained prices differ considerably as between substantially similar articles?—A. Not very much variation. Competition levels them out.

Q. Not much variation?—A. No.

Q. Competition levels them out. To your knowledge do margins to retailers vary considerably in substantially similar articles—A. A very narrow variation.

Q. Mr. Chairman, I would like to ask for some advice if I may?

The CHAIRMAN: Who are you going to ask advice from?

Mr. BEAUDRY: From you or from the joint chairman?

Hon. Mr. GARSON: Will you guarantee to take it?

Mr. BEAUDRY: I will. May I refer to a brief submitted yesterday?

The CHAIRMAN: I do not know why you cannot. It is a matter of record in our proceedings but I hope you will identify the brief for the witness.

By Mr. Beaudry:

Q. This is the brief submitted by the Canadian Pharmaceutical Association to which is appended a list of resale prices, sizes, discounts, amounts, percentages, and profits. Unfortunately I left my notes in my office, but from a perusal of this I discover that eight types of shaving cream described as relatively similar sizes, showed a variation as to sale price of somewhere between 34 cents and 73 cents, if my memory is correct; and that the variations between margins of profit or mark-ups to the retailer in these eight products varied between 20 and 33. Is that not a slight contradiction of your statement made a moment ago?—A. I would have to know the characteristics of the product. I might add this: the less desirable the product the more the manufacturer will endeavour to woo the retailer by allowing him a wider margin.

Q. Would you allow the committee to conclude that competition in price margins does exist to a great extent between manufacturers competing for the same article?—A. Yes.

Q. Thank you. Do you have members selling goods on which the price is maintained by provincial authorities—such as, for instance, in dairies?—A. Yes.

Q. Can you give us a reason why the price is maintained by legislation in those cases? I am speaking now of provincial legislation. If you are not familiar with the motives you have no answer but if you can suggest some we would like to have them.

The CHAIRMAN: Surely that question should be asked of the people who are in charge, the legislative body. These gentlemen are only aware of the effects of the legislation.

By Mr. Beaudry:

Q. I will withdraw the question, but I will leave it that you do have members selling that type of goods?—A. Selling food products.

Q. I am going to take only three more minutes Mr. Chairman and I am through.

Returning to Article I on page 8—that price maintenance stabilizes and likely lowers prices by eliminating an element of risk to both the manufacturer and the retailer—an element which, as insurance, is covered frequently by a premium—in this case price increase?—A. I do not understand your question.

Q. I will repeat it, and the only answer I would like, please, is yes, or no.

Mr. FULTON: That depends on the question, does it not?

The CHAIRMAN: The witness has a right to answer any way he wishes—yes, no, and anything else.

Mr. BEAUDRY: I would not prevent him but that is what I would like—and I do not necessarily get what I like, Mr. Chairman.

By Mr. Beaudry:

Q. Is it true, in your opinion, that price maintenance stabilizes and likely lowers prices by removing an element of risk and uncertainty to both the manufacturer and the retailer—in this case price?—A. Yes.

Mr. THATCHER: What is your proof?

Mr. BEAUDRY: The record to date—

The CHAIRMAN: When it is your turn to question you may ask that, Mr. Thatcher.

Mr. THATCHER: Thank pou, Mr. Chairman. I hope that time will come.

The CHAIRMAN: I hope so too.

By Mr. Beaudry:

Q. On point 2 is it true that while on the whole of the country's manufacturing business price maintained goods represent a small part, a minority of the total trade, it may constitute in some industries a major part, and the abolition of prices maintenance might have serious repercussions on the consumers and those industries?—A. Emphatically so.

Q. Point 3. Minimum resale prices also tend to become maximum prices. Is it or is it not true that maintained resale prices are in effect a maximum price and at time set effective controls on would-be profiteering? A. They tend to become maximum prices.

Q. Point number 5—

Mr. THATCHER: Can these statements be amplified? Just to say yes or no does not put any evidence in front of the committee. I would like to see some evidence on the point.

The CHAIRMAN: I think it is important, despite the fact that you have to catch a train, that the witness answer the questions fully.

Mr. BEAUDRY: Actually, Mr. Sinclair, I think he has already answered them in other forms I am only summing up.

By Mr. Beaudry:

Q. You were suggesting this morning that these gentlemen put up a concrete case and I am only trying to sum up each one of their own answers. That is why I am taking up each point separately.

Is it true that the retailers' margins of profit are generally smaller in price maintained goods because of easier, faster, more frequent selling without the element of risk as to price or excessive stock?—A. Yes.

The CHAIRMAN: Surely we have had these questions all this morning. I do not think you are in the position of counsel summing up at the end of a case, Mr. Beaudry. In deference to the other members of the committee they have points on which they would like to talk and they have been very reasonable in taking their turn.

Mr. BEAUDRY: That is my last question.

The CHAIRMAN: Before Mr. MacInnis starts I think that in fairness I should read a telegram I have just received.

> "The Hon. Senator A. L. Beaubien, Mr. James Sinclair MP Joint Chairmen—Joint Committee of the Senate and the House of Commons on Combines Legislation, Parliament Buildings, Ottawa.
>
> Brief presented to you today by the Canadian Retail Federation was not presented to all the members of the executive committee of the

federation before its submission. Having now seen the brief we would like to point out that it does not represent the views of all the members, many of whom are strongly opposed to price maintenance.

(sgd) M. A. Robinson,
The T. Eaton Co. Ltd. Representative on the executive and Board of Directors Canadian Retail Federation."

The committee will remember this morning that this witness did point out that he was not presenting a brief on which the members were unanimous.

Hon. Mr. GARSON: Just a moment, I think it is desirable in the interests of the witness as well as ourselves that we should be clear. Did I understand him to say it had met with approval of all members of the executive? This telegram apparently points out differently?

The WITNESS: I do not think I said it had the approval of all members.

Hon. Mr. GARSON: That is what I understood you to say but anyway the record will indicate it.

The WITNESS: If I said that I was in error.

The CHAIRMAN: Mr. MacInnis?

By Mr. MacInnis:

Q. I am afraid there will be a little overlapping but I am only going to ask a few questions. Stop me if I go too far because I do not want to ask unnecessary questions.

The first point you make in your brief—and you say it is a brief summary of the views expressed at that time to Justice MacQuarrie and his fellow committee members:

"Resale price maintenance is a stabilizing factor in our economy. It is the most effective method of curtailing the anti-social effect of 'loss leader' selling."

A. It is one of the purposes. May I say something about the case of a product which many years ago was probably the most popular product in its classification on the market. They did not enforce price maintenance policy and that product today has virtually—I would not say "lost" its distribution—it still has an element of distribuion, but it is called an under-the-counter item—otherwise it is produced only if people ask for it; but, through being used as what we call a football, it has ceased to have any profit attraction to the retailer whatsoever and consequently, in the course of time the public have lost their interest in it. In other words, public demand for it has died down.

Q. As the public demand disappears for this particular article you mentioned the article will partially disappear. Retailers will not sell it, display it, or put it in a place where buyers will see and ask for it.—A. Partially so.

Q. Well, what are the reasons, if that is but a partial reason?—A. Well, times change and demands change with them.

Q. That might happen to any article, whether price maintained or not; it might go out of fashion.—A. It might.

Q. And it does not necessarily mean that this particular item went out of fashion just because it was not price maintained?—A. It does in this particular illustration which I have in mind.

Q. You are sure that it does? Is there very much in the way of loss-leader sales at the present time? Is it a common practice?—A. I have to think that one over very carefully; and again, it depends upon the field and the store and the definition of a loss-leader. I am told by one of my associates that the United States Commerce Department has been trying for six years to define the term "loss-leader", but they have yet to find a definition. So I feel very humble in relation to that experience.

Q. Well, the Congress of the United States should be able to get their definition by consulting the people who have appeared before us because all of them included it as a most important item in their briefs, a most important function. Therefore if Congress gets into difficulty, we should be able to help them out. You did not answer that question, but would you not say that loss-leader selling is an important item in merchandising at the present time?—A. It is important to some types of stores.

Q. To which stores?—A. May I give you an illustration. If you go along Sherbrooke Street in Montreal you will find the stores there have found that loss-leaders were not a device which was of very great use to them. Their appeal is more to fashion and to exclusiveness and so on. On the other hand, if you seek in the lower end of the city, you will find that the loss-leader principle is more important there to produce traffic.

Q. I agree. If there is a bargain, people will seek out that bargain but I cannot agree with you, an expert, on the point you made this morning that if a brand-named goods were sold at a loss, sales would fall. Is it not the practice of manufacturers to sell goods cheaper in order to get people acquainted with their products?—A. Would you mind repeating your question.

Q. Is it not a fact that manufacturers do at times sell their goods at a lower price in order to get their goods introduced into the market and to get people acquainted with the product; and once they have appreciated its value, then they will sell those goods at the normal price?—A. Yes.

Q. That is true. So, if merchandising in that way would increase the sale of a product, how would it decrease the sale of a product if it were sold, for instance, under what you call the loss-leader practice?—A. Well, again let us take an illustration of a product. I think that is the simplest way for one to speak of it; and let us say that that product has a regular selling price or maintained selling price of $4. Then, one store decides to make a loss-leader of it and sells it for $2. Therefore there is a discrepancy of $2 between the maintained price and the selling price. That means that the sale of that product stops, not entirely, but slows down very considerably in every store which fails to meet that price. If they all should meet it, then it ceases to hold the same attraction; and they must get it up again because they cannot continue to operate at that level. They must find some other product which is going to give them more returns in order to equalize their mark-up, which keeps them in business.

Q. I agree that sales would fall in the stores which did not lower their prices. But I believe that the total sales to the manufacturer would not necessarily decline.—A. We are talking about the retailer now, not the manufacturer.

Q. Yes, but the manufacturer has to supply the retailer; and if one retailer sells more, let us say, of shirts than another, surely the sales of the manufacturer do not decline, do they?—A. In my opinion, over the course of time, they would very definitely decline because that product has ceased to prove acceptable to the retailers generally.

Q. Let me put it this way: supposing you were in the habit of buying a certain brand of shirt which you liked, and for which you had been paying—I have not bought a shirt for such a long time I do not remember what I would pay for one.—A. Let me say that they have gone up.

Q. Well, let us say $7 or $8, or let me be modest and take a price that I can afford, $5; and then if you could get that shirt from some other store for $2.50, you would buy two or three of them because you could get them at that price. Now, that $2.50 shirt will give you just the same service as the $5 one; so would you discontinue buying that shirt because the price came down to $2.50? Would you think that it had deteriorated in value?—A. No, I do not think I would. But I think I might find it very difficult to locate a place to buy it at that lower price.

Q. I cannot follow that.—A. May I amplify my answer?

The CHAIRMAN: Surely.

By Mr. MacInnis:

Q. If that is the answer, we can leave it at that.—A. I would like to make my point clear. Let us take an example of a city in which a shirt manufacturer has eight outlets, all good reputable dealers. One of them decides to cut prices on that shirt. He decides that he is going to make that shirt his loss-leader in order to bring people into his store, and he is prepared to accept a loss on that particular item because he is going to make it up on others. Now, the other three stores are going to stop carrying that shirt, and when they stop carrying it, the first store is going to have it exclusively, if you like. But the manufacturer is not going to be content with that form of distribution because he is not going to get the volume out of the one account that he would get out of the four accounts; and if he does not get his volume, then his cost is necessarily going to rise. Therefore the product becomes less acceptable to the consumer in other places on that account.

The CHAIRMAN: Now Mr. Stuart.

By Mr. Stuart:

Q. Every once in a while there will be an advertisement appearing in an Ottawa paper concerning some store here in Ottawa, offering to sell 3,000 shirts, let us say, at a discount of so much. Trade names will not be mentioned. It will be sugested in their ad: "We are unable to mention trade names." How could that come about if it is not too much bother for you to answer it? I have often wondered why it was done.—A. I cannot answer for the Ottawa stores but I can answer for our own store. You say: "How could it come about?" First of all, it might be soiled merchandise; secondly, it could be slow-moving lines; thirdly, it could be old merchandise, older than you are prepared to accept in your stock; fourthly, it could be purchased from a manufacturer at a special price; and fifthly, it could be distress merchandise, overproduced merchandise.

Q. That would be merchandise, I take it, when it is advertised in that way, on which a price had been set by the manufacturer; that is why it would be advertised in that way?—A. By not using the manufacturer's name?

Q. That is right.—A. Yes, that would be so.

The CHAIRMAN: Now, Mr. MacInnis, again if you please.

By Mr. MacInnis:

Q. According to point 2 of your brief, you say that resale price maintenance applies to only a minority of products sold at retail. Is the practice increasing of the factory setting a price to be maintained?—A. I find that question a very difficult one to answer accurately because of lack of knowledge and because of never having studied the question. But let me say this: although we have made that statement, again I would like to emphasize that in some categories of merchandise and in some types of goods and stores, I think you will discover it is a very large proportion of their sales.

Q. You cannot tell me whether the practice is increasing, whether there are more price maintained lines today than there were five years ago?—A. I could not answer that, but I could if you said fifty years ago or even if you said twenty years ago.

Q. I am thinking, let us say, of 1941, ten years ago.—A. No. All lines were price maintained in 1941 by the government.

Q. But that was at the end of November or December, 1941, and that is not the kind of price maintenance that we are talking about.—A. All I meant to say was that price maintenance was not a factor during the war years.

Q. That was price maintenance imposed by an authority responsible to the people of Canada. But this is price maintenance imposed by people who are not responsible to anyone but themselves.

Mr. FULTON: It was pretty effective pressure.

By Mr. MacInnis:

Q. I think that in nearly all the briefs we received there was a sentence in them to the effect that resale price maintenance applied to only a minority of products sold at retail. Is that an apology for price maintenance? Is it something which is just used to make price maintenance more acceptable?—A. It was an attempt to bring out the fact that, taking in all categories of retail, there was but a relatively small proportion of the over-all sales items which were price maintained; but that in particular classifications there was a great deal. Now, as you know, ready-to-wear represents a very large part of purchases. There is comparatively little price maintenance in the ready-to-wear field, because the appeal of the item is that of fashion, eye-appeal, whims, if you like, of the purchaser. It has a very short "making" period. It has a very short life in the store, and perhaps it has a very short life on the back of the person who wears it.

Now, that all goes in to average it out. I would like to give an illustration of an automobile. An automobile manufacturer has to plan his new model 12 months in advance. I am guessing on this. He has to tool up far in advance and put his product on the market. He has to be assured of a certain market before he can set his price. He has to set his price before he goes to the market to take his orders; and by and large he must maintain that price throughout the season. It is a long-range commitment, whereas with the dress manufacturer, it is what is known as a cutting up trade. You order today and it is delivered in two days from now.

Q. On page 2 of your brief under point No. 5, you said that shrinking margins were more of a source of concern to the retailers. You said:

> A survey of retailers' margins for price maintained goods shows that they are by no means excessive in terms of the traditional cost of merchandising particular products. Indeed, more concern was expressed by retailers over shrinking margins which manufacturers allow because of the competitive efforts of the supplier to obtain a larger share of the market by keeping his price at a realistic level.

Have you or your organization ever taken this matter up with the manufacturers? I refer to the matter of shrinking margins?—A. No, sir. We are not a trading organization.

Q. The individual retailer would take it up with the manufacturer?—A. That is entirely up to him. I am speaking of the Canadian Retail Federation, when I say that.

By Hon. Mr. Garson:

Q. Would any of your component associations do so?—A. They might, conceivably.

Q. Yes, I think so. But would you find out about it and let us know?—A. Yes. I think that probably some of them will be submitting briefs themselves, and that point might come out, sir.

By Mr. MacInnis:

Q. With respect to the point of orderly marketing you say resale price maintenance encourages it possibly because there is assurance not only of stable quality and current prices, but also the knowledge that there will be no need to shop in more than one retail outlet. That means that price maintenance reduces competition?—A. No, sir. I do not think the statement says that.

Q. No. But if the price at each retail outlet is the same, and that is what this appears to be, you said there would be no need to search for fractional advantages in price by shopping in more than one retail outlet, because there would be no advantage to be found. Is that right? Is that a fair interpretation of this item?—A. No, sir, I do not think it is. Again I might use an illustration: I recall to you the day when every grocer had his barrel of oatmeal, and the only difference between the barrels was in the number of weevils in them. The competition was purely equivalent to price; it was an identical product and one fellow could under-sell the other fellow. Today you get a cereal which is based upon taste, upon presentation, and upon the liking of the individual. The lady who buys it does not have to go shopping up and down the street to find out who has weevils in his oatmeal and who has not. She is sure that when she buys oatmeal there are no weevils in it, and that it is a very acceptable product. She can have that assurance.

Q. Your brief did not make any mention of weevils. Therefore I left them out of my interpretation. But I think in reply to a question asked by Mr. Jutras you said that there was a higher margin on non-price maintained than on price maintained goods.—A. That is your question?

Q. Yes, did you say that?—A. Did I say that?

Q. Yes.—A. Yes, I made that statement.

Q. Well, are the non-price maintained goods then carrying the retailers' profits that should go fairly to the price maintained goods?—A. I would say that the profit, if any, is being borne by both. But how much each contributes to that profit I do not know. You would have to make a pretty complete analysis of a department to get an accurate answer to that question.

Q. Do you consider it would be a good thing if all goods were price maintained goods?—A. No, I would not.

Q. Why not? If it is good for a certain number of articles, why should it not be good for all articles? You said this morning, I think, that it protects the consumer. So why not go the whole hog and say that it protects the consumer by putting price maintenance on all goods?—A. Because with respect to some products it is impossible to establish a standard.

Q. You do not want to establish a standard in these articles. You merely establish a brand name. That is not a standard.—A. A brand name is associated with a standard. Perhaps I may make that a little clearer. Let us say apples are very much more difficult to establish a standard on than it is in the case of sugar.

Q. I see you are not familiar with British Columbia apples.

Mr. FULTON: I think the Tree Fruits people say they laid down a fairly successful classification of standards. They have a rigorous inspection system to enforce it, also.

Mr. MACINNIS: Did you ever buy a box of extra fancy delicious packed in the Okanagan? I am asking the witness. He does not have to answer.

The WITNESS: No, we patronize our local products pretty well.

By Mr. MacInnis:

Q. Well, then, your answer is this, that you would not like to see all goods price maintained?—A. That is right.

Q. It would be putting too much of a limit on competition. Would that be the reason?—A. No, sir, simply the ability to identify and maintain the standards

that the consumer and the retailer could rely upon. For instance, nails, if you like, a bulky product of that kind is very much more difficult for the consumer to identify than it is in the case of a shirt, to come back to that again. Let me go back to my illustration of the dress. It is much more difficult for a standard to be established in a dress than it is in a shirt.

Q. Well, that may be so, but it is still easier to apply standards to nails than it is to a shirt or a dress. I sometimes go shopping with my wife and she has a hard time getting something she like, but I can go in to a store and ask for two pounds of 2½-inch wire nails and I know exactly what I am going to get.

What I want to do is to get an answer why is a small amount of price maintenance a good thing, and not a complete price maintenance?—A. Again, I can only repeat, that for some products which I attempted to say this morning, where use is one standard, use and wear, use and operation, where that can be established and tested over a long period of time, then it is a valuable device both to the consumer, the retailer and the manufacturer. In other fields it is not so applicable. In a free competitive system that level is found out, discovered, it finds itself.

Q. Just one other question. On page 4 you say:

> Manufacturers who offer suggested resale prices do not do so without excellent knowledge of the market.

What is the meaning of the word "suggested" there?—A. It is a practice of some manufacturers to give a suggested retail price.

Q. Is it just a suggested retail price?—A. I think that is a very mild way of putting it.

Q. I do not want a mild way; I want the actual term that is used.—A. That is the usual trade term, "suggested price".

Q. Does suggestion here mean that this is the price at which you will sell?—A. Yes.

Q. That word "suggestion" I have not understood before now.

By Mr. Hees:

Q. Mr. Harris, you said this morning, and again a few moments ago, that in your opinion the profit margins on articles which are not price maintained are generally greater than the profit margins on articles which are price maintained.—A. That is my experience.

Q. Well, now, if you can back up that opinion by figures, then I believe you will have sold the practice of resale price maintenance to the Canadian people generally, and I say that for this reason, that the buying public expects the retailer to make a reasonable profit on the goods he sells just as the farmer and the industrial worker expect a reasonable profit on the goods they sell. I believe if it can be demonstrated to the satisfaction of the people that the profit margins on price maintained goods are reasonable and generally less than the profit margins on goods which are not price maintained, then the buying public can have no practical objection to the principle of resale price maintenance. Mr. Harris, if given time, could you and your associates produce figures to demonstrate this?—A. I would say yes. I speak without complete authority, but I feel fairly well convinced that the executive of the Canadian Retail Federation would go along with that. We shall endeavour to secure from our members comparable figures to find out the breakdown in the sales, possibly by choosing two departments where price maintenance is a strong factor in that department, which I would think would be the best test, and I think I can say, if it is a practicable thing to find them out and if we may have the sanctity, if you like, of the names of the companies, preserved. I mean we are very competitive and we do not trade figures in the retail. If they can be known as companies

A, B and C, and that is preserved, then I feel fairly confident that our members will co-operate to give these figures. May I go a little further? In my opinion that is getting very much to the root of the thing. In the MacQuarrie Committee, as far as we were concerned, we were not asked for any factual evidence and I would suspect that their conclusions were reached without factual evidence of this kind as far as maintained prices are concerned.

Q. Mr. Harris, how long would you think it might take to obtain these figures?—A. I would have to consult to find out. We could let you know at the first of the week.

Mr. THATCHER: Would you permit an interjection, Mr. Hees? Mr. Chairman, I believe Mr. Hees has put the finger on the main point, and in the briefs we ask for from now on I think that that point should be made, that when these industries come here to give evidence that they bring with them tangible prices. I think it would help.

Mr. HEES: Mr. Chairman, I believe that this is the crux of the whole thing. We are here to try and decide whether resale price maintenance is or is not in the best interests of the Canadian people, and it is only by figures of that kind that it can be demonstrated to the Canadian people whether this is or is not in their interest, and I think that all other talk on the subject is completely outside the point. It is the figures that count. Either resale price maintenance takes the Canadian people for a ride, which they have been led to believe it does, or it does not, and resale price maintenance gives the people a better break than on goods which are not price maintained. If that is the case there is no objection to resale price maintenance. I suggest that Mr. Harris and his associates obtain those figures as soon as possible and return before this committee, because only in that way can we decide that very important point.

The CHAIRMAN: I agree that it would be of value, but we must be sure of what we are getting. The fact that the mark-up on a price-maintained article is 25 per cent and on an article of equal quality not price maintained, the mark-up is 40 per cent does not mean that that the consumer will get it at a lower price. I would think when we have these figures on that basis we should have certainly, I think, brand names because I think they are pretty important here. If they are to be known as articles A, B, C and D, we will want to know what the goods are because we will want to know the quality, and I would suggest that we ask this gentleman who wired us today, who is on the other side of the retail trade, to provide us with similar figures.

Mr. HEES: We are all for that. It is important not to spend days and weeks just talking over generalities like we have been, but to get the people here, like the gentleman who sent that telegram, and ask them for specific figures. I do not think any amount of oratory is going to prove this one way or the other. It is the flat figures that will prove it. The people of Canada, members of parliament, and, I think, the members of this committee have no idea just what the practice of resale price maintenance is. I think this is the only way you can show people what it is and what it does.

Mr. FULTON: May I make a suggestion to Mr. Harris to try his best to get these figures from reputable firms, whether large or small, who will be willing to have their names and the names of the brands revealed. I make that suggestion for this purpose: As I said this morning, the committee should get facts and figures; the committee has power to subpoena witnesses and to compel them to produce their records. We prefer not to have to do that, but it may be done to get the actual information we need. We would have to do that unless somebody is going to volunteer, and that is why I made the suggestion to try to get this evidence from members who would not object to having their names and the names of the goods disclosed.

Hon. Mr. LAMBERT: I think Mr. Harris said he could get that information for us early in the week.

The WITNESS: No, I said we could let you know early in the week whether we could supply it.

Hon. Mr. GARSON: I am in entire agreement with Mr. Hees that this comparison is the crux of the question, but I think in practice it may be found a much more difficult feat than perhaps some here have been inclined to think. In the first place, we have to be absolutely certain that the commodities which are compared, that is the one being under resale price maintenance and the other not under resale price maintenance, are as nearly identical as possible. We have to make a comparison of comparable things. The economic conditions will have to be the same because the economic conditions will affect price. I think perhaps that you will find when you come to make the inquiry that one of the best places to get such a comparison is where you have—and I do not know whether we have that condition in Canada—the same articles being sold in two different jurisdictions close enough to have their economic conditions roughly comparable, in the one case under resale price maintenance and in the other case with no resale price maintenance. Now, attempts at this sort of thing have been conducted on a fairly large scale in the United States and they have had great difficulty finding it out there. We would have, I think, even more difficulty here; because I think I am right in saying that it will be quite difficult to find two places in Canada that are comparable, in one of which resale price maintenance applies in the other of which at the same time resale price maintenance does not apply. Do you know of any, Mr. Harris?—A. Well, sir, the point as it appears to me would be this, that if in a department your average mark-up was 37½ per cent on goods which are not subject to resale price maintenance, and 35 per cent on goods that are subject to resale price maintenance, then the point would be made.

Hon. Mr. GARSON: That is just the kind of simple solution that, I think, might lead us far astray. The real point of the matter is, as I think, and the chairman has stated, not a question so much of mark-ups. I do not think the consumer cares what happens to the mark-up as long as he gets value. The real test is whether the consumer gets a certain product under resale price maintenance for, we will say, a dollar, and the same product not under resale price maintenance at 90 cents in the one case, or $1.10 in the other. I do not think he is concerned with the mark-up.

Mr. FULTON: Let us get prices, then, as well as mark-ups.

Hon. Mr. GARSON: Yes. I think the opponents of resale price maintenance argue that under the competition that they say will prevail in the absence of resale price maintenance there will be a tendency for prices to come down. The supporters of resale price maintenance say that by the stabilization and the economy which that permits the manufacturer and the distributor to effect, you can sell the goods for less. Now, I share Mr. Hees' views very emphatically, that listening to all these generalities, statements and so forth carries no conviction, to my mind. If the witness says in answer to a long question by Mr. Beaudry "Yes, they are cheaper", that answer carries no conviction in my mind. But can you produce evidence that where the same products sell, under conditions which are otherwise fairly comparable, at less under resale price maintenance than they are under no resale price maintenance...that is the question.

Mr. HEES: Less, or the same, or no more expensive.

Hon. Mr. GARSON: Or no more expensive.

Mr. HEES: One or the other.

The WITNESS: Mr. Chairman, the contention has been that the retailer is making more money on price-maintained items than he is making on non-price-maintained items. That is inferred in the MacQuarrie report.

Mr. HEES: That is what the public understands.

Hon. Mr. GARSON: I think I can say this, that this committee is not interested in pushing the retailer down or cutting his profit, but it would like to have a system under which the consumer could get as good a deal as possible and consistent with that the retailer could make as good a profit as possible. The figures that we have been able to get in the department—I think I should say this in all fairness to the witness—tend to indicate that where this comparison can be made the comparisons are all in favour of no resale price maintenance. Not only did the consumers get a better deal, but the retailers, dealers, are also better off. Unless a comparison of that kind is made then comparisons in mark-ups will not establish very much.

Mr. HEES: Is not the important thing, then, that Mr. Harris and his associates, representing a very large number of retailers, are here to prove a case for resale price maintenance? They believe it is a good thing. Let us not be taking away a lot of their worries in proving their case for them. My suggestion is that they prepare a case on a different basis than has been presented so far, with facts and figures, and come back and state it to us, and that we give them the opportunity to do so. He has welcomed the opportunity of so doing. Let them now bother about the details, let them bother whether they can convince us. It is not our worry.

Hon. Mr. GARSON: I agree, but I say it will be of considerable help to Mr. Harris if we can give him some specifications on what it is that we want. I say we are not mostly interested in mark-ups because the argument that the opponents of resale price maintenance, as I understand it, is that when you do away with these restrictive practices of any kind, you create that degree of competition at the manufacturing level, at the distributive level and so on, and you get your prices down and increase your consumption and the amount of business done, so you have an efficient economy and everybody at every level is better off. If we are going to have from this witness any figures here that will be worth very much to this committee—I am just expressing my own opinion—I think they should be in the form of a list of products that he can demonstrate have been sold under conditions otherwise comparable to the consumer for a lower price under resale price maintenance—and if you like at a lesser mark-up, although I think that that is of less importance than the price to the consumer.

By Hon. Mr. Lambert:

Q. I just want to logically follow up what you are saying about what you might do. Your organization is made up of provincial units, and, being a federal body, you will have to consider them. Could they give you say ten lines in which you have price maintenance, and even on ten lines, answer the point that members of your retail association deals in—to prove or at least to support the claim that price maintenance does not increase prices.

It seems to me that on the basis that the retail association, through the individual retailer according to the statistics you have given us, represents practically 73 per cent of all the business done in Canada, that it is a very representative basis on which to make a statement. The chain stores and the departmental stores represent something like 17 per cent and 10 per cent of the volume. Surely 73 per cent of the business done in this country can be classified into evidence sufficient to represent what the majority of this field covers. That is purely a suggestion.—A. Perhaps I should make that clear. We

represent all of these groups, not just some. The Canadian Retail Federation is representative of departmental stores, chain stores, and the independent retailers.

Q. Oh, I see you include them?—A. Oh, yes.

Q. Departmental and chain stores?—A. Yes, in our membership.

Mr. THATCHER: Mr. Chairman, as a retailer I must take exception to what the minister has just said because I think it would be very pertinent to this committee if we went out and found that a store was selling 1,000 articles and of that number 900 were being sold under non-price maintenance at a mark-up of 35 per cent, and that the 100 being sold under price maintenance were marked up only 25 per cent. I would think that would indicate very clearly in that line of business that the practice of resale price maintenance does not necessarily mean higher prices. The contrary in fact would be true.

The CHAIRMAN: Yes, so do I.

Mr. THATCHER: I think it is very necessary to get a general picture on price maintenance goods as compared with those which are non-price maintenance goods. Far from being a difficult task I think I can tell the minister that it will be a very simple task to go out and follow such a procedure.

The CHAIRMAN: May I just speak a moment to the committee. We are again branching out on two lines of thought. The point Mr. Thatcher raises is a very important point as far as mark-up is concerned. However, we have two ladies here this afternoon and I do not think they care what the mark-up is to the retailer. They want to cut down the cost of living by getting goods cheaper when they go shopping. I understood that was the purpose of this committee—to see whether this practice of resale price maintenance was increasing the cost of living.

Mr. FULTON: But you said exactly the opposite this morning. You said this committee was to examine into and consider the report of the MacQuarrie committee.

The CHAIRMAN: That is right.

Mr. FULTON: The minister told us that this morning and now you are advancing another argument to prevent us from getting the figures we want. It is just the opposite.

The CHAIRMAN: Order, Mr. Fulton.

Mr. FULTON: It is just the opposite.

The CHAIRMAN: I am not opposing the suggestion about figures. We all want figures, but we want figures which will convey something to the Canadian people.

Mr. THATCHER: They certainly would tell us something.

The CHAIRMAN: We have concentrated on the retailer and forgotten that it is the manufacturer who sets prices and he is not setting those prices through any philanthropy, but it is his initial price set after his own financial calculations. It may be that Mr. Hees' figures would be very useful to show that in the case of manufacturers the resale price is higher under price maintenance, and that he could give a smaller percentage of mark-up which would net the retailer more money and mean a lower final price to the consumer.

I think you have made an excellent suggestion and that we should have the manufacturers produce the mark-up prices to the retailers on articles of comparable value. I suggest that we should get that not only from the witness here, who, to give all credit due him, has shown us on what side he is; but we should also get it from somebody from the retail field who disagrees with him violently. I think it is a field in which figures in abundance can be produced, and we know that in any field where there is an abundance of figures there is ample opportunity to buttress any argument. Once we have both figures we will be in a better position to go ahead.

Is that agreed?

Mr. HEES: It is 100 per cent as far as I am concerned.

Hon. Mr. GARSON: Can I deal with this subject very briefly before we finish. I agree with both Mr. Hees and Mr. Thatcher that no harm can come from securing these comparative mark-ups, but I do suggest that the retailers' mark-up, as a component of the final price that the consumer has to pay, is just one factor, and that what the consumer is interested in are all factors.

The CHAIRMAN: Hear, hear.

Hon. Mr. GARSON: It just so happens that in the brief presented by the Pharmaceutical Association yesterday a comparison was made of figures in the United States, because Professor Fuller who helped to present it said that he found it very difficult to get statistics of this sort in this country. I am sure this witness would agree. At page 21 of the supplementary brief they state: "A comparison of 117 branded articles showed that 35 cost about one-third less in Washington, D.C., which has no fair trade law, than in Maryland, where resale price maintenance is legal; 38 cost about one-quarter less, and 29 cost one-seventh less."

Then the second item:

"54 trade drug items cost an average of 16·2 per cent more on the east bank of the Mississippi, where fair trade is legal, than on the St. Louis side, where it is not."

Now that is the kind of comparison, I suggest, that really compares, that is of the price to the consumer. If the consumer can get his merchandise at a favourable price I do not think there is a single member of this committee who is going to inquire too much as to whether the retailer might perhaps have a higher mark-up—where the consumer is getting this sort of a deal.

Our purpose here is not to depress the retail trade or the wholesale trade or the manufacturer; it is to arrive at a system of merchandising and manufacturing that will give the consumer the best possible deal and at the same time maintain the manufacturer, the wholesaler and the retailer as prosperously as we know how.

Mr. HEES: Mr. Garson, what the government is proposing to do is to legislate against a practice which has not yet been proved harmful to the general buying public. We have had Mr. Harris' statement today and Mr. Preston's statement yesterday—and Mr. Harris is going to back his up with figures as far as the retailer is concerned—and their opinion is they take a lower mark-up. If you want to go further and say mark-ups do not mean a thing in the retail trade because the manufacturer might be taking too big a cut, then the only other person we have got to get is the manufacturer. As Mr. Fulton suggested this morning let us have a proper inquiry and get the facts before we pass legislation which is going to have tremendous effect on the great body of merchandising in this country. Let us find if it is or is not a bad thing. You, as the government, are suggesting that we pass legislation but we do not know whether it is a bad thing we are passing. That is the guts of the whole thing.

Hon. Mr. GARSON: I agree with everything you have said but my simple suggestion is that mark-up alone, by itself, would not necessarily be conclusive. I think you agree.

Mr. HEES: Yes, I do. However, as Mr. Fulton suggested this morning, let us really make this an inquiry and get the manufacturers. If you think the retailers are getting smaller mark-ups on price maintained goods but the manufacturer is taking a big cut, then let us get him in. There are only two

cuts, one by the manufacturer and one by the retailer. If they are both smaller on price maintained goods then the government's legislation is ridiculous.

The CHAIRMAN: There are three cuts in some cases.

Mr. HEES: My suggestion is let us get them in too. Let us prove this thing.

Hon. Mr. GARSON: You do not have to go very far. One of the first things a witness could bring along to prove it is evidence that these comparisons in the United States which I have quoted are not valid.

Mr. HEES: I do not think the United States has any bearing on this at all.

The CHAIRMAN: Order, Mr. MacInnis is next.

Mr. MACINNIS: I understand, Mr. Chairman, that the Royal Commission on Prices made a very thorough investigation and comparison of all maintained prices—at least in some lines.

Mr. THATCHER: Well did they?

Mr. MACINNIS: Just a moment. I understand they did, and whether they did or not can be easily ascertained. There is no reason why we should go to still more expense to get information we have already on hand. That is the first information we should have—and I believe they made that investigation.

Mr. FULTON: Which royal commission do you mean?

Mr. MACINNIS: The Curtis Commission.

Mr. THATCHER: Has there been an answer to Mr. MacInnis's question: Did the committee make such an investigation?

The CHAIRMAN: The committee reported on resale price maintenance in their report.

Mr. THATCHER: Did they go into figures?

The CHAIRMAN: I will find that out and report on Monday.

Mr. DICKEY: My observation is, as I understand, the minister was reading from one of the briefs submitted to us already, so that information is before us.

The CHAIRMAN: We will return to this brief on Thursday.

Mr. FULTON: I think the information asked for, both from the retailers and the manufacturers and from the jobbers, is what the committee should be concerned with, and if we cannot get it voluntarily we should subpoena them and get it for ourselves. It appears now there is no objection to it forthcoming. If they can produce it willingly and readily and come back and tell us on what basis it was produced, so we can satisfy ourselves that it is fair and accurate information and a valid comparison on the point Mr. Garson raises, then I think if they can get that comparatively quickly we should have it for ourselves, whether or not the other Royal Commission on Prices have had it or not. That will not add to our expense or impose any great deal of work.

There is one other question, whether this association can also give figures to enable either us or the Dominion Bureau of Statistics to make a study as to what extent the resale price maintenance practice on the goods to which it applies enters into the figures in the cost-of-living index.—A. I doubt if we could, but I am quite sure that the Dominion Bureau of Statistics would have no trouble, and we would be very glad to work with them on it. If they will indicate the items which they take in as factors, then we will indicate what we take in as price maintained items.

Hon. Mr. GARSON: Later on a combines investigation economist will come before us with an estimate of the percentage of merchandise which is covered by resale price maintenance; and in that connection we have been trying to check the accuracy of this estimate as closely as we can. I wonder if the witness, who is the head of a department store, can tell us what percentage of merchandise his store sells which would be under that category?

The WITNESS: Which would be price maintained?

Hon. Mr. GARSON: Yes.

The WITNESS: I have no idea, sir.

Hon. Mr. GARSON: We can only make an estimate.

The WITNESS: It has never been a factor with us, so why should we know? It is a free economy.

Mr. FULTON: I understand that your organization or some expert from it would be willing to sit down with the Dominion Bureau of Statistics and tell them which goods came into the cost of living index which are price maintained, and therefore arrive at a basis of how much price maintenance affects the cost of living; or more accurately, the percentage that the cost of living index derives from price maintained goods.

Hon. Mr. GARSON: I think it would be very helpful if they would sit in with our experts, and, if you like, criticize or advise on the validity of the methods by which we have made this estimate. We would show you how we arrived at it and you could say: we do not think that this or that item is right.

The WITNESS: If that could be possible.

The CHAIRMAN: We shall write to Mr. Robinson and inform him and ask him if he is opposed to the practice. Now Mr. Shaw?

By Mr. Shaw:

Q. Mr. Chairman, returning to the brief I should like to ask Mr. Harris if he was one of the architects of this brief. In other words, did he work on this compilation.—A. I did not, sir.

Q. Did any one of your associates who are present have anything to do with the drafting of this brief?—A. No sir.

Q. I am coming back to this reference to loss-leaders on page 1. You have made a very specific statement there. You say:

> "It is the most effective method of curtailing the anti-social effects of 'loss-leader' selling."

You have been extremely hesitant today about defining loss-leader, yet you have used it in a very specific sense here and you have asserted that it is anti-social. Now, how can you reconcile that statement with the fact that you have already said that as far as you are concerned it is almost impossible of definition? How can you reconcile those two facts?—A. I think I have admitted that today by means of an illustration, and I have pointed out a case, if you will remember, in reply to Mr. MacInnis about the shirt which was cut in price from $4 to $2, and the effect upon the community and upon distribution in that case.

Q. As far as your definition of loss-leader is concerned, would it be fair to say that you are much in the position of the man who is faced with a nightmare, that it is almost impossible to define, but it frightens hell out of you?—A. It has a different meaning to different people I think I tried to make that plain.

Q. Well, this is your brief. What did loss-leader mean to your association when they used it in this brief?—A. If you note, we put it in quotation marks.

Q. Which, of course, does not mean a great deal. You did not put in a foot note at the bottom saying: we do not know the meaning of this and we are not satisfied that we know the meaning of it. Anyway, exactly what do you mean when you say it is anti-social? Do you mean in relation to the manufacturer, in relation to the wholesaler, in relation to the jobber, to the retailer, the consumer or the public? Does it work to a disadvantage with respect to all those groups?—A. Well, yes.

Q. You indicated this morning that the druggists are affiliated with your organization. Did your not include them?—A. Yes.

Q. You did include them?—A. The Ontario Retail Druggists' Association.

Q. Do you believe that the removal of resale price maintenance would cause the almost immediate and widespread practice in the use of the loss-leader?—A. I believe it would.

Q. You believe it would? But in an earlier answer you seemed to indicate that you did not feel that way. However, I accept your answer now. You think it would be almost immediate in its effect?—A. I think so.

Q. Then you agree with the Canadian Pharmaceutical Association in their assertion that there would more than likely be an immediate effect?—A. I have not read their brief.

Q. They asserted that in their opinion there would.—A. If they asserted that, then I agree with them.

Q. And do you agree with them in their assertion that it would create a chaotic condition? Would you go so far as to use the word "chaotic"?—A. Those are very strong words, and they lend themselves to different interpretations. But it would certainly create a very disturbed condition within the trade.

Q. Even though a retail store might find that only a very small percentage of its actual sales are made up of price maintained goods, you think it would have that effect on their business?—A. You are now asking about the drug trade?

Q. No, I am asking about any business.—A. I am sorry I misunderstood you. I thought you were referring to the brief which was presented yesterday afternoon.

Q. No. I am referring to the general retail trade.—A. That would vary according to the classification of trade.

Q. In any event, you have asserted, I believe, what average percentage of a general retail business would be met by price maintained goods. Did you not give an average?—A. I did not give an answer to that.

Q. But you have said that the Canadian Retail Federation is made up of certain affiliated associations which you listed, and you asserted, I believe, that they stood as one with you in opposition to the proposed government legislation?—A. No.

The CHAIRMAN: No, no!

By Mr. Shaw:

Q. Do you recall any group associated with you as being in entire opposition?—A. I do not, sir.

Q. What percentage of retailers would you say stand with you in the position which you take in opposition to the proposed legislation?—A. The great majority.

Q. The great majority. Now, how did you come to that conclusion? By what process?—A. I came to that conclusion from the advice of our associates and from a survey of our own direct members.

Q. You have made a survey since the 9th of October?—A. Yes.

Q. Have you, or your associates written to each retailer to ascertain his views?—A. Across Canada?

Q. Yes.—A. No, we have not.

Q. Have your affiliated associations done that?—A. We cannot say that they have canvassed their entire membership.

Q. Then how have you determined that you, as a retailer, could say that the great majority are with you? How have you determined their views?—A. We assumed that the trade associations, if they are representative of their trades, are familiar with the thinking of their particular memberships and are

qualified to answer for them. If they are not, then they do not belong, I mean they should not act as representatives of their groups.

Q. Is it not very difficult for you to assert categorically that the great majority of retailers stand with you in support of your opposition to the proposed legislation? You cannot actually make the assertion that the majority are with you—A. Yes, I think we can make it.

Q. Well, what do you base it on? You are not certain as to whether or not a proper canvass has been made?—A. I am not certain that a complete canvass has been made but we have been assured by our associates that that is the feeling of the majority of their members and we know the feeling of the majority of our own direct members.

Q. Are you aware, Mr. Harris, of any letters which have been sent out by your association or by your affiliates to retail merchants urging that they take a certain course of action? Are you familiar with any such letters? Or, to your knowledge have any such letters gone out?—A. Yes. One was sent out.

Q. By your association?—A. Yes.

Q. Would you be prepared to table that letter?—A. I would be very pleased to table it.

Q. Could you procure copies of the letters sent out to retailers by your affiliate organizations?—A. We would have to ask them.

Q. This question may not be fair, but you say you will try to procure copies of those letters.—A. I shall try to be as helpful in every way that I can.

Q. Would you say that as far as retail merchants are concerned their action in opposition to the government's proposed legislation was spontaneous, or was it inspired?—A. Inspired by whom?

Q. By either the association which you represent or by the manufacturers.—A. But we are retailers.

Q. You are a retailer.—A. We are self inspired. Does that answer your question?

Q. Thank you very much. But we as members of parliament received letters from individual retailers. Did your council, or whatever you wish to call it, write to those individual retailers to take that action?—A. Yes, as far as the Canadian Retail Federation is concerned, we did. But may I enlarge on that answer?

Q. Yes, surely.—A. We believe that members of parliament are our elected representatives and we wish on every occasion to instruct them as to what our feelings are, and we expect that they will represent those feelings in the House of Commons.

Q. Do you believe that an individual retailer has a fairly accurate and complete knowledge of resale price maintenance? Do you think that he understands it?—A. Every retailer?

Q. I would say most of them.—A. I think I made the point very clear this morning when I described the different types of retailers. So I think you could reach your own conclusion from that.

Q. When a communication for example goes out to a retailer insinuating that he is being deceived, that he is in great peril, that he is going to be deluged with mail order catalogues, and that a number of terrible things are going to happen to him, and when he is urged to have his wife and his children and everyone else that he can interest deluge us with letters, then I think the very nature of that letter frightens him to the point where I say it has not been a spontaneous action. So I wonder to what extent I can put too much stock in that letter which I, as a member of parliament, received from the retail association.

Q. I do not want to give any wrong impression. This letter here was not sent out by your organization. But I have a letter here which I propose to table. This was sent out by a manufacturer.—A. We can take no responsibility for it.

The CHAIRMAN: I think it is a little unfair to expect him to take any responsibility for a manufacturer.

Mr. SHAW: I am sorry.

The CHAIRMAN: I would suggest that since he has offered to table the letters which he himself sent out, he has met with the requests of the committee. And I also suggest that we hold that letter until the druggists come back.

Mr. SHAW: I intend to, Mr. Chairman.

The CHAIRMAN: We will return it to you on Thursday.

By Mr. Shaw:

Q. I certainly did not intend to create the impression that this letter was sent out by your organization; and that is why I am particularly anxious to secure copies of the letters which were sent out to the retailers by your association, or by the other associations which are affiliated with your association.—A. Perhaps as a member of parliament you have already received them.

The CHAIRMAN: Not what you sent. You received what they sent back.

Mr. SHAW: I received a couple but I thought that the writer had made a mistake when he put them in. I shall be as brief as I can, Mr. Harris.

The CHAIRMAN: the witnesses would like to catch a plane at 6 o'clock or at 6.10. So might we let them go at 5.30? Are your friends going with you?

The WITNESS: I think they are all departing.

Mr. FULTON: You will be back at some time, though. You will give us an answer by letter to the other inquiries?

The WITNESS: Yes.

Mr. THATCHER: This is a most important body and some of us have still not got to the questioning. Therefore I think we should go on on Monday. I have been sitting here for four hours.

The CHAIRMAN: Yes, and you have learned a lot in those four hours.

Mr. THATCHER: Yes, but four hours is a very considerable time.

Mr. HARKNESS: I am in the same situation. I did not get an opportunity to do any questioning yesterday at all, although I sat here all the afternoon. I have not been able to do any questioning here today. So I would suggest that in the future the people who want to ask questions should put their names in a hat, and the names could be pulled out of the hat by someone.

The CHAIRMAN: I think that would be a good idea. I have tried to be fair, and I have certainly received my share of abuse in trying.

Mr. HARKNESS: I do not say you have not been fair. I think I have just been unfortunate.

The CHAIRMAN: I hoped that the members might make one or two points, bearing in mind the fact that others want to make their points as well.

Mr. THATCHER: Could we not limit the time of questioning to, let us say, 10 minutes for each person?

The CHAIRMAN: 10 minutes to each person, and then the guillotine. I think that would be a good idea.

Mr. FULTON: When can we have these witnesses beck again?

Mr. THATCHER: Could we not finish with them on Monday?

The CHAIRMAN: For Monday we asked the electrical manufacturers to come. But perhaps we could delay them.

Mr. SHAW: I do not think we should hold these men here if they have made arrangements to leave.

The CHAIRMAN: I think it would be very difficult to stand down on Monday. What do you think would be convenient to you?

The WITNESS: Could we not possibly defer it until we were able to get the information which you desire? It might kill two birds with the same stone.

The CHAIRMAN: If we delay it until next Friday, that would give them an opportunity to get these things. We shall send copies of the proceedings to you, so that you can review them beforehand.

Mr. FULTON: May I suggest that you advise us by letter of the earliest day which would be convenient to you?

The CHAIRMAN: We shall make a tentative date then for next Friday. And now I want to thank you because you have been through a long, gruelling day, something a little different from your ordinary business.

The WITNESS: And I want to thank you, Mr. Chairman, and members of your committee for the very courteous hearing which you have given us, and I hope the discussion has been as interesting to you as it has been to us.

The CHAIRMAN: It certainly has, and thank you again.

The committee adjourned.

APPENDIX A

MEMORANDUM

Submitted to

The Joint Committee of the Senate and House of Commons on Combines Legislation

by

The Canadian Retail Federation

The Canadian Retail Federation was organized in 1941 to act in a liaison capacity between retailers of all classes and those agencies of the Government which were charged with the maintenance of a stable civilian economy. The Federation is now established as the permanent voice of Canadian retailing. Its membership is composed of many stores across the Dominion, together with thousands of other retailers in its affiliated associations.

On September 15th, 1950, it submitted a Brief to the Committee to Study the Combines Investigation Act. While that Brief was directed to the broader terms of reference under which the Committee operated, it was also concerned with the traditional trade practice of re-sale price maintenance. It was stated in the Brief that, while there was some division among retailers as to the merits of re-sale price maintenance, by far the greatest majority of distributors believed it was not only a most important factor in the continuance of vigorous, competitive retailing in Canada, but was also in the interest of the buying public. Here is a brief summary of the views expressed at that time to Justice MacQuarrie and his fellow Committee members:

(1) Re-sale price maintenance is a stablizing factor in our economy. It is the most effective method of curtailing the anti-social effects of "loss leader" selling.

(2) Re-sale price maintenance applies to only a minority of products sold at retail. The public has the protection of an established brand name and the assurance that the retailer, backed by the manufacturer, will guarantee the quality as well as the servicing of his product.

(3) Minimum re-sale prices also tend to become maximum prices.

(4) Consumers have the assurance that they will not be subject to the excessive prices that might be charged in areas of local product monopoly.

(5) A survey of retailers' margins for price-maintained goods shows that they are by no means excessive in terms of the traditional cost of merchandising particular products. Indeed, more concern was expressed by retailers over shrinking margins which manufacturers allow because of the competitive efforts of the supplier to obtain a larger share of the market—by keeping his price at a realistic level. If he sets his price too high and the product does not sell, the retailer will either switch to another re-sale price maintained line of a comparable character or buy goods which he may price as he wishes.

(6) It is discriminatory to assume that group action undertaken to effect orderly marketing of primary products is in the public interest, but that similar action in the field of retail distribution is against that interest.

(7) A manufacturer of an article into which has been put inventive genius, production skill and promotional advertising for the purpose of creating a continuing consumer demand has, by the implied responsibility to back up his product, the assurance in re-sale price maintenance that his reputation will not be debased by loss leader selling.

(8) Re-sale price maintenance tends to stabilize production.

While representatives of the Canadian Retail Federation appeared before the Committee to Study Combines Legislation for the purpose of discussing the various points put forward in our Brief, there has been no opportunity for analyzing the opinions of organizations not in favour of re-sale price maintenance.

In its Interim Report, the MacQuarrie Committee established as its standards of judgment of re-sale price maintenance:

(1) Whether it facilitates or restricts competition. We believe that it is a dangerous assumption to use the word "competition" without any qualification whatsoever. There are certain extreme forms of competition that may not be in the public interest.

An isolated purchase should not be the sole criterion for judging the distributive system—it is protection in continued buying that counts. There are thousands of products which retailers sell today, a reflection of the higher standard of living now prevailing. Years ago, when there were not so many goods, consumers and retailers were better able to compare the value of the simpler and relatively few items then available. The Canadian consumer today not only has to choose from a great array of goods but continues to do so over most of his life span.

The orderly marketing which re-sale price maintenance makes possible gives assurance not only of stable quality in recurrent purchases but also the knowledge that there will not be the need to search for fractional advantages in price by shopping in more than one retail outlet. Where re-sale price maintenance does not apply, some consumers will pay slightly more, others slightly less for the same product. Re-sale price maintenance offers all consumers the same buying opportunity consistent with our democratic principles. Where the buyer has no brand assurance and production is only to meet a price, there may be a corresponding decline in quality—but the consumer has no simple method of knowing, which means that the so-called advantage that is obtained is merely illusory.

(2) The Committee also stated that the encouragement of economic efficiency was a standard to judge re-sale price maintenance. Again we do not believe that should be the only measure for appraising this pricing system, although we will show that there is a stimulus to marketing economies. There is a more important social consideration. It should be emphasized that most products sold under re-sale price maintenance incorporate only a small variation in price—and sometimes not at all—for the same article sold in every province of the Dominion. This has an important benefit in equalizing the standard of living of all Canadians across the country, in a way which would not be possible if the principle of maintained price were made illegal. The western provinces and the Maritimes now benefit under this method of pricing.

(3) Purportedly re-sale price maintenance eliminates competition at the retail level. This is only true in the academic sense. Manufacturers who offer suggested re-sale prices do not do so without excellent knowledge of the market. Those prices are established through continuing and comprehensive knowledge of public acceptance for their products at retail. They have to take into account not only comparable lines offered by other manufacturers who suggest re-sale prices but also products of a similar kind which are not price-maintained.

Retail margins for comparable price-maintained goods offered by different manufacturers do not vary to any marked degree because there is a knowledge at the manufacturing level of the established cost of distributing that class of goods.

It should be emphasized here that there is a much wider variation between the margins required by the retailer to merchandise different kinds of goods than there is in the distribution costs of retailers selling the same goods. While there are exceptions, it applies to by far the majority of retailers in Canada.

It is suggested by one submission to the MacQuarrie Committee that re-sale price maintenance encourages wasteful advertising. The contrary is the case. The national advertiser of re-sale price maintained goods assists all retailers in bringing the special advantages of his product to the attention of the public. He also helps the individual retailer in arranging advertising displays at point-of-sale. This enables the small retailer to compete with his larger competitor in a way which would not otherwise be possible. Indeed, if national advertising and point-of-sale assistance such as this were not forthcoming, the individual retailer, to stay in business, would have to do his own promotion which, taken in the aggregate, would be conclusively more costly than the present method.

In other words, it would add to distribution costs if the individual retailer had the resources to undertake a comparable campaign. Of course, in most cases he could not do so, which would lessen his ability to compete.

(4) It is stated as factual that re-sale price maintenance tends to fasten higher margins on the economy than would otherwise be the case. These margins are supposedly set at a level which will keep in business the most inefficient retailer. This is completely unsubstantiated and incorrect opinion.

The manufacturer obviously must set his price and that of the retailer selling his product at a level which will obtain a maximum of dollar profit in terms of the total volume of sales rather than the margin which applies on one item. If his margin is too high—and therefore his price—he will lose some of the market to his competitors and much of his profit. He will dissuade his retail account from buying further goods from him. The retailer will switch to the competitor who gives him the assurance of sales at a reasonable profit, since a higher margin on goods which do not sell will not pay the retailer's cost of doing business!

(5) It is also added in a submission to the Committee that the more efficient retailer who does not require the average margin of profit provided from the

manufacturer in a re-sale price maintained article has no means of passing the savings on in the form of lower prices. Since the retailer will undoubtedly be selling other goods which are not price-maintained, it is perfectly in order for him to reduce the prices on those articles or accept higher trade-in allowances on re-sale price maintained goods where this is feasible. If he just decides to keep the product of his own efficiency, the Government will take at least one-half of it from him in the form of taxation!

The Committee states that it did not centre its attention upon individual cases of maintained prices and their possible isolated consequences, because if the application of re-sale price maintenance were restricted to a limited number of goods the problem thus involved would not deserve the Government's consideration.

We submit that re-sale price maintenance, which is an effective instrument for the orderly marketing of consumer goods in the public's interest, does not apply to more than a fraction of goods sold at retail and only has a very minute impact on the cost-of-living index. Therefore, it certainly does not deserve the Government's consideration.

Legislation on the subject of re-sale price maintenance neither merits the urgency with which the Interim Report was introduced into Parliament nor justifies in any way the claim on the valuable time of the members of this Committee when the country faces far graver problem!

There is, indeed, a basic misconception in the argument put forward by the Committee to Study the Combines Legislation. It states that re-sale price maintenance to be effective must be enforced. It says that this enforcement—i.e. presumably the refusal to supply goods to the retailer who cuts prices—is a "private system of law".

Nothing could be further from the truth. The very legislation which the Committee recommends is a removal of the basic freedom which the individual now receives under our statutory law. It would eliminate the democratic right of a corporation or an individual to offer their products or services to whom they please.

If legislation is enacted that requires a supplier to continue making available goods to a distributor to whom he no longer wishes to sell, it would "freeze" the manufacturer's outlets so that it might not be possible for him to supply other retailers when he wished to do so. It would not only encourage higher distribution costs, since the retail structure is dynamic in that it adapts itself to population changes and changing selling techniques, but more importantly, it would be an unwarranted invasion of one of our basic freedoms.

The Committee says that the general level of prices as a result of re-sale price maintenance is higher thant it would otherwise be. While there cannot be conclusive evidence on this point, it should be pointed out that there is sufficient data vailable to indicate that retail margins on re-sale price-maintained lines are, if anything, lower than those lines which are not price-maintained-quite contrary to the conclusion in the report. Again the advantage of a better established market enables the manufacturer to obtain the economies of large-scale production. All this encourages economic efficiency.

The word "maintained" in the phrase "re-sale price maintenance" is a misnomer since it gives the impression that prices of goods in this category are only rarely changed. Such is not the case. While they are not subject to the disadvantages of day-to-day fluctuations, the manufacturer must quickly adjust his prices to changing demand and cost factors or eventually go out of business. He always has competitive products which he must meet in price-quality terms. Where competition does not exist, then there is a monopoly, which is subject to all the provisions of the Combines Investigation Act.

The practice of re-sale price maintenance has done much to maintain the position of the small retailer in this country. It should be remembered the distribution in Canada is almost more difficult than it is in any other country in the world. There are fewer than four citizens to every square mile, so there must be retailers in the scattered communities across the country, if all Canadians are to share equally in our rising standard of living.

While re-sale price maintenance will by no means keep the inefficient operator in business (since in most cases it only applies to a small portion of his products), it does enable the average retailer who conducts his business efficiently to continue the great contribution which he is making to the Canadian public.

In the 1941 Census, independent retailers in Canada did 70.3% of the total business transacted. Chain stores did 18.7% and department stores 11.0%. In 1949 the comparable Dominion Bureau of Statistics' figures were 72.8%, 17.0% and 10.2%. It is quite apparent that the smaller retailer in Canada is effectively maintaining his competitive position. He should not be hampered in continuing to do so.

The form of legislation that has been proposed by the Committee to Study Combines Legislation would restrict competition, raise distribution costs and moreover abolish our principle of Freedom that a man may offer his goods or his services to whom he pleases.

We recommend that your Committee reject this dangerous recommendation which could undermine the basic of Canadian democracy.

All of which is respecfully submitted on behalf of the CANADIAN RETAIL FEDERATION.

BY H.G. COLEBROOK,
President,

November 19th, 1951.

HOUSE OF COMMONS

Fifth Session—Twenty-first Parliament

1951

(Second Session)

JOINT COMMITTEE OF THE SENATE AND THE HOUSE OF COMMONS

ON

COMBINES LEGISLATION

Joint Chairmen—The Honourable Senator A. L. Beaubien
Mr. James Sinclair, M.P.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 6

MONDAY, NOVEMBER 26, 1951

WITNESSES:

Mr. F. R. Hume, Counsel, and Mr. B. Napier Simpson, General Manager, Canadian Electrical Manufacturers Association.

Mr. W. C. Kennedy, Frigidaire Products; Mr. L. E. Butters, Canadian General Electric; Mr. C. H. McBain, Canadian Westinghouse Co., Ltd.; Mr. C. L. Gulley, Superior Electrics Ltd.; Mr. J. R. Longestaff, Renfrew Electric and Refrigerator Co., all representing Canadian Electrical Manufacturers Association.

OTTAWA
EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY
1951

MINUTES OF PROCEEDINGS

NOVEMBER 26, 1951

The Joint Committee of the Senate and the House of Commons on Combines Legislation met at 10.30 o'clock a.m. The Joint Chairman, the Honourable Senator A. L. Beaubien and Mr. James Sinclair, M.P., were present, Mr. Sinclair presiding,

Also present:

For the Senate: The Honourable Senators Aseltine, Golding, Lambert.

For the House of Commons: Messrs. Boucher, Carroll, Carter, Cauchon, Croll, Dickey, Mrs. Fairclough, Fulton, Garson, Harkness, Hees, Jutras, MacInnis, Mott, Murray (*Oxford*), McLean (*Huron Perth*), Shaw, Stuart (*Charlotte*), Thatcher, Welbourn.

In attendance: Mr. F. R. Hume, Counsel, Canadian Electrical Manufacturers Association, Mr. B. Napier Simpson, General Manager, Canadian Electrical Manufacturers Association, Mr. W. C. Kennedy, Frigidaire Products, Mr. L. E. Butters, Canadian General Electric, Mr. C. H. MacBain, Canadian Westinghouse Co. Ltd., Mr. C. L. Gulley, Superior Electrics Ltd., Mr. J. R. Longestaff, Renfrew Electric & Refrigerator Company, all of Canadian Electrical Manufacturers Association.

Mr. Hume was called and introduced the representatives of the Canadian Electrical Manufacturers Association.

Mr. Simpson was called, tabled a brief on behalf of the Canadian Electrical Manufacturers Association, which is printed as *Appendix A* to this day's Minutes of Proceedings and Evidence, was heard and questioned thereon.

Messrs. Butters, Kennedy, MacBain, Gulley and Longestaff were called and questioned.

Mr. Fulton moved that the Steering Committee in conjunction with Committee Counsel and the Combines Investigation Act Commissioner formulate a series of questions to be put to all manufacturers groups coming before the Committee; and in cases where the witnesses wish that the names of the manufacturers producing figures be kept secret, Committee Counsel and the Combines Investigation Act Commissioner sit in with the witnesses in order to assure the Committee that the figures are representative.

After discussion, and the question having been put on the said motion, it was resolved in the affirmative.

It was agreed that ten minutes be the maximum time allowed any one member for one series of questions.

The witnesses retired.

At one o'clock p.m. the Committee adjourned until Tuesday, November 27, at 10.30 a.m.

A. L. BURGESS
Clerk of the Committee

96459—1½

EVIDENCE

NOVEMBER 26, 1951.

10.30 a.m.

The CHAIRMAN: Will you come to order, gentlemen?

Mr. THATCHER: Might I ask one or two questions before you start Mr. Chairman?

The CHAIRMAN: I just wanted to point something out, if you don't mind.

Mr. THATCHER: Oh, all right.

The CHAIRMAN: First of all we are accumulating quite a file of correspondence and wires aside from briefs from various groups. I think it would be very useful if we were to have a meeting of the steering committee, not after this meeting, but say later on this afternoon, after orders of the day at 3.30, when we can discuss them and decide our agenda from now on. Most of this correspondence is addressed to myself, but I think I should mention that we have received a resolution from the Saskatchewan wheat pool on the matter which can be dealt with at the same time.

Mr. CROLL: They lost on Saturday, didn't they?

The CHAIRMAN: This is the wheat pool, not the team.

Mr. THATCHER: Mr. Chairman, at the last meeting we received a telegram, I think, from Mr. M. A. Robinson. I am not clear as to what his capacity is. I think you mentioned that he spoke for the T. Eaton Company; is that right?

The CHAIRMAN: No, he is a director of the Canadian Retail Federation which was before us, and he wired to say that the brief was not unanimous.

Mr. THATCHER: Where do Eaton's come in?

The CHAIRMAN: That was his company.

Mr. THATCHER: He is an official?

The CHAIRMAN: He is an official of Eaton's and that is why he is also a member of the Canadian Retail Federation.

Mr. THATCHER: Just one other point, Mr. Chairman; can you tell me, at this point, if there have been any retail groups who have sent in wires or letters who are in favour of the abolition of price maintenance?

The CHAIRMAN: Not to my knowledge. The clerk has a great number of wires there and all I can say is they are apparently from retail groups all over the country and most of them added their views to that of Mr. Harris, advising that they are in accord.

Mr. THATCHER: Can we assume that Eaton's are the only ones that protested or are in favour so far, from the representations that have come in?

The CHAIRMAN: I would not so judge. Mr. Harris himself said, you will recall, that he spoke for a majority but not for everyone in his association.

Our witnesses this morning are the Canadian Electrical Manufacturers' Association. They have submitted their brief and I expect most of the members have read it. Mr. B. Napier Simpson, the general manager, is the one who signed the brief.

Mr. F. R. HUME: Mr. Chairman, I am F. R. Hume, counsel for the Canadian Electrical Manufacturers' Association and I thought I should just introduce the matter to the committee.

The CHAIRMAN: Oh, yes.

Mr. F. R. HUME, Counsel, Canadian Electrical Manufacturers Association: I thought I should introduce the matter to the committee and tell the committee about the Canadian Electrical Manufacturers Association; that it is a duly incorporated dominion non-profit organization, and that the general manager is Mr. B. Napier Simpson. He will give you a short summary of the brief and will be glad to explain in more detail the position of the association.

The brief which this committee has received arose out of the submission made originally to the MacQuarrie committee; and I want to tell this committee that there was an invitation, when the original draft submissions were sent to all our members about a year ago, that they make their comments as to their views supporting or disagreeing with this submission. No contrary views were received; therefore the board of directors have requested me to say that they believe this brief represents the views of the organization members.

In order to assist this committee the General Manager will be discussing the brief very briefly and will be available for questioning, but as Mr. Simpson is general manager of this organization and is not an electrical manufacturer it is my pleasure to introduce certain gentlemen who have come to Ottawa to be here to assist in the event that there are some questions which members of the committee might ask which Mr. Simpson or myself might not be competent to answer. I should like to tell the committee first of all that these gentlemen are all officials of member manufacturing organizations and they are here in their capacities as members of this committee of the Canadian Electrical Manufacturers Association. Mr. W. C. Kennedy is first vice-president and general sales manager, Frigidaire Products of Canada, Limited; Mr. L. E. Butters, is manager of the appliance division, Canadian General Electric Limited; and now I wish to introduce Mr. C. H. MacBain, who, until recently was sales manager of the appliance division of Canadian Westinghouse Company Limited; then I wish to introduce Mr. C. L. Gulley, president of Superior Electrics Limited, Pembroke, Ontario; and finally, Mr. J. R. Longstaff, president of the Renfrew Electric and Refrigerator Company, Limited, Renfrew, Ontario. These gentlemen are here to answer any questions which may be asked which Mr. Simpson in his capacity as general manager of this association may be unable to answer, and they have consented to assist him.

I think, sir, without any further delay, I should like to introduce to you Mr. B. N. Simpson.

B. Napier Simpson, General Manager, Canadian Electrical Manufacturers Association called:

The WITNESS: Mr. Chairman, ladies and gentlemen, I would just like to state that in certain respects this brief may be very inadequate because of the fact that we were rather pressed for time in order to give it to you on time. We only got the word that we were to appear on Friday, and you know how it is, with the football game and everything, and offices being closed on Saturday—well, I drove down, and I had to pick up most of the members of the committee who appear here with me today and drive them down in my car to make sure that we got here on time. So I will ask you to excuse any inadequacies which may appear in our submission.

The Canadian Electrical Manufacturers Association, which is a non-profit organization, carries on under a dominion charter and was incorporated in 1944. It comprises 145 member companies within the industry which would represent about 90 per cent of the dollar turn-over. There are some small

companies, quite a large number in fact, who are not members; but in dollar volume they represent a very small proportion of the industry. The industry directly employs about 60,000 persons and if you added those dependent on the products of the industry for a living, the distributors and the wholesalers and the electrical contractors and so on, you would have it up to about 200,000.

I do not need to go over all the objects of the industry. They have been set down here. You will notice that it is to promote the standardization of electrical products. We work very closely with the Canadian Standards Association which is a quasi government body. You will note that one of the objectives of the association is for members of the association to appear before and co-operate with legislative committees, government departments and agencies—and that is why we are very pleased to be here this morning.

There is one thing to which I would like to refer this morning, Mr. Chairman. After the offices were closed for the afternoon, about 6 o'clock, we received a telephone call—one of my staff was working late—from Mr. Burgess, the clerk of your committee, requesting a list of items as large as possible showing list price, the distributor's discount, retail price and what have you; and, if possible, along with that a comparative list of other items on which resale prices were not maintained. I was obliged to send a wire back saying that the offices were closed on Saturday and that it was impossible to procure the information requested; and, secondly, that the information is therefore not available. I would like to say, sir, that when this association was established, the first policy that the board laid down was that no prices or discounts would ever be discussed in any association meetings. You can readily understand that, as it would conflict with the combines legislation, and for that reason it has always been forbidden. The reason I mention this is that this list you asked me for is not available within the association offices. As an officer of the association I have no knowledge whatever of the price policy or merchandising policy of any individual manufacturing company within my membership. That is one of the reasons why I directly could not provide you with a list of items such as you require.

Referring to the interim report of the MacQuarrie committee to study combine legislation, dated October 1, it may be stated that while the manufacturers themselves are not directly concerned with the subject of resale price maintenance, they are concerned with the welfare of the distributor organizations and retail outlets, and for the well-being of a system of merchandising goods which has received wide public acceptance for a long period of years.

1. Most consumer products manufactured by the electrical industry are highly technical and their successful use requires instruction in operation and skilled maintenance. These products are bought at infrequent intervals and the reputation of the manufacturer is largely dependent in the length of successful service which they give. It is, therefore, necessary for the manufacturer to ensure that properly equipped and qualified dealers, who will remain in business, handle his products so that the public will receive value for its money. Value in this case does not mean first cost alone, but length of time the articles give satisfactory service when related to first cost. Clearly it is a false bargain to purchase an electrical appliance at a low price if it fails in service, and for which it is impossible to obtain parts or service. To a lesser degree this is equally true if such parts and service are not readily available. In the sale of these products the lowest cost dealer is not necessarily the most efficient since the public derives the greatest benefits from the dealer who sells at a reasonable price and then gives the most efficient service.

You will pardon me, Mr. Chairman, but at this point I have to quote from the brief. I know that your rule was that briefs were not to be read, but I

think for the purpose of my review I shall have to refer to certain parts of it, with your permission. I do not think it is necessary for me to go through these paragraphs 2 to 5. If you will bear with me I would like to read verbatim section 6, which is comparative price information in which I think your committee would be interested.

6. The fact that consumers have not suffered because of the suggested "resale prices" in the electrical manufacturing industry, but have undoubtedly benefited thereby, may be illustrated by the following examples which have been furnished by member companies having products on the market today, which are comparable to those marketed in 1939, but which, since that date, naturally incorporate improvements in design, convenience and operation.

Example 1—Company "A" In 1939 sold a 6 cu. ft. electrical refrigerator for $284.50. The published price for this refrigerator in June of 1950 was $299.75. It is interesting to note that except for the added increment due to the application of excise tax on April 10, 1951, the price of this refrigerator would still remain at $299.75—an increase of $15.25 only, over a period of twelve years. If the price of this refrigerator had followed the increase in the cost of food, it would not sell at $299.75 but at the equivalent price of $710.40.

If it had followed the increase in the price of clothing it would not sell at $299.75 but rather at $608.26.

If it had followed the increase in the index for labour within the electrical industry, as quoted by the Dominion Bureau of Statistics, it would not sell at $299.75 but at approximately $860.00.

If it had followed the increase in the price of ferrous and non-ferrous metals, as given by the Dominion Bureau of Statistics, it would not sell at $299.75 but at approximately $680.00.

Example 2—Company "B" In 1939 company member "B" marketed a 7·9 cu. ft. refrigerator with a suggested list price of $319.00—today company "B's" 8 cu. ft. refrigerator has a suggested list price of $399.00. Eliminating, however, the amount of increase caused by the application of the excise tax in April 1951, this refrigerator would sell today at $342.00, which it will be noted is only 7 per cent increase over 1939 prices.

In 1939 this same member company marketed a washing machine with a suggested list price of $127.00—today this washer sells at a suggested list of $184.50, but if the special excise tax is eliminated, the present day price would be $154.50, which it will be noted is anly an increase of 21·6 per cent over 1939 prices.

Example 3—Company "C" This company in 1939 marketed a washing machine at a suggested list price of $144.50, which today sells at $189.50. Eliminating, however, the special excise tax, this machine would sell at $151.70, which it will be noted is an increase of only 26 per cent.

Mr. FULTON: At this time may I just ask whether you would not like to make a correction in your brief? If my arithmetic is correct the figure of 26 per cent should be more in the neighbourhood of 5½ per cent. You, see your increase is only $7 on $144.50.

The WITNESS: I stand corrected.

Mr. FULTON: It is your favour, I think.

The WITNESS: This was proof-read as carefully as we could, but in the hurry of getting away it was not possible to recheck it.

It is not possible for company "C" to give direct comparisons in regard to refrigerator models, because of a complete change in design and in capacity. On a basis of cubic foot capacity, however, this company states that in 1939

it cost $40.00 per cubic foot to produce and sell their refrigerator, but that if special taxes are eliminated, their cost of production today would be only $42.30 per cubic foot. On a cubic foot basis, therefore, this is only a cost increase of 5·7 per cent approximately.

The above examples are only a few of those which could be given, but are considered to be sufficient in number, since in general all would conform to the same pattern.

In evaluating the above noted per cent increases in prices, it should be appreciated that there have been major increases in labour and material costs since 1939.

Average weekly earnings in durable goods manufacturing increased from $24.28 in 1939 to $55.30 in August of this year, an indicated increase of 127·7 per cent. However, a much more relevant index in so far as this industry is concerned, is the index based upon average hourly earnings in the heavy electrical machinery and equipment industry, as published by the Dominion Bureau of Statistics in "Man Hours and Hourly Earnings". As of August 1951 this index stood at 286 (1941=100) indicating a 186 per cent increase since 1941.

The most relevant material index for this industry is the wholesale combined index for iron and non-ferrous metals (Table 5—Dominion Bureau of Statistics Prices and Price Indexes) which indicates an increase of 127·9 per cent over 1935-39 averages.

In fact you will note, gentlemen, from those indices I quoted, they are about double.

In the face of these increases in both labour and materials, the electrical manufacturing industry's completely unrecognized achievement in keeping down prices may be contrasted with other industries in which "resale price maintenance" has not been a factor. Clothing and food are both good examples of such commodities, and the indices of these industries on a percentage basis of a comparison with 1939 prices now stand at 213·8 per cent and 249·7 per cent respectively as quoted by the Dominion Bureau of Statistics, October 1, 1951.

It is felt that these examples provide the most factual answer which this association can give to the most significant question formulated by the MacQuarrie Committee in its interim report, in suggesting standards by which "resale price maintenance" should be judged and which reads as follows:

> Does it promote efficiency in the economic system providing the consumer with the goods and services he requires at the least necessary prices?

It is submitted also that there is ample evidence in these illustrations to show that "resale price maintenance" does not discourage economic efficiency as has been stated in the interim report of the MacQuarrie Committee.

7. In periods of declining prices the publication of suggested "resale prices" by the manufacturer prevents dealers from continuing to sell to the public at the former higher prices.

8. Prices of an individual manufacturer's product would vary in different localities, largely dependent upon whether there was more than one dealer in his products. In small communities served by only one dealer, prices would tend to increase out of line with larger communities where there were a number of dealers.

9. Large department and chain stores have complete control over the "resale price" of their private brands. Small dealers are entitled to similar control on national brands. It would be most unfair if price cutting should only occur on products handled by dealers whose volume is already too small

to justify having their own private brands. The fact that they can successfully compete with the private brands of department and chain stores indicates that the "resale prices" of national brands are not too high.

10. "Resale price maintenance" tends to prevent peaks and valleys in the whole economic structure, eliminates lay-offs and stabilizes employment. If peaks and valleys could be controlled depressions would be eliminated.

11. This association agrees with that portion of the interim report of the MacQuarrie Committee dated October 1, 1951, dealing with the "loss-leader" device, and submits that "resale price maintenance" is the most effective, if not the only method, of preventing this abuse.

I would like to refer to that last paragraph of the summary of the interim report of the MacQuarrie Committee:

> As to the "loss-leader" device, the committee believes that it is a monopolistic practice which does not promote general welfare and therefore considers that it is not compatible with the public interest. However, we do not believe that it presents any immediate danger: extreme forms of price-cutting are not very likely in this period of inflation and relative scarcity.

I quarrel, gentlemen, with that term "relative scarcity".

Since excise taxes were applied in April of this year, which raised prices to the consumer by a very wide and considerable margin, the appliances industry is well on its way to being liquidated. Employment in the industry is 50 per cent of what it was at this time last year. Production lines are only operating at 40 per cent of what they did last year, and then only because manufacturers are trying to maintain employment to the best of their ability and retail sales in the appliance industry are not more than somewhere in the neighbourhood of 25 per cent approximately, so I quarrel very greatly with the statement contained in the last paragraph. I would like to again read from our brief if I may.

12. Since the greater part of the MacQuarrie Committee interim report obviously refers to technical products or consumer durables of the type manufactured by members of this association, it is important that the peculiar problem involved in the manufacture and distribution of products of this nature be brought to the attention of the joint committee.

These so-called technical products are for the most part "deferrable products" in the sense that potential purchasers may delay buying them for an indefinite period. The demand for such products therefore fluctuates violently over the course of the business cycle. When business is high and consumer expectations rise, or shortages seem likely to occur, or a special tax seems imminent, the demand for such "deferrable products" is increased at a much more rapid rate than in the case of those other products which the customer consumer cannot postpone buying. When consumer incomes are reduced, or when it is expected that incomes will be reduced, or excessive taxes are imposed, the demand for these "deferrable products" is lowered with extreme severity, as I have just explained.

Consequently, the demand for raw materials, labour, and capital employed in the production of such goods is subject to wide and sudden variations. It is also important to recognize the fact that the capacity to produce "deferrable products" is frequently inadequate to the effective demand; and under adverse marketing conditions that the capacity available for producing such goods is also greatly in excess of demand, as is now the case.

These fluctuations while they vary in severity are not at all unusual. The Industry experienced a minor recession in 1949 and is now in one of much more

serious proportions. Between these recurring recessions, as previously mentioned, there are boom periods accompanied by shortages, when it is self-evident that "Resale Price Maintenance" protects the interests of the consumer by established and nationally advertised prices. However important this particular benefit is to the consumer, it is quite superficial to the far more fundamental one of forcing a high degree of efficiency on the manufacturer in order to survive. This high efficiency has been proved herein by the relatively lower increase in the prices of such commodities, when compared to other goods and services which have not been subject to "Resale Price Maintenance".

All the foregoing is submitted after careful study by a special committee appointed by the Board of Directors. We have approached the subject with the hope that the material contained herein may be helpful to you in solving the problem under discussion; and will further your committee's efforts in assisting to suggest legislation which is satisfactory both from the viewpoint of the consuming public and industry as a whole.

I thank you.

The CHAIRMAN: Thank you, Mr. Simpson. Mr. Favreau, one of our counsel, will begin the questioning.

By Mr. Favreau:

Q. You said your association was formed in 1944 under a dominion charter. Now, is that association constituted exclusively of manufacturers?—A. It is indeed. You must be a manufacturer to be a member, no other applications are accepted.

Q. And you state also that these manufacturers control approximately 90 per cent of the total sales of the articles covered by the field?—A. That is approximately correct.

Q. How many manufacturers would be included in the remaining 10 per cent approximately?—A. How many in numbers?

Q. Yes.—A. That is readily available from the Dominion Bureau of Statistics. I have not the figure before me but I think it is somewhere over the 300 mark.

Q. So that there would be approximately 450 manufacturers concerned in the field of this particular industry?—A. No, no. That figure in the Dominion Bureau of Statistics is the total number in the electrical industry.

Q. There would be approximately 150 in this 10 per cent?—A. Yes; as I say, there are small firms with very small dollar volume as you can note from the figures.

Q. What kind of records of statistics does your association as such keep concerning the trade in general?—A. We do not keep any general record. We have no policy for keeping statistics. You understand this trade association is broken down into a large number of sections and committees on which various manufacturers have representatives for purposes of standardization and so on. Some of the sections, possibly the transformer section, the motor section, generator section, household equipment, refrigeration section and so on might, through the association, gather monthly statistics in order to let them know what the sales were in units only, not in dollars, for the industry, so they can plan for the next year or size up whether they are getting a reasonable portion of the business and so on. It is only done on the request of the sections who feel they need that information and who among themselves wish to do that. It can only be done by companies who are members of that section.

The CHAIRMAN: You have a good strong voice and if you wish to sit down it will be all right.

The WITNESS: Thank you.

By Mr. Favreau:

Q. You just spoke about numbers of units; would you have any statistics showing the relative number of units sold each year between 1939 and 1950?—A. That, sir, is available from the Dominion Bureau of Statistics listing the different industries.

Q. Would you explain to this committee as precicsely as possible what the different categories or groups of articles are which are manufactured by the group of Canadian electrical manufacturers?—A. I am afraid, sir, you are asking me now for a list of some 5,000 or 6,000 articles.

Q. I am speaking generally. There are refrigerators as a group and you have electrical stoves.—A. We prefer to call them ranges. I find the question rather difficult to answer, I can run through the whole gamut of refrigerators, washing machines, toasters, sandwich grills—

Mr. CROLL: Not so fast, this has to be taken down. Will you start again?

Mr. FULTON: If there are anything like 100 of them it might be better to table the list.

The CHAIRMAN: The question as I understand it is the groups of manufactured products within the industry; is that so?

Mr. FULTON: Yes.

The WITNESS: If I said appliances, that would cover everything which the consumer uses in the household from refrigerators and vacuum cleaners and electrical razors and so on there would be twenty or thirty items I presume, automatic irons, non-automatic irons, and it would comprise a long list.

By Mr. Thatcher:

Q. Is that the main volume of the industry?—A. Oh, no, through you, Mr. Chairman, I would say this is a very rough guess because I have not the figures, but I would think the dollar volume of appliances is not more than 15 or 20 per cent of the total of the electrical manufacturing industry in Canada. The large volume as you will quite realize, gentlemen, is in the apparatus field. You have power development, transformers and generators, circuit breakers, and items of that nature and they, of course, are not subject at all to the matter which you have under discussion because they are usually built to particular specifications for a given power company and for a given job.

By Hon. Mr. Garson:

Q. Custom built?—A. Yes, that is correct. There are those in the industry as you know, particularly large companies, who cover the whole field. There are certain companies within the association who make nothing but appliances and many of those are relatively small. I would add again to emphasize the matter that we have been very, very badly hit since last April with this excise tax and so on, which has reduced employment.

By Mr. Croll:

Q. You are putting a great deal of emphasis on excise tax; do credit restrictions not affect the top 90 per cent?—A. Only in the major appliances. They do affect all sales, of course, but when you apply 15 per cent excise tax to refrigerators, ranges or washing machines, it amounts in dollars to quite a considerable sum. We feel we are very vulnerable because every time they went to raise taxes they put it on electrical appliances, household appliances such as irons and toasters and so on which carry 25 per cent excise tax, and while that amounts to a large percentage of the selling price it is a very strong detriment to buying but it does not run into the volume that a 15 per cent tax applied to a $300 item does.

The CHAIRMAN: I think it would be better if we let counsel go ahead with the questioning and the members can make notes for cross-examination.

By Mr. Favreau:

Q. In this field what approximately would be the percentage of custom-made products?—A. I am afraid I cannot answer that question with the available information.

Q. In referring to your brief at the bottom of page 2 and the top of page 3 I see that you refer to the necessity for servicing being one of the factors or elements to be taken into consideration to justify the principle of resale price maintenance. Would you enlarge on that statement and explain to this committee to what extent and in what manner servicing is concerned with the principle of resale price maintenance?—A. If you will bear with me, I would like to ask Mr. Butters to answer that question.

The CHAIRMAN: At any time you would like to have one of the other members answer they may do so. The only thing I would ask is that you give their names so that the record will be clear.

Mr. HUME: I will be sure that the reporter has the name. This is Mr. L. E. Butters.

Mr. BUTTERS: The servicing and maintenance of a major appliance is an important part of the sale. In most cases a refrigerator is under guarantee and carries a one-year guarantee and carries service policy on a defective unit. The quality or success of a dealer in that function is a most important thing. The fact that he must stay in business to fulfil the obligation that he assumes when he sells a refrigerator is important. The initial sale in the case of a major appliance is only one step in the sale as far as the public or consumer satisfaction is concerned.

Mr. THATCHER: But how could that responsibility be affected if resale price maintenance was taken off?

Mr. BUTTERS: Well, it might not be affected adversely in the case of the better dealers who have full knowledge of their costs of operation. Is that enough at this stage?

Mr. FAVREAU: To continue this question of responsibility for servicing in the field, is it the responsibility of the manufacturer or the retailer?

Mr. BUTTERS: The dealer, the franchised dealer has the primary responsibility and the manufacturer, in the case of those who are reputable, supports that guarantee if the dealer cannot.

Mr. FAVREAU: Is it not a general practice, in connection with the cost of servicing done by the dealer, that the final cost is borne by the manufacturer?

Mr. BUTTERS: No. It is actually included in the original sale, in the dealer's profit or margin. It is part of the original sale and is supported by the manufacturer if anything arises which necessitates the manufacturer fulfilling the guarantee.

Mr. FAVREAU: Do you have any figures in percentage as to the proportion of cost of servicing to a dealer—that is with respect to selling price?

Mr. BUTTERS: We have figures of manufacturer's cost but we have not figures available, at least we have not at this time, which would embrace the retail level as well. That would require quite a study. We have ideas, of course, as to what that runs and we do survey the situation from time to time.

Naturally, the manufacturer's part of an arrangement of that kind is to strive at all times to produce a refrigerator that does not require service in the field. So, it varies from year to year.

The figure is available, however, with some study and while, as one of the delegates, I have not all of the material or information here that you might ask for, if it is possible to gather that for the committee to help them in their deliberations, I would be very glad to submit it confidentially from the company.

Mr. FAVREAU: I presume what you have just said is that the cost of servicing decreases yearly with the increase in quality and experience of the manufacturer?

Mr. BUTTERS: In most cases that will be correct, yes.

Mr. THATCHER: Before Mr. Favreau leaves the point I have something I would like amplified. I am not clear yet, and perhaps Mr. Butters will enlighten me, how the servicing angle might be worse if resale price maintenance was taken off?

The CHAIRMAN: Let us turn to that later. You are fifth on the list and can make your point then.

Mr. FULTON: I think that is a question that should come later.

The CHAIRMAN: Part of the reason for having counsel do the questioning is to raise the principal matters in the minds of members of the committee, matters on which they would like further elaboration. I do not think that we should have members break into counsel's questioning. You are the fifth on the list, Mr. Thatcher, so you can hold your questions until it is your turn.

Mr. FAVREAU: Reverting to the manufacturers who are not included in the list of your members, those 150 or so, are they more concerned with the industry of appliances than with the apparatus field?

The WITNESS: I do not think I could hazard a guess on that. I have no figures which would show me what the percentage would be in either one category or the other.

They are not a factor in the industry, one way or another as a matter of fact, because they are small as you will note from the approximate dollar value. Subsequent to the war and during the period of shortages and due to consumer backlog which had been built up, there were many small firms which entered the appliance field and began to make perhaps a cheap toaster or cheap iron of very low quality—or some other small products for use say in the house building industry. As far as being a factor in the industry one way or another, although I do not think you can disregard them because they are part and parcel of the industry, yet they are not a factor in the industry.

Mr. FAVREAU: Do you know any of those dealers who are engaged actually in the apparatus field?

Mr. HUME: Do you mean dealers?

Mr. FAVREAU: No, manufacturers.

The WITNESS: I cannot answer the question.

Mr. FAVREAU: In fairness to your group, there would appear to be, although there may not be, a contradiction in the principle set out on page 5 of your brief—

The CHAIRMAN: Page 5?

By Mr. Favreau:

Q. Page 5—to the effect that resale price maintenance would favour or permit stabilization of the industry and of the market; and there is your other statement on page 6 concerning fluctuations in the market at divers periods—the 1949 and the 1951 recession, for instance. Would you enlarge on that and reconcile the two notions if they can be reconciled?—A. I am afraid your question is not clear to me.

Q. On page 5?—A. Which paragraph?

Q. The second paragraph from the bottom of the page. You state: "Resale price maintenance tends to prevent peaks and valleys in the whole economic structure, eliminates lay-offs and stabilizes employment".

On page 6 you say: ". . . there are boom periods . . ." and periods of recession.

Now, at least on superficial reading the two statements would appear to be contradictory although, as I have said, they may not be since you have put them in the same brief. Would you explain for the committee how you do reconcile the two statements?—A. I do not think your reading of the two statements in the first place should be so vastly different. I think they have the same intention and they may be expressed in different ways. However, let me say this. If the products of this industry were left to the law of supply and demand what we say in this paragraph would be perfectly true. But, if the government in a period such as this insists on putting increases in sales tax and excise taxes on these articles and disturbs the law of supply and demand, then, what we have said here is the case.

Mr. THATCHER: Mr. Chairman, did you get that?

Mr. FAVREAU: You would make a distinction would you for periods where, for instance in the interests of public order, credit has to be curtailed to a certain extent?

Mr. LONGESTAFF: We do not agree with this indiscriminate putting on and taking off of taxes.

The CHAIRMAN: Well, if a witness wishes to speak I think he should give his name and be questioned.

By Mr. Favreau:

Q. You said in your opening remarks that your association as such did not carry information or keep information with respect to prices charged by its members? Is that right?—A. That is correct.

Q. How do you account for the figures and information on pages 3 and 4 concerning companies A, B, and C? Would they not be figures taken from your files?—A. They would not. When this committee requested a submission from our association the board of directors appointed a committee. Understand that in trade association work, because of the cost involved, it would not be possible for me to have a staff in my office sufficient to do all the things that are required by the members, by the government, and so on, in certain respects. When a problem such as this comes up, through the kindness of member companies, appointments are made to committees of personnel who have knowledge in regard to the matter under discussion. That was the case in this brief. Acting as an association committee, some of the members were kind enough to give me, at my request, the examples which are shown here as a comparison. In other words, I was trying to show in this brief that the percentage of increases for price maintained items were less than those for which I gave you as alternate examples—namely food, labour, materials, and so on. The information was not available in my files. We have no catalogues or price lists of any description in the association offices.

Q. I wonder, if it please the committee and for the information of the committee, if some of the gentlemen who are here representing some of the large firms or manufacturers of divers well-known products, would object to stating some of their prices as set—for instance the manufacturer's price, the price to the wholesaler, and the price to the dealer.

Hon. Mr. BEAUBIEN: And the consumer?

Mr. FAVREAU: Yes, and the consumer.

The WITNESS: I think that question should not have been asked and is entirely irrelevant.

The CHAIRMAN: I think it is up to the chairman to decide whether a question is relevant or not. This committee has full power to subpoena any witness and get any information it wants—the same as any court of law. If you do not choose to answer the question for reasons present in your own mind that is one thing.

The WITNESS: I stand corrected in regard to the fact that the question is irrelevant. I wish to say this, however. These gentlemen have been loaned to me in an advisory capacity in order to answer the questions as far as they are able. Pricing, however, is a matter for each individual company and we can hardly expect any one of these gentlemen who, in spite of the fact they are persons who might be termed friendly competitors, to stand before this committee and give his manufacturer's price, his jobber's and retailer's discounts, and so on. Those figures are their own private property.

I am sure if the committee requires it they would be kind enough to co-operate by furnishing it to the association office for your confidential use; but I think you can hardly expect them, being as I said friendly competitors, to give away what is ostensibly private information of their own companies.

Mr. STUART: May I say—

The CHAIRMAN: Just a moment, Mr. Stuart.

We have already had such information provided to us from, for example, the druggists. This committee is not going to be able to discuss facts, as Mr. Hees pointed out the other day, unless we have figures. I appreciate that you, as manager of the association, have asked these gentlemen to come in an advisory capacity and it makes it difficult for them to come forward individually and give their company's pricing policy. However, this committee has full right and full power to subpoena any one of these companies as a witness before us. I thought it might be easier, from the point of view of the industry, to provide it through the association rather than have us select one or two individual companies; but let us make it quite clear—if this committee wants information this committee can get that information.

Mr. HUME: While the discussion was going on I consulted with Mr. Butters and Mr. Kennedy, the two closest to me and they both agree they would be very pleased to supply information which they would ask the committee to keep confidential in its deliberations because it is information which they do not want their competitors to know. That information would be made available, and they are perfectly agreeable as to that point; however, they do not want to have it placed on the record of these proceedings and published.

Hon. Mr. LAMBERT: Mr. Chairman, in connection with the other witnesses here frank statements have been given with respect to what was regarded as a fair and average mark-up between the manufacturer and the retailer. Those statements were given without hesitation or delay. Now, if it is not possible for the witnesses to inform this committee as to the mark-up in price on their products between the manufacturer and the dealer, then in my opinion we are without the most important information that we want.

The WITNESS: Mr. Chairman, in my opening summary of this brief this morning, you may remember that I stated that at 6:00 o'clock on Friday night, when all the offices were closed, certain price information was requested which was absolutely impossible for me to get, also having regard to the fact that on Saturday and Sunday all offices were closed. So I could not bring that information to you this morning. You may remember also that I telegraphed to Ottawa, when we received this short notice, and I requested a postponement of this meeting. But that postponement was not given and we were required to be here.

The CHAIRMAN: On this point, might I say that this parliamentary committee was set up as a consequence of demands by manufacturers and retailers across the country for a further investigation. Most of the associations which already had made representations to the MacQuarrie Commission made this request and it was thought that the very people who asked for this further inquiry would come forward with facts and figures.

The WITNESS: Yes, Mr. Chairman, but the time factor did not make it possible for us to bring that information to you, because it would have meant contacting a number of companies, and that was impossible in the short time available.

The CHAIRMAN: I would therefore raise the question of whether or not there is any point in our going on until we have the facts and figures.

Mr. HEES: Mr. Chairman, I think that the objection which has been raised to producing the facts and figures is a very reasonable one. I think it is unfair to ask one competitor—although the various competitors may be sitting together on the same board—to tell another competitor what his mark-ups are. However, I do think that it is reasonable to have that information submitted as Mr. Harris said he would submit such information on behalf of the retailers—by listing the various companies as company A, company B, company C, and so on. Would that not be quite fair and agreeable to you?

The WITNESS: Indeed!

Mr. HEES: You would be willing to give the information which has been asked for but not according to specific companies, such as General Motors, and so on. Is that right?

The WITNESS: That is correct and it was my intention to make clear to you in my previous statement that we would get it for you, but there had been no time to do so before we came down here today.

By Hon. Mr. Garson:

Q. Had you not made any preparations at all to get it before you got notice to that effect from this committee?—A. Very definitely not, sir. This is an industry brief on resale price maintenance.

Q. In spite of the fact that you had made representations before the MacQuarrie Commission as a body?—A. I received a letter from Mr. Justice MacQuarrie which stated that the committee would study a rewording of the Combines Investigation Act; and there was added to the letter a rider stating that in view of the previous report brought down by the Royal Commission on Prices, would we also state our views on the question of resale price maintenance?

Q. That is right.

The CHAIRMAN: Excuse me, Mr. Simpson, but might I say that that was not a rider to the letter. It was, perhaps, the largest paragraph in the letter which Mr. Justice MacQuarrie sent out to all groups concerned. I think I read it into the record at the last meeting; and the fact is that this enquiry was not a matter of rewording the Combines Act, but one of studying the implications of the Combines Act, and the attention of everyone receiving that letter was explicitly drawn to the sixth paragraph which said:

> That particular attention would be given to this matter of resale price maintenance.

By Hon. Mr. Garson:

Q. Might I ask the witness this question: was your association identified with the request made by the Canadian Manufacturers' Association for the setting up of this committee to go into this question?—A. We are not connected with the Canadian Manufacturers' Association, sir.

Q. You say you were not identified with the request that this parliamentary committee be set up to consider this matter?

Mr. HUME: We are the Canadian Electrical Manufacturers' Association.

Hon. Mr. GARSON: Was not this association which is appearing here this morning identified with the request which was made to have this parliamentary committee set up for the purpose of studying this question?

The WITNESS: No.

Hon. Mr. GARSON: You say it was not identified with it?

The WITNESS: No.

Mr. CROLL: Did not the MacQuarrie Commission ask you for the facts and figures, the same information that we are now trying to obtain from you?

The WITNESS: No. They did not ask for any figures whatsoever.

Mr. FULTON: But you personally gave evidence before the MacQuarrie Commission?

The WITNESS: No, we did not. We did not appear before the commission and we were not asked at any time for price figures.

Mr. HEES: How long do you think it would take your association to produce the figures in the form you have agreed would be a fair one, such as company A, company B, company C, if you are requested to do so?

The WITNESS: Well, Mr. Chairman, if it is limited to a reasonably small number of companies, that information might be supplied in two or three days.

The CHAIRMAN: I cannot understand why secrecy is necessary so far as these companies are concerned, in view of the fact that the druggists, when they came before us last week, produced 10 pages of detailed information concerning manufacturers' prices, mark-ups, and retailers' prices on practically every line of price maintained goods that they handle. For example, here on page 9 you will see that the whole page concerns various brands of toothpaste, well-known toothpaste, and shows the prices at which the manufacturer sells them to the retailer, and the prices at which the retailer sells them.

Mr. FULTON: Yes, Mr. Chairman, and we also asked for additional information with respect to manufacturer's prices, did we not?

The CHAIRMAN: That is right.

Mr. FULTON: Yes. You see, there are only the two sets of figures given in the druggists' brief.

The CHAIRMAN: I see your point, Mr. Fulton.

Mr. FULTON: We have asked the retailers for something considerably more than that.

The CHAIRMAN: Going back to the manufacturers' cost.

The WITNESS: Our association is a trade association. As I have said, it does not offer advice with respect to the retail price, or with respect to matters such as a price discount. Therefore the submission of this association has no such information. On the other hand, this committee may call individual members and thereby get that information. But as an association, we have not got the figures and we would never normally procure those figures, because it would be a matter foreign to our activities.

Mr. CROLL: Mr. Chairman, have we got the wrong people before us today?

The CHAIRMAN: I am inclined to think that way, Mr. Croll. I think we have some of the right people here, but they are here under the wrong auspices, in fairness to themselves and to their companies.

Mr. MACINNIS: Mr. Chairman, to save time, could we not, at this stage, confine ourselves to such questions as these people are able and willing to answer? If we desire to have further evidence, then we will have to take steps to bring people here who will give it to us. I think we would need a great deal more than the information which we get in this brief. Consider page 3, for example, where it speaks of the refrigerator which was sold in 1939 for a price of $284.50, and where it says the price would now be, if it were not for taxes and so on, $299.75 Surely there must be something wrong there. That refrigerator, unless there was an undue mark-up on the manufacturer's price, in 1939 would be selling at below cost; they would be going in the hole on every-one.

The CHAIRMAN: Order. As to the actual point which Mr. MacInnis has raised, that is a point which the committee must now decide. At this time it is obvious that counsel cannot follow its line of questioning as to mark-ups because these gentlemen are not in a position to supply the necessary figures. Does the committee therefore now wish to go on with examination on the general aspects of the brief, or does the committee wish to adjourn, whereupon we might have a meeting of the steering committee this afternoon, to decide which of the actual companies in this industry we would like to have come before us, and to decide exactly what we would like to ask them to bring with them, when they come before us.

Hon. Mr. GARSON: I think we can dispose of this present question, Mr. chairman much more summarily and satisfactorily than following that device. The gentleman who spoke just a moment ago I think is correct in saying that the trade association, under the Combines Investigation Act, did not discuss prices at this period and therefore it is not in a position to offer suggestions relating to them on this particular occasion. And I would suggest that the trade association therefore could not be accused of breaking the Combines Investigation Act if, at the request of this committee, it got the material which has been suggested that it get, in the form of, let us say, company A, company B, company C, and so on, showing he manufacturer's cost, the manufacturers' selling price, the distributors' mark-up, and the retailers' price, in connection with a typical list of appliances. I think that could be done, so far as this committee is concerned, much more quickly and satisfactorily in that way than by bringing the manufacturers concerned before us, one by one.

Mr. HEES: Surely!

Hon. Mr. GARSON: And I think that Mr. Simpson might be the very individual from whom to gather that information. We might want, I think, perhaps the steering committee to consider that point. We might want to have three or four men come before us who could answer questions with respect to individual manufacturing companies, should any question arise outside of the general material which Mr. Simpson might lay before us, so that we could get information concerning it. We could not ask Mr. Simpson about it, because he would only be a conduit through which this information would come before our committee. On the other hand, if we establish a practice now of calling before us a large number of manufacturers and examining them individually to secure a mass of data, which we otherwise could get in a tabulated form, we shall be here until next June.

Mr. LONGESTAFF: Might I ask if the committee is talking about the manufacturer's price?

The CHAIRMAN: No.

Mr. LONGESTAFF: You see, there is a vast difference between the cost and the price.

Mr. HEES: At the meeting on Friday we had quite a discussion with the Retail Trade Federation. I think we all pretty well agreed on how this whole question would be decided; that the question as to whether or not retail price maintenance was a good thing would depend on whether or not the public were being charged a fair price through retail price maintenance, whether a fair price was being maintained; and that the only way in which you could show that would be by showing that the retailer, for instance, takes as reasonable a mark-up on goods that are resale price maintained as on goods that are not; and it was also pointed out that the sale price to the retailer might in some cases be at an even smaller mark-up than on resale price maintained goods. The point I was discussing was that the manufacturer might be taking the public for a ride by charging a bigger mark-up. It was agreed, therefore, to get the whole picture it would be necessary to find out whether or not the manufacturer and retailer took a larger mark-up on the resale price maintained goods than on lines of goods that are not resale price maintained. It is now directly up to you, gentlemen, and the committee is trying to help you, to produce figures and sell your case to the public, because the public at the present time, I think perhaps erroneously, are sold on the idea that retail price maintenance is taking them for an unjustified ride. Now, we are trying to help you to sell the public on the opposite point of view.

Hon. MEMBERS: No, no.

Mr. CROLL: Mr. Chairman, Mr. Hees must speak for himself.

Mr. HEES: We are all fair minded men here, are we not?

The CHAIRMAN: Order, order.

Mr. HARKNESS: The gentleman said just a few minutes ago that they would be prepared to bring down these figures in two or three days' time on a certain list of articles, and I think we should proceed on that basis and let them come back.

Mr. HEES: That was the idea.

Mr. HARKNESS: Let them come back in two or three days' time with their cost prices, their mark-up to the wholesaler and the wholesaler's mark-up to the retailer and the retailer's mark-up to the consumer. That is essentially what we want. At the same time some mention was made of the fact that perhaps the figures should be confidential. It seems to me that such a suggestion would be impracticable because we cannot discuss figures in the committee on a confidential basis. Our proceedings go on the record and, of course, the newspaper men are here also. I think the only way we can discuss those figures is in open committee.

Mr. CROLL: Mr. Chairman, you will recall that an exception was made in that regard. It was agreed not to disclose the prices of any individual company by name. It was suggested that the companies be listed a, b, c, and that individual companies be protected in that way.

Mr. HARKNESS: That is all we need there.

Mr. LONGESTAFF: The point I wanted to make to this committee is that it is a quite simple matter for company a, b, c, d and so on to give you that information with regard to their standard rate of discount, and they can certainly tell you the prices at which they sell; that is, we can tell you exactly how much we get for a commodity at the factory, either by way of discount, or whatever other way the accounts may be carried. But if this committee is going to try to find out what the difference is between my factory costs and what I get for it; well, as a factory man, as a manufacturer, I don't know any-

thing about the retail business, my sales department looks after that, that is why I have them. I can tell you what I get for it, but if you want to get the difference between what it costs me to make it and what I get for it, I don't think I can give you that information except on a theoretical basis, I could give you how it works out in theory.

The CHAIRMAN: Well, that is a start, anyway.

Mr. LONGESTAFF: I don't know that I could give you the exact cost.

The CHAIRMAN: It has been pointed out to the committee that with respect to resale price maintenance we have no knowledge at all of the manufacturing cost of resale price maintained goods, and we cannot reach anything like an intelligent decision until we have some information on that point, as to whether they sell for more or less than non-resale price maintained goods.

Mr. HARKNESS: May I ask just one more question, Mr. Chairman?

The CHAIRMAN: There are other members of the committee who want to speak on this point too, Mr. Harkness.

Hon. Mr. LAMBERT: I want to repeat the point I made before. First of all, the examples you gave us of prices as between 1939 and last November, on manufacturers prices are manufacturers' prices?

Mr. SIMPSON: You mean, our list prices?

Hon. Mr. LAMBERT: What do you mean by that?

Mr. SIMPSON: The consumer list prices, the prices at which they are sold to the consumer.

Hon. Mr. LAMBERT: You mean, in the retail shop?

Mr. SIMPSON: Yes, sir.

Hon. Mr. LAMBERT: Well, all right. I think, in view of the statement which has been made in this brief, that this system of price maintenance is merely recognition of the right of the manufacturer to establish the price at which the product will be sold to the public; in view of that statement I think that any witness would recognize the impossibility of this committee to determine the character of that right; and I agree with what this gentleman has just pointed out about the cost to the manufacturer; but I think it is very essential that we should know the price at which the manufacturer makes available to the retailer a refrigerator, one of these lines that are nationally advertised and which all of us have an opportunity of appreciating in the advertisements which appear in our newspapers, journals and periodicals every day. Now, what is the difference between the manufacturer's price and this advertised price, sir? You see, here you have the right of establishing those figures, and I say that we have the right of knowing the spread between the maufacturer's price and the price at which the retailer sells. I think that is very essential, and some of us have noticed a very great difference between the retail price in certain stores and shops and those advertised, say in the large departmental stores under a brand, an altogether different one from the one that is represented in the average retail shop.

The CHAIRMAN: I don't want to interrupt you, Senator Lambert.

Hon. Mr. LAMBERT: I would like to get that information; I would like to make my point clear.

The CHAIRMAN: Just a moment, Senator Lambert. Let me make it clear, there is no doubt that these gentlemen would like to provide that, but I wonder if we should not go on a little further. I think we would like to have the actual manufacturer's cost, the cost to the different manufacturers, and the price to the consumer, that will give us the whole situation.

Order, gentlemen. Mr. Croll is next.

Mr. CROLL: Mr. Chairman, may I suggest this, in order that all may be treated alike before this committee, could we not authorize counsel to formulate a set of questions to which we want a specific answer and then we could turn those over to these various groups, instructing them that we want answers, detailed answers to specific questions. Then they will all be in the same boat and we would do away with a great deal of misunderstanding that might otherwise develop.

The CHAIRMAN: I would suggest that we leave that to the steering committee. I think the steering committee should instruct counsel as to the information it is desired to obtain.

Mr. FULTON: Mr. Chairman, may I make a suggestion? I think the most convenient way of arriving at what we want is if these gentlemen can give us their manufacturing costs. I would hope that they would do their very best to see if they could supply us with that information. However, if they come back and tell us it is absolutely impossible to do that with any degree of accuracy, then would we not be getting at the same basic principle by asking them to supply us with their costs, the factory cost of their line of price maintained articles. Having obtained that then we could ask the manufacturers who do not follow the price maintenance practice to give us the returns to the factory on their articles, and then follow both price maintained and non-price maintained articles through the whole channel. In that way we would get a comparable picture.

The CHAIRMAN: We will have that taken up before the steering committee this afternoon.

Mr. FULTON: What I want to emphasize is that the present witness said that they were agreeable to supplying that information, but said they could not give it to us accurately on the basis of their factory cost.

The CHAIRMAN: Mr. Fulton, do you believe there is any manufacturer in Canada today who does not know his factory cost?

Mr. FULTON: No, I think he should know that.

The CHAIRMAN: Do you not think that the manufacturers know exactly what their costs are, Mr. Fulton?

Mr. FULTON: I could not answer that question authoritatively because I do not know whether the manufacturer can tell you his cost per article, personally I should suppose he could; but if a group of manufacturers comes to the committee and says they cannot do that, I have no reason to believe that they are telling a falsehood, so I have no option but to accept their answer. What I say is that if they tell us they cannot, then I suggest we can get at the same basic information as to whether resale price maintenance is good or bad by getting what we can from a factory or a group of factories who follow resale price maintenance, and then asking similar information from other manufacturers who do not follow resale price maintenance. We could ask them to give us exactly similar figures, and we will see how it works out.

Mr. LONGESTAFF: Well, Mr. Chairman, I can assure the committee—

The CHAIRMAN: Pardon me, Mr. Longestaff, you are here as an adviser to Mr. Simpson. If the committee wants your views you will be asked to express them.

Mr. LONGESTAFF: Thank you, Mr. Chairman.

Mr. STUART: Mr. Chairman, I believe that we should have something on the record that would express the feeling of many Canadians as to this business of resale price maintenance. I have a letter here and I also have some telegrams which I would like to read.

The CHAIRMAN: Just a moment, Mr. Stuart, until we get this point cleared up.

Mr. STUART: I just wanted to put this before the committee to show what the public are looking for. If I might have your permission I would like to read this letter. I have in my hand here a letter which I would like to read for the record.

Mr. FULTON: Well, if that is the line, I have a telegram here that I would like to have put on the record too.

The CHAIRMAN: Order, Mr. Stuart. We are trying to debate the actual question here as to whether or not the manufacturers can supply us figures which will prove this is a good practice or otherwise.

Mr. STUART: If you will just let me finish my statement. It is in this way that the committee are wasting hours, and hours, and hours, unless you can get down to the manufacturers' costs. There is something wrong and it should be brought out. That is the only way.

Mr. HEES: The gentleman who just spoke a few minutes ago said it was impossible for a manufacturing company to know its cost. I happen to be a manufacturer and in manufacturing if you do not know your cost you are not going to stay in business. If you telephoned your company I know you should be able to get the cost on any article.

Mr. FULTON: Perhaps Mr. Longestaff should be allowed to answer.

Mr. HEES: Is that not fair?

Mr. LONGESTAFF: It is not a correct statement, Mr. Chairman. In the manufacturing business much of your cost is dependent on volume. If you said to me if you do $1 million worth of business, could you tell me your cost? I will tell you my cost. You must realize the electrical manufacturing business is a highly technical business. I know from conditions in my own plant that my indirect labour is 50 per cent or more of my direct labour. I say that my volume is not $160,000 or $200,000 a month; it is going to be $80,000 or $75,000. I know before the tax I was doing a nice business but in the last four months I have lost $8,000 a month. At the end of the year I am going to start with a clean sheet. I am going to cut off engineers, this guy and that guy. On the 1st of January in my organizations—I have five of them—I am going to let about six executives go. You are asking me my cost of a toaster today, and it is about three times what I am selling it for.

Mr. HEES: At a certain volume you could estimate what your cost is?

Mr. LONGESTAFF: Yes, that is right. The committee will have to lay down what that volume is.

Mr. HEES: If you do not provide this committee with those sort of figures it is impossible for us or anybody else to justify something which you are anxious to justify to the Canadian people and all the oratory in the world is not selling a bill of goods to anybody.

Mr. THATCHER: Surely the committee wants to compare the prices of similar electric appliances—sold with and without price maintenance.

Mr. JUTRAS: That doesn't give us an answer.

Mr. LONGESTAFF: It gives us a major answer.

Mr. HARKNESS: The particular point is whether a manufacturer can produce his cost or not. I remember very well in the Prices Committee of 1948 we did get costs and in the case of some companies extending over a period of twenty years. I do not think there is any question but that they can be produced for any specific period and I think that is all we require. If we can get

the cost for the past year it will be sufficient for our purposes. There is no question these figures can be produced for any particular year and we should get them.

Mr. THATCHER: Suppose we do get Mr. Longestaff's cost. He is making products which are not price maintained. We are not interested in what he is producing if it is not price maintained.

Mr. HARKNESS: These articles are price maintained.

Mr. THATCHER: Let us get the prices on goods price maintained and goods not price maintained.

Hon. Mr. BEAUBIEN (*Joint Chairman*): Isn't the whole question this: suppose the price of a refrigerator is $299.75, as example A, I think what this committee wants to know is how much of the margin is the manufacturer's margin, the distributor's margin, and the retail store margin, to bring that refrigerator to a price of $299.75.

The WITNESS: In other words, you are not asking for the manufacturer's cost, you are asking for the mark-up.

Some Hon. MEMBER: No, no.

Mr. HEES: Mark-up is the difference between selling price and manufacturer's cost.

The WITNESS: That may be.

Mr. CARROLL: As to the great difficulty of manufacturers telling what their costs are, don't they file them every year for income tax purposes, and I assume they are doing it accurately.

The CHAIRMAN: I would hope so.

Mr. CARROLL: Now, what is the great difficulty of giving us cost prices?

The CHAIRMAN: Mr. Longestaff may talk about fluctuations from month to month which may establish a problem, especially in small businesses, but there should be no problem in bringing forward what the manufacturer's cost was last year because price maintenance is not a new problem. All these firms can and should produce these figures for us, and if they like, as the druggists have done, they need not produce company names. They could call them A, B, C, D, and E. I think the committee agrees on that.

Mr. JUTRAS: Even on that point I am not clear what is meant by saying, "A, B, C and D." If we just take two or three companies and do not know who those companies represent, I do not think it would amount to very much unless we have some knowledge of what they represent.

Mr. FULTON: I suggest on that point that our counsel sit in with the manager of the association and tell him what we want and satisfy himself that the information being produced is of a nature which will justify the committee's drawing a firm conclusion from it. The committee counsel would see the names and would be in a position to say, "I assure the committee this is as full a report as you would want."

The CHAIRMAN: I think the combines commissioner has a very good fund of knowledge of every one of these major Canadian companies in every field. He is a servant of parliament and from the benefit of his advice they can decide what figures should be brought forward.

Mr. THATCHER: He can give us his figures.

The CHAIRMAN: I had hoped the combines commissioner would be called back as a witness because the evidence he gave earlier was mainly on draft legislation. This branch has been in the field for one-quarter of a century and has perhaps more detailed knowledge than any other branch.

Mr. THATCHER: It is not secret in any way and it would be valuable to the committee. If he had figures for each of the industries we wanted could he make it available to the committee?

The CHAIRMAN: If we had somebody who was in daily touch with all these problems and realized the type of company we should ask about; it is no secret that the combines commissioner has the price lists of all these companies.

Mr. FULTON: He hasn't their cost, and that is what we are after.

The CHAIRMAN: I believe he has costs because in his investigations, not in this field but in other fields, that is one of the primary things to start with. I think we could very profitably have him on the steering committee.

Mr. CARTER: I think as a member of this committee I should like to have also an explanation of why one article, made by the same company, should be two or three times more expensive in Canada than it is in the United States, when it is exactly the same article, made by the same company, and the cost price in Canada is double and sometimes triple what it is in the United States. I would like to have some information why that is so.

The CHAIRMAN: Again that is a matter for the steering committee to decide. That sort of information or question would not apply to all companies. I suppose some of these companies are not branches of American parent corporations.

Mr. FULTON: I move the steering committee with our commission counsel and the combines commissioner formulate a series of questions directed to this association, the answers to which they should bring before the committee at a later date.

The CHAIRMAN: Not necessarily just this association. I think Mr. Croll suggested it should be all manufacturers' groups coming before us.

Mr. FULTON: Yes, I accept that.

The CHAIRMAN: Let us deal with this one first.

Mr. FULTON: I think we might incorporate in the motion that our counsel and the combines commissioner sit in with those producing the figures if they want to keep them secret. Committee counsel and the commissioner could sit in so they could satisfy us that these are proper figures on which we can base a conclusion.

Mr. JUTRAS: What does the last part actually mean?

The CHAIRMAN: We will say that company "A" is a large electrical company. As you point out it is not much use dealing with "A" here if we do not know what is behind the figures, but our counsel and the combines commissioner in the steering committee can say that the figures produced for company "A" are accurate.

Mr. FULTON: The information, of course, would be confidential.

The CHAIRMAN: I want to put this motion to the committee.

Carried.

That will be decided by our steering committee at our meeting at 3.30 this afternoon. Now, Mr. Thatcher raises a point; shall we proceed with the questioning on this brief, leaving aside the question of specific mark-ups, retail store mark-ups, about which we were talking for the last half hour?

By Mr. Favreau:

Q. As to the remarks just made by Mr. Longestaff, wouldn't you think it would be possible if the manufacturers want to maintain output and sales, to allow the dealers to pass on some of the margin to their customers in the form of reduced prices? Then, some sales which are not made at the present time could be made.

The WITNESS: That is a rather difficult question to answer as I have already explained to you. The increased prices which are due to sales and excise taxes, and possibly customer resistance owing to the 20 point increase in the cost of living index, have reduced production by approximately 40 per cent and sales are not at that rate. The manufacturers, in attempting to keep their staffs together, because it is hard to build up an organization, maintained those staffs long after they should have from a sales point of view.

I can tell you, and I am talking about major appliances, every manufacturer's warehouse is full, most distributor's warehouses are full, and the retailers have on their floors all they can handle—and they are not moving. Your suggestion that we just keep on producing—

Mr. CROLL: No, that is not what he said.

Mr. FAVREAU: If you can find a way of increasing sales at the retail level then you would not have to reduce your output so much at the manufacturer's level?

The WITNESS: I grant you that, but they would be out of business in no time at all. Shall I tell you about one of my major companies in the appliances industry, whose employment has dropped from June to now to less than 50 per cent, whose production figures are as I gave you. They were not only in the red for the last four months but so far in the red that I doubt if they can continue to stay in business very long on that basis.

You say: pass on a lesser cost in order to move goods; but you cannot sell at a loss and stay in business.

The CHAIRMAN: I do not think you have the point.

Mr. FAVREAU: I said that if the retailers were allowed to pass on part of their own margin to consumers and thus increase the number of sales of your articles, would that not place the manufacturer himself in a better position—because it would allow the retailer to free himself of the stock which he presently has on hand?

The WITNESS: Let me answer that in this way. That position might be maintained by a very large and a very strong retailer but, if the small retailer in the appliance business who normally sells these goods did not sell them and obtain the necessary margin of profit which has been given him by the manufacturer, he could not stay in business. If you, sir, bought a refrigerator from somebody at a cut price and you came back two years from now looking for service and he was not there you would not like it very well.

Mr. CROLL: Does Mr. Longestaff have something to add to that?

Mr. LONGESTAFF: Except the whole committee, I would say, is starting to argue on a wrong premise.

Mr. FAVREAU: I am not arguing, I am just questioning.

Mr. LONGESTAFF: The premise of price maintenance in my estimation is wrong. The manufacturer tries to keep his factory going as best he can and he establishes a price to sell at. I will give you an example to make my point, and the example happens to be an electric iron which everybody wants to buy. This is perhaps disclosing something you want to find out.

The WITNESS: Is it an automatic or a non-automatic iron?

Mr. LONGESTAFF: Non-automatic. A while ago we said that in buying a hundred of them the price would be $2.40. We gave them to the sales department but there was no movement. We got after them and asked why they did not sell them. It was a good iron. "Well—we cannot sell them."

"Why?"

So, I figured it out—worked out what was a normal mark-up and normal discount and I said: "Why do you not put the list at $5.95." They said: "Oh, well, we can sell them now"—and it is the same price.

Mr. FAVREAU: Would you say the same thing of a refrigerator?

Mr. LONGESTAFF: I am not speaking of a refrigerator, I am speaking as an individual manufacturer. The chairman, however, just told me I was out of order.

The CHAIRMAN: You were not out of order as an individual manufacturer but it was out of order for you to question as a member of the committee. You are here as an adviser to the manufacturers.

Hon. Mr. BEAUBIEN (*Joint Chairman*): What did you say about that iron?

Mr. LONGESTAFF: A manufacturer tries to produce and keep his factory going. No manufacturer, basically, is interested in how much spread there is between what he gets for the article and what it sells for. That is something for the merchandising business, the retailer.

Hon. Mr. BEAUBIEN (*Joint Chairman*): Where did you get the $5.95?

Mr. LONGESTAFF: The $5.95 represents the normal mark-up for the manufacturer and the retailer and the taxes. The taxes are very important. The retailer does not understand—no retailer understands unless you talk finished prices.

Mr. THATCHER: Mr. Favreau brought up a very important point in his question—

Mr. CARROLL: Mr. Chairman, the other day we said that counsel's line of examination should not be interrupted.

The CHAIRMAN: Go ahead, Mr. Favreau. Just note your point down, Mr. Thatcher.

Mr. CROLL: Could we have a little clarification on Mr. Favreau's question? As I understood him what he said in effect was: Assuming that the retailer charges his mark-up as 100 per cent, or whatever it is, if he cuts that mark-up in half or even cuts it lower, will he not increase sales? That was the question. Now, we did not get an answer to it. Let us have an answer from somebody.

Mr. THATCHER: I will give it to you.

Mr. CROLL: No, you are on the wrong side, with those five stores of yours.

Mr. LONGESTAFF: If you went into any retailer and wanted to buy an appliance he would give you 10 per cent or 15 per cent off if you did not tell anybody.

The CHAIRMAN: That is the point, Mr. Longestaff. In other words, they are all breaking resale price maintenance if 'you do not tell anybody'. I think that has a very helpful interruption and perhaps Mr. Favreau can follow along that line.

Mr. FULTON: After all, one of our own members of parliament said the other day that he would break the law if he could get away with it.

Mr. CROLL: That was your interpretation.

Mr. FAVREAU: Is it not a fact that presently, under present circumstances, some retailers are tolerated to the extent of being permitted to reduce some of their retail prices to their customers in order to allow them to free themselves of the stock which they have on hand? I am speaking especially of refrigerators and electric ranges—and small dealers.

Mr. THATCHER: Sure, that is right.

The WITNESS: I would say there are all kinds of people in business and undoubtedly some of them get in a jam at times and financially cannot support themselves—which would necessitate their turning things over at any price they can in order to finance themselves.

I would also like to say, and I am not speaking from definite knowledge, that I would very much doubt if many of those would be penalized. The only case I know of where a dealer had an agency taken away from him was a case where he sold things at $50 over list price during a period of scarcity. He had the agency taken away from him for selling at too great a profit. That is the only one I have knowledge of where the dealer had an agency taken away from him.

By Mr. Favreau:

Q. Do I take it there is no present enforcement of retail price maintenance?—A. I, as general manager, cannot answer that question because it is an individual company problem.

Q. In your brief you refer to different indexes—indexes of man hours, indexes for iron and non-ferrous metals, and so on. As far as your particular industry is concerned would you not think that the electrical equipment and fixtures index would reflect quite accurately the trend of the economy of your industry?—A. I do not know whether there is such an index published.

Q. I find it in the price index of the Dominion Bureau of Statistics for September, 1951, at page 12—electrical equipment and fixtures, the index being presently 220·2?—A. Against which period?

Q. Against 1935-39 equals 100.—A. I cannot answer that without knowing on what it was based.

Q. I am just referring it to you, you might just check up on it. It is given in the September 1951 Dominion Bureau of Statistics Prices and Prices Indexes at page 12?—A. I would be very glad to, because the prices which we have discussed, in so far as we know them, do not bear out anything like that by comparison as you will note.

The CHAIRMAN: On that point, Mr. Simpson, where did you get the basis for these comparisons on food, clothing, labour, and non-ferrous metals?

The WITNESS: From the Dominion Bureau of Statistics index.

The CHAIRMAN: You accept their figures on these items but you are doubtful about the ones in your field.

The WITNESS: I do not know in what form they are published. I do not know what is included in there. It might be in the apparatus field, or it might be a conglomerate index of both. I do not know.

The CHAIRMAN: Thank you, Mr. Favreau.

At our last meeting, we had two points raised: the fact that certain members seemed to be in a position to do all the questioning, while other members were left without an opportunity to question, although they had questions in mind which they wanted to ask. Therefore we decided to have a sharp 10-minute limit on the questioning, to give each member a chance. I have before me the following list: Mr. Harkness, Mr. Carter, Mr. Mott, and Mr. Welbourn. These members have indicated that they would like to ask questions, but in the past they have never been able to get on.

Mr. MACINNIS: Mr. Chairman, I suggest that we do not adhere strictly to the 10-minute rule, and that if the questions asked are important, there be a discretion left to the chair in that respect.

The CHAIRMAN: That was the very thing. Whenever I spoke to Mr. Beaudry about his questioning, he would say that his very next question was the most important one of all.

Mr. FULTON: I think we all would feel that way, Mr. Chairman.

The CHAIRMAN: How would it be then for the 10-minute interval to terminate the questioning of a member on the first round?

Mr. MACINNIS: I am not going to ask any questions at all today, Mr. Chairman.

Mr. SHAW: What other names have you got?

The CHAIRMAN: Mr. Thatcher, Mr. Fulton, Mr. Hees, Mr. Croll, and Mr. Stuart.

Mr. SHAW: I have two questions.

Hon. Mr. BEAUBIEN (co-chairman): Last week when I attempted to rule on the question I was chastised for trying to limit some of the members who appeared to be asking questions all the time.

The CHAIRMAN: Now, Mr. Harkness.

By Mr. Harkness:

Q. I think you told us that from the point of view of dollar value, 90 per cent of the sales were made by members of your association. Might I ask what percentage of material would be imported?—A. I could not answer that.

Q. Well are these goods which are imported price maintained also?—A. I could not answer that either. Perhaps this would assist you. Our own member companies are manufacturers of products. They are in the appliance industry. And in the apparatus field they find it necessary to import certain component parts which are not available in Canada because of the dollar shortage and government interference. So our plants were expanded very greatly, and the Canadian plants were vastly increased because of the necessity of saving United States dollars. That is why some of these greatly expanded plants are in existence today with but a small market for them, and why they now have but nominal production. In addition, there are certain other items which are brought in here by large retail stores, either Eatons or Simpsons which have United States factory connections from whom they purchase directly. I do not know what type of mark-up they get, or whether the United States manufacturers requires them to maintain the price.

Q. You do not know whether there is price maintenance or not in that connection?—A. No.

Q. What members of your association employ the policy of resale price maintenance?—A. I could not answer that question.

Q. You would have no idea of what percentage of your association made use of resale price maintenance, and what percentage of your association did not?

The CHAIRMAN: Would you not try to limit the field of your question? I think Mr. Simpson said earlier that in the major part of their field there was none.

By Mr. Harkness:

Q. Well, so far as electrical appliances are concerned, what would you have to say?—A. I think that the majority in the appliances field would suggest or recommend their retail selling prices.

Q. But of them, there would be some who do not?—A. I cannot answer that question definitely because I do not know. It is a matter of merchandising policy and I would not have that information.

Q. In your brief you stated that manufacturers themselves are not directly concerned with the subject of resale price maintenance? Does that mean that it does not make any difference to the manufacturer from the point of view of profits whether there is or is not resale price maintenance?—A. I say this

advisedly because I do not know; but speaking from the standpoint of pure logic, I would say that the manufacturer of a product makes his mark-up depending on his costs at his factory door; and that in any case is the money which he gets for his product regardless of where it is sold later at retail level. He is interested in his distributors' policy and in his retailers' welfare. He is interested in the reputation of his product, and with the fact that an impression may be created that if that product be knocked down to a low price, it may not be considered to be a quality product. Moreover, he will remember that he probably started from a very small beginning and that it took him from 30 to 35 years to build up his business; and he will remember that he now has a reputation for his product. And then, in most cases he advertises nationally, and that is done without cost to his dealers all across the country who get the benefit of that national advertising. It is a question of the reputation and goodwill of the product in which the manufacturer is interested particularly.

Q. From the point of view of projecting your factory operations evenly over the years and therefore cutting down the cost of your manufacturing, I refer particularly to paragraph 3 on page 3 of your brief. You are interested in spreading your operations evenly throughout the year, and as a result, of course, your profit will be either big or small, as you indicated here a few minutes ago, because the sales would be down at a certain period of the year. So, if you are interested in resale price maintenance, there is the point of view of spreading the sales evenly, is there not?—A. I do not know if resale price maintenance would have that effect. But if you asked if it is desirable that a manufacturer maintain yearly production at the same rate over the year, it would be very desirable.

Q. And do you think that resale price maintenance helps to do that?—A. Yes, we feel that it does.

Q. You are, then, directly interested in retaining resale price maintenance, are you not?—A. Yes and no; for the reasons we have given you.

Q. The reason I brought this up is that I quoted your statement that you were not directly interested; reading that brief I took it you were directly interested because, if your contention that resale price maintenance is an advantage, as far as the manufacturer is concerned, is correct, then you are directly interested in maintaining it.—A. I have just suggested to you that the manufacturer gets his price for his product at the factory door regardless of where it is sold later. I have just explained to you he is interested in the reputation of that product and the goodwill he has built up over a long period of years. He is interested in the fact that if a large retail organization takes his product and destroys that goodwill by selling it at a low price that the small retailer cannot sell at—

Q. We are away from the question I asked, Mr. Simpson. Now, if you were not interested in resale price maintenance you would not be here, would you?

Mr. CROLL: Just a minute.

The CHAIRMAN: Mr. Croll, I am the chairman here.

Mr. CROLL: You were not too quick then.

The CHAIRMAN: Mr. Harkness is allowed to proceed with his questions.

By Mr. Harkness:

Q. Is it not a fact you would not be here if you were not interested in resale price maintenance?—A. We are here for the reasons given in the brief.

Q. Well, we heard from one manufacturer that it would ruin his business, in fact he suggested it would ruin it overnight if resale price maintenance were banned. Would that be true of the electric appliance industry?—A. He would lose his business overnight if it was banned?

The CHAIRMAN: In fairness to this witness, this is not referring to any witnesses here; it was mentioned by a witness in another industry.

By Mr. Harkness:

Q. I ask would that be true in your industry?—A. I would say no.

Q. You would say no. I would agree with you.

I was very interested in these examples you gave of various prices, and your comparisons of the price of a refrigerator in 1939 and 1951 and the price of food in the same years. Would you agree that the prices of farm products, that is food, were extraordinarily depressed in 1939?—A. I would have no knowledge of that; quite frankly, that is beyond my field; I would have no knowledge of that.

Q. If the prices of food were extremely depressed in 1939, would you think that it is a fair comparison to compare the prices of food now and then, and the price of a refrigerator now as compared with then?—A. I would think so because possibly the price of these electrical appliances at that time were depressed also, Mr. Harkness.

Q. I would doubt that that is the case. As a matter of fact, is not the chief reason that the price of an electrical refrigerator has not gone up from 1939 to the present time more than it has gone up is due to the fact that your volume has tremendously increased in the meantime?—A. Very definitely.

Q. That is the reason?—A. Yes.

Q. Looking at the statistics of the Dominion Bureau of Statistics, I notice that the volume index for the month of October of last year and April of this year, the volume index varied from 914 to 999·5. In other words, your volume was between nine and ten times what it was in 1939, and I think that is the chief explanation of the fact that you are able to sell a refrigerator now at the price you are getting.—A. We would agree to that.

The CHAIRMAN: Time for one more question, Mr. Harkness.

By Mr. Harkness:

Q. The next question then arises from a matter that has already been raised before. I took the trouble to read over some advertisements in the United States papers listing prices of refrigerators and washing machines. I found that there is a General Electric washing machine, 17 gallons capacity, selling in Detroit on November 20, 1951 for $109.90. Now, that is considerably less than you quote for washing machines here. I do not know what washing machine it was. Similarly, an eight cubic feet refrigerator, a Hotpoint, selling at $249.95. The price for yours is $399. What is the reason for that big differential?

Mr. BUTTERS: In the first place I do not think you can commence or attempt to get together on a figure of that kind. I presume it is not the list price. You said you saw these prices in an American paper. There is a lot of price cutting by dealers now both in Canada and the United States. You also mentioned it was a General Electric.

Mr. HARKNESS: As far as the Phillips refrigerator is concerned, the advertisement was put in by the Phillips Company.

Mr. BUTTERS: It was a what kind of refrigerator?

Mr. HARKNESS: Philco refrigerator, nine cubic feet, $289.95.

Mr. BUTTERS: That is $300.

Mr. HARKNESS: $289.95.

Mr. BUTTERS: I am sorry, I thought you said $298.

Mr. HARKNESS: Your own refrigerator, the General Electric, eight cubic feet, is selling in the United States for $299.95.

Mr. BUTTERS: Well, the Philco people might be in a position that they are sacrificing their profit margin, but that is going to be very difficult to try to get—these costs and manufacturers' profits—in a picture because it is not static by any means. It would be pretty hard to answer that question or make a comparable statement without knowing all of the facts so far as each refrigerator is concerned. I could tell you this, that in the United States we have a 10 cubic feet refrigerator—I have just set down some figures here when we got into this discussion on a comparison of prices. Suppose, for instance, we, as a manufacturer, purchased from the General Electric Company at distributor prices in the United States a 10 cubic foot refrigerator and then deducted the excise tax in the United States, which is 10 per cent, as you know, and then added the exchange, and then paid the duty and then added the sales tax and then the excise tax, which we must do in the Canadian market, and then add, say, $6 or $8 for freight, and then add a reasonable gross margin for ourselves, and a dealer margin—that is in common practice in the trade today both in the United States and in Canada—that refrigerator would sell in Canada for $580.

Mr. HARKNESS: What does it sell for in Canada?

Mr. BUTTERS: Well, it does not come in. I am just giving you an illustration.

Mr. HARKNESS: What is the similar refrigerator that you sell in Canada? What does it sell for?

Mr. BUTTERS: $499, roughly half a cubic foot smaller, but we also make that refrigerator in a stripped model at $439, but then, again, you have to get down to details, for instance, there are shelves in the model we make here which are not in the American model. That costs more money to make. You have to take all these factors into consideration.

The CHAIRMAN: Can you return to your questioning later, Mr. Harkness?

Mr. HARKNESS: I still really have not had any answer as to why there are these differences. I would like some definite information as to why there are these considerable differences in the prices.

The CHAIRMAN: Can we have one of the questions drafted by the steering committee with counsel and the Combines Commissioner for submission to the manufacturers who are to come back here later?

Mr. HARKNESS: I am just wondering if any of these gentlemen here can answer that question now.

Mr. SIMPSON: It is owing mainly to the fact that the output of the manufacturing plants in Canada is possibly only one-tenth of that produced in the United States. Tooling costs are expensive and if they can be amortized over a large volume it is a lesser factor in the cost. On top of that you have to consider we have a 10 per cent sales tax here and a 15 per cent excise tax pyramided on top of that.

The CHAIRMAN: Not pyramided, Mr. Simpson. It is on the same base. Mr. Carter, you may question.

By Mr. Carter:

Q. You mentioned this morning, I think, that when a consumer buys an article, an electrical appliance, he buys not only the article but the servicing of the article. Is that right?—A. He has to give the service necessary to maintain that article during a five year guarantee period. In other words, part of the mark-up that he gets he has to spend out during that five year period, if that item requires service, to keep it in operation.

Q. So that the servicing, then, is intimately connected with the guarantee offered by the manufacturer to the consumer. Is that right?—A. That is correct.

Q. And that guarantee is to cover the possibility of trouble to the consumer; it is an obligation on the part of the manufacturer arising out of imperfections in the workmanship or the material in that article. Is that right?—A. Yes, but he does that through his retailer. He does not directly service these things himself. Of course he will service it himself if in the meantime that retailer has gone out of business and the consumer comes back to him asking him to service it.

Q. Yes, but the guarantee itself is an obligation to the consumer to correct any imperfections in the manufacture of that article.—A. That is correct. The guarantee is made by the manufacturer that the product will stand up under service.

Q. Well, then, if that is so, should not then the manufacturer be expected to support and bear the cost resulting from such defects instead of passing that on to the consumer?—A. He does, Mr. Carter. You make it on the oranges or you make it on the bananas. Whether he allows the retailer sufficient margin to take care of the cost of that service, or whether he services the thing directly and raised his price to take care of that cost himself, would make no difference.

Q. But why do you include that in the maintained price? That is the important thing. Why should you include that in the maintained price of the article?—A. Because the retailer has the duty of servicing that article and he has gone out of business and the consumer comes back to him asking him to service it.

Q. Should the manufacturer himself not bear that cost?—A. If he raised his price in the first instance to take care of that cost instead of putting it on the mark-up to the retailer—you have to get it one place or the other.

Q. On page 4 you mention the increase in the labour index since 1939. Can you tell me what percentage of the manufacturing cost is represented by labour, roughly?—A. I have not that figure, but I think it would be a very high content.

Q. Have any of you gentlemen such a figure?

Mr. LONGESTAFF: The cost of everything is the result of labour.

Mr. CARTER: When you manufacture an article there is in it the cost of labour and the cost of materials.

Mr. LONGESTAFF: The material in the original instance was labour. Everything is the result of labour.

Mr. CARTER: That is not my question, Mr. Chairman. My question is when an article is manufactured what per cent of the cost of manufacturing that article is represented by labour.

Mr. LONGESTAFF: Everything.

Hon. Mr. GARSON: If the questioner is going to be confined to a 10 minute period I think he should ask the question and get a reasonable response, without interruptions.

The WITNESS: We have no figures that would give that, but I would hazard a guess that 75 per cent of it is labour. Mr. Butters thinks that estimate is high and would correct it.

By Mr. Carter:

Q. Could the gentleman give us his idea?

Mr. BUTTERS: That would depend whether you mean direct or indirect labour.

Q. Direct labour.—A. You mean in the entire operation in a plant what amount of the cost of the product is represented by labour?

Q. That is right.—A. I am only hazarding a guess without looking up statistics on that point. I am not a production man, but I would say it is in the vicinity of 45 per cent, it depends again of course on what you are talking about—I am talking refrigerators—if you are referring to refrigerators I still think my figure is close to being correct.

The CHAIRMAN: Mr. Carter was asking Mr. Simpson, as I understand it, not for labour costs going back to the cost of extracting raw materials, but, rather, he is confining himself to the plant, what percentage of cost in your plant is attributable to labour?

Mr. BUTTERS: I would rather look it up if it is important. It would be somewhere in that vicinity, and then, again, I was not taking into consideration that the motor is made in another one of our plants, so there is labour again. It would probably, if I analysed it, be closer to 45 per cent.

Mr. CARTER: It would be under 50 per cent in any case?

Mr. BUTTERS: I would say it would be.

Mr. CARTER: Can you tell me what percentage of the costs would be reprseented by capital invested normally?

Mr. BUTTERS: I do not think that that question, as such, could be possibly answered, Mr. Carter. It would depend on capital invested.

Mr. CARTER: Can you tell me, then, what percentage of capital investment is normally invested in re-tooling improvements for new models, etc?

The CHAIRMAN: Mr. Carter, in fairness to these gentlemen, one is the manager of the association and the other are with the sales agencies. I think that is a technical question that could be directed to a cost accountant of these companies rather than these gentlemen.

By Mr. Carter:

Q. Well, the cost of unemployment insurance, pension schemes, etc., that is all counted as part of labour, is that right? It is all counted as part of the cost of manufacture?—A. Very definitely, yes.

Q. On page 3 you mentioned some prices here of refrigerators, etc. Company A and Company B. Are those Canadian prices or American prices? —A. They are Canadian prices.

Q. Are they wholesale prices or retail prices?—A. They are established list prices. I think I made that statement previously.

Q. I am sorry. I did not quite get that.

The CHAIRMAN: Your last question, Mr. Carter.

By Mr. Carter:

Q. Can you tell me what bearing your comparisons for clothing and food, etc., has on the increase in electrical appliances?—A. What bearing that has on the increase in electrical appliances?

Q. Yes, on the increase in costs. You mention it as one of your arguments here.—A. The increase in labour and material would have a very great effect on the cost of electrical appliances, but the comparisons were not made for that reason, they were made because electrical appliances are resale price maintained items and those other comparisons in general which we have made are not resale price maintained.

Q. Does it necessarily follow that if they had been price maintained that there would be comparative increases in food, clothing, etc. Does it necessarily follow?—A. Not necessarily, but it is possible.

The CHAIRMAN: Mr. Mott, will you question?

By Mr. Mott:

Q. Most of the questions I was going to ask, Mr. Chairman, have been answered, but I understand you to say, Mr. Simpson, that 15 per cent of the electrical manufacturing capacity is devoted to electrical appliances as compared to about 85 per cent on heavy equipment.—A. That was an approximation, yes.

Q. Now, I also want to ask you a question regarding this Company A. You say that the price increased $15 on a refrigerator only, at the same time you mentioned that materials, such as steel or other metal, have gone up 100 per cent, and I also presume that labour has had a terrific increase in the ten years? What increase would labour represent in the cost of manufacture?—A. I have not got it in ten years, Mr. Mott, but the index for labour, which was that given by the Dominion Bureau of Statistics, equalled 100 in 1941, is now 286, indicating a 186 per cent increase since 1941, in labour.

Q. Well, we will take 186 per cent increase. In other words, it is your mass production that enables you to keep the prices of your refrigerators at what they are today?—A. That is correct.

Q. It is a result of mass production. Now, they are a resale price maintained product?—A. In most cases, but not in all cases.

Q. You also mentioned that most of the factories, or quite a few of them, have warehouses which are probably filled up. You cannot get clear of that particular product or other electrical appliances at the present time?—A. That is correct. They are not moving.

Q. Well, would you say that if the resale price, even if it were maintained, even if it were maintained on a lower level, low enough even to offset the taxes put on commodities in the last two years or so, and the dealers were thus able to sell more of them today, would that not have an effect in your mass production to give you a greater margin, a fairer margin? You maintain that it is through mass production that you have been able to keep the price down. You would be able to keep the price down if you could continue manufacturing. On the other hand, you are not able to keep the price down if you are not manufacturing. Now, if the resale price was lowered so that all these refrigerators could be cleared out of the warehouses, that would allow you to continue to manufacture on a mass production basis, which would have the effect of keeping prices down as low as you have them at now, or lower. The whole theory is that you have been able to keep the prices down through the use of mass production methods, and the more you sell, the cheaper you can manufacture them for. Now, if the retailer could only clear them out would there not be a tendency for you to continue to manufacture them at a lower rate?—A. I agree with everything you said up to your last point, but the fact of the matter is that the market will not absorb these appliances at the present time due to consumer credit restrictions, sales tax and excise tax, and also the fact that the cost-of-living index has increased 20 in the last year.

The CHAIRMAN: 20 per cent?

The WITNESS: 20 points, I mean. There is not just enough money in the average person's pocket to buy the things he wants and, consequently, whether or not they will it, there is a consumer's resistance set up at the present time to purchasing anything. I do not know what has caused that tremendous drop in sales since April. I have my own ideas on the subject, which I have just given, but I could be wrong. The point of the fact is that the market today is not there. You feel, do you, that if we just went on producing them at an abnormally high rate, flooding the market with these things, that they would be taken up merely to get the cost down on them.

By Mr. Mott:

Q. No, but I do feel this . . .—A. If they were still not absorbed you would be faced with a terrific loss.

Q. One of the reasons they are able to sell so cheaply in the United States is, I think, the fact that they have there a population of 120,000,000, a greater field, and that they can turn them out by mass production methods. I do not think there is a resistance on the part of buyers such as you mention, because I think that there is still a good average of employment and a very good average wage to meet the cost of living as it has gone up, in the large industries, at least. I was thinking, if you followed that right straight through, that the consumer could get them at a lower price through your industry being able to continue to produce them by mass production methods, which you maintain is the reason for the small increase in manufacturing cost.

Mr. MOTT: There is no doubt about it, where the warehouses are filled—and there is no reason to doubt that the warehouses are filled—is it not better to be able to get them to the public, to the consumer, and to sell them, than to have them standing on the floor?

The WITNESS: Not at a loss.

Mr. MOTT: No, not at a loss.

The WITNESS: I see your point, I am sorry. I think this is something that we should not argue about too long because the same conditions prevail in the United States that prevail in Canada; witness the fact that in spite of shortages of materials appliance manufacturers in the States—under the defence programme they have advance orders to take up that slack—from them we have imported into Canada something like 100,000 refrigerators in nine months (Jan.-Sept.) supposedly in face of the fact that appliance manufacturers could not get materials to produce; so you can see that there was a very high inventory over there, or in their hands, of which they could not dispose.

Mr. MOTT: That is fine. The other question I wanted to ask you was in regard to dealers; is there any discrimination—and I use that term advisedly—between appliance dealers; let us assume the dealer has the same type of electrical appliance and he has a store at this corner and there is a dealer just around the corner who has a store which was closed out; as I understand it he cannot buy any of the, let us say, bankrupt stock of the dealer who is closed out? Is that so?

The WITNESS: Let me put it this way, Mr. Mott; and I don't know—I am only speaking personally now. I would say that any manufacturer is limited in the number of dealers that he can support by his production. In other words that he does not want three dealers in one block along the street. In the first place, he cannot sell goods on that basis and it would only add to the cost of putting the article on the market. Does that answer your question?

Mr. MOTT: Yes, it certainly does. In other words the wholesale distributor decides the number of outlets and I presume it would depend on location, how far away from the outlet dealer he was, and the conditions which you mentioned in your brief.

The WITNESS: May I have Mr. Kennedy answer that question for you?

Mr. KENNEDY: I would like to attempt to answer the last part of your last question. I would not like the inference to be left that the location of the appliance dealer is the important thing. There are many appliance dealers in a non-satisfactory location who have turned out to be better appliance dealers than men who have had a glory front store, just sitting there waiting for the business to come in. I would not like the feeling to be left with this committee that dealers are appointed by virtue of their location. They are

appointed the same as other business people are, for their intelligence, their aggressiveness, their credit responsibility, their standing in the community and so on.

The CHAIRMAN: Mr. Welbourn.

Mr. WELBOURN: The question I had in mind has already been answered Mr. Chairman, thank you.

Mr. THATCHER: I should like to pursue a question asked by Mr. Mott—as to the desirability of price-cuts in the appliance field to increase sales. First of all Mr. Simpson in this business, is it usual to take tradeins?

The WITNESS: Yes.

Mr. THATCHER: Does your association have any idea of the proportion of retail appliance sales which have tradeins? Would you say the number would be substantial or otherwise?

Mr. KENNEDY: If you could refer to major appliances for the moment, such as electrical refrigerators and electric ranges.

Mr. THATCHER: I would like your answer to include washing machines, radios, and other such items.

Mr. KENNEDY: I cannot answer your questions including radios because I am not in the radio business.

Mr. THATCHER: Please answer then, leaving out radios.

Mr. KENNEDY: One person's opinion in the industry is that as of today, due largely to consumer credit and high taxes, that in at least 75-80 per cent of the individual homes which are buying major appliances today you have a trade-in and the retailer must absorb the trade-in.

Mr. THATCHER: Is it usual in your industry for a company to tell the dealer what he may or may not give for a tradein?

Mr. KENNEDY: Again, sir, I must speak for one company and not the industry; that is not the usual practice.

Mr. THATCHER: So that from your experience in the appliance field today there is real competition, even though goods may be price maintained. The competition comes from the value respective dealers are prepared to allow for the trade-in.

Mr. KENNEDY: If it is of interest, sir, in answering your question, having been twenty-six years in the appliance business I can safely say that competition at the retail level is higher today that it has even been in that twenty-six year period.

Mr. THATCHER: From your own experience would you not say the value of trade-in goods, in the present period of difficulty, has gone up very substantially, and because of this fact, the real price to the consumer for these various appliances, even though price maintained, has gone down sharply?

Mr. KENNEDY: I would agree with that.

By Mr. Thatcher:

Q. Now, I would like to get you, Mr. Simpson, to comment on the period since 1945 in so far as prices are concerned. You told us earlier that since the new taxes—supply of most articles has been very plentiful. Before that time however would you agree that frequently supplies were tight and difficult?—A. There was a very large backlog of consumer demand up until approximately a year ago—in so far as my knowledge takes me. There was expanded production encouraged by the government trying to overcome the dollar shortage. They increased the Canadian content in these appliances in order to save U.S. dollars, and most manufacturers expanded their plants.

Q. Am I correct in saying—and I am sorry to rush you but I only have ten minutes—that from 1945 to 1950 many dealers in Canada, in fact nearly all dealers in Canada, had great difficulty in obtaining all the appliances they wanted—particularly those made from steel?—A. That is correct in the major appliance field.

Hon. Mr. BEAUBIEN (Joint Chairman): And there was no trade-in in those days.

By Mr. Thatcher:

Q. In periods of shortage I suppose you would agree that it is normal for prices to go up?—A. It very definitely would be.

Q. You have maintained that the price on electrical products did not go up as rapidly in this period as did other goods. Would you say the fact that appliances were price maintained over this period of shortages actually kept prices down in many localities?—A. Very definitely. It prevented the retailer from selling beyond the price at which it was marked. As a matter of fact, I mentioned before that on one occasion a franchise was taken away from a dealer for selling over the price at which the manufacturer intimated his goods should be sold.

Q. In other words, resale price maintenance as far as appliances are concerned, in the period of shortages from 1949 to 1950, has meant that the consumer purchased at lower prices than otherwise might have been the case?—A. I feel that very definitely.

Q. You stated a moment ago that 45 to 50 per cent of your costs are represented by labour?—A. Mr. Butters stated that—directly or indirectly.

Q. Is it true that most of that labour would be unionized?—A. It would be.

Q. One brief suggested that employees like to sell their services at a uniform figure—in other words they like to market their product—labour—in an orderly way, that is through a trade union? Do the workers in the electrical industry take such an attitude?—A. I think so.

Q. You do not blame them for such a desire?—A. No, I do not think they can be penalized for that.

Q. Does your association see a parallel between the desire of trade unions to market their services in an orderly way, and of farm organizations to market their products in an orderly way, and your own request for the retention of price mantenance, so that your products may be marketed in the same fashion. —A. I would say that in this democracy we are at least entitled to the same privilege they are.

Mr. MACINNIS: Well, may I ask a question?

Mr. THATCHER: I will just be a minute.

By Mr. Thatcher:

Q. Then you feel that your organization, in asking for orderly marketing by resale price maintenance, is only asking in principle for the same thing that labour and farm organizations are asking for their products?—A. I think that is so.

Q. And you would also feel that if the government should prevent "price maintenance" in one field, they probably in fairness, would be obliged to prevent it in others?—A. I think that naturally follows from your argument.

Q. Very well.

The CHAIRMAN: Please note that the witness said that it "followed from your argument", not that he necessarily believes it.

By Mr. MacInnis:

Q. When there is a difference of opinion on wages, how is the wage arrived at? When there is a difference of opinion between the organized worker and an industry, and the management as to what the wage should be, how is it arrived at?—A. I do not know anything about the industrial relations of my companies. I would say that they are individual problems within the companies themselves, and I would have no knowledge of them.

Q. But supposing I say that the way in which it is arrived at is by means of a conciliation board appointed by the government. Would you agree that that was the usual procedure?—A. No, I do not know the answer to that.

Q. You do not know. Well, do any of the other gentlemen who are here with you today know the answer to that?

Mr. LONGESTAFF: Mr. Chairman, might I say that the answer to Mr. MacInnis' specific question is "no!"

Mr. MACINNIS: How is the conciliation board appointed?

Mr. LONGESTAFF: I would say that most disputes between labour and management are not settled by conciliation boards.

Mr. MACINNIS: But I want to know about cases where the employers and the organizations do not agree.

Mr. LONGESTAFF: They usually do agree.

The CHAIRMAN: Please answer the question which was asked, Mr. Longestaff.

Mr. MACINNIS: Would the manufacturers agree to have their prices set in some such way as wages are settled by government appointed conciliation boards, let us say, by a government appointed prices board?

Mr. LONGESTAFF: The business of price maintenance comes about by logic because the distributor wants so much money; and if you try to sell your product in any other way, the dealer will not handle your product. I have to sell my product in the best way I can sell it in order to get the most business for my factory. You are assuming that it is all done by some mysterious method known as price maintenance. I have to accept that, because that is the purpose of this committee. But we know that the distributor wants to get a certain discount and he will not handle our products unless he gets it.

Mr. MACINNIS: I am not dealing with that question.

Mr. LONGESTAFF: We have to put our product into the hands of the people in the best way we can.

The CHAIRMAN: You are a long way from the question which Mr. MacInnis asked you.

Mr. MACINNIS: I am not necessarily opposed to price maintenance; but if there is going to be price maintenance, I do not think it should be done by private individuals. I do not think that the enforcement of price maintenance should be a private matter between private individuals.

The WITNESS: Oh, so you are recommending government control of business?

Mr. MACINNIS: If there is going to be enforcement of price maintenance, that enforcement involves a code of private law from which there is no appeal to the courts—

The CHAIRMAN: It is now 1:00 o'clock, gentlemen, and we decided to cut off our discussions at 1:00 o'clock. What is the wish of the committee now so far as procedure is concerned?

Mr. THATCHER: Mr. Chairman, I think we should have these gentlemen back again, because a lot of us are not finished yet.

Mr. FULTON: I think we should formulate the questions in the steering committee and find out from them if they could immediately return with the answers.

The CHAIRMAN: If our steering committee and counsel and the Combines Commissioner can agree on the questions, we will get together and find out when we can have them return. I think we will be able to give them a little more notice than today.

Mr. F. R. HUME: Some of the gentlemen here are on their way to meetings at New York, so if you would give us a little notice we could get them together again.

The CHAIRMAN: The steering committee will meet at 3.30.

The committee adjourned.

APPENDIX A

CEMA
Canadian Electrical Manufacturers Association
126 Davenport Road (at Belmont),
Toronto 5, Canada

Telephone Midway 1139

November 21, 1951

TO:
The Joint Committee, both Houses of Parliament
to consider the Interim Report of the MacQuarrie
Committee on Price Maintenance.

Gentlemen:

The Board of Directors of the Canadian Electrical Manufacturers Association welcome the opportunity of filing representations with your committee and submits herewith its view on "Resale Price Maintenance."

Composition of the Canadian Electrical Manufacturers Association.

The Canadian Electrical Manufacturers Association was formed in the year 1944 by a group of forward-looking executives in the Industry, and now has a membership of one hundred and forty-five member companies. The actual production of the Electrical Manufacturing Industry is in the neighbourhood of 580 millions of dollars, according to the last report of the Dominion Bureau of Statistics. The industry directly employs approximately 60,000 persons. The member companies in the Association represent about ninety per cent of the dollar turnover in the Industry.

The objects of the Association are to promote and further the interests of manufacturers of electrical products; to stimulate the interest of the public in the manufacturing, engineering, safety, transportation and other problems of the Electrical Industry and to this end, among other things:

(a) to increase the amount of electrical service to the public and to improve the quality of this service;
(b) to promote the standardization of electrical products;
(c) to collect information relating to the Electrical Industry and to disseminate such information to the members of the Association and to the public;
(d) to appear for the members of the Association before and to co-operate with legislative committees, governmental departments and agencies and other bodies in regard to matters affecting the industry; and
(e) to promote a spirit of co-operation among the members of the Association in the attainment of improved production, enlarged distribution and increased efficiency in the use of electrical products.

This submission is presented in the name of the Board of Directors of the Association which was duly elected at its annual meeting held in September, 1951.

"Resale Price Maintenance"

Referring to the Interim Report of the MacQuarrie Committee to study Combines Legislation, dated October 1, it may be stated that while the manufacturers themselves are not directly concerned with the subject of "Resale

Price Maintenance", they are concerned for the welfare of their distributor organizations and retail outlets, and for the well-being of a system of merchandising goods which has received wide public acceptance over a long period of years.

"Resale Price Maintenance" is merely a recognition of the right of a manufacturer of a particular product to establish the price at which it will be sold to the public. It is not an agreement between competitors to keep prices up, neither is "Resale Price Maintenance" related to profits large or small, but as stated only to the merchandising of standard products in a manner which has been overwhelmingly endorsed by consumers all over this Continent.

Manufacturers are naturally interested in the successful operation of a business, as employers of labour for the well-being of their employees, and in their responsibility to shareholders. Successful operation of a business means that the economy is healthy, if not, everyone suffers. Manufacturers are most successful when they sell the largest possible number of satisfactory products at prices which show them a reasonable profit, and which the public can pay. If the profit is unreasonable or the product is not satisfactory this objective will not be attained. It has been established that the responsibiliy for a product does not end at the factory door, and in order to maintain quality and reputation it is also necessary for the manufacturer to take a direct interest in the satisfactory operation of the product after it is sold.

We believe the growth of "Resale Price Maintenance" coincides with and is a result of the acceptance of this responsibility by manufacturers. The most satisfactory method of ensuring that the manufacturers' responsibility to the consumer will be carried out by the distributive trade, is for the manufacturer to exercise some control over the prices at which his products will be sold, also the methods of distribution and the necessary service required. The benefits of this method of distribution are:

1. Most consumer products manufactured by the Electrical Industry are highly technical and their successful use requires instruction in operation and skilled maintenance. These products are bought at infrequent intervals and the reputation of the manufacturer is largely dependent on the length of successful service which they give. It is, therefore, necessary for the manufacturer to ensure that properly equipped and qualified dealers, who will remain in business, handle his products so that the public will receive value for its money. Value in this case does not mean first cost alone, but length of time the articles give satisfactory service when related to first cost. Clearly it is a false bargain to purchase an electrical appliance at a low price if it fails in service, and for which it is impossible to obtain parts or service. To a lesser degree this is equally true if such parts and service are not readily available. In the sale of these products the lowest cost dealer is not necessarily the most efficient since the public derives the greatest benefits from the dealer who sells at a reasonable price and then gives the most efficient service. The manufacturer suggests a price which will provide this service and must have the right to refuse to sell through dealers who do not recognize this responsibility.

2. A manufacturer who accepts responsibility for his goods in the hands of the public cannot be indifferent to the terms on which his goods are sold. No reasonable person would suggest that a manufacturer should be forced to continue to supply a dealer who fails to pay his account. The injury to the manufacturer and to the public is even greater when a dealer deliberately adopts a policy of predatory price cutting and refuses to accept responsibility for properly servicing the manufacturers' goods.

3. The benefits of mass production by individual manufacturers can only be realized if the manufacturer is assured that his goods will be distributed in an orderly manner. To accomplish this he must exercise some control over the prices at which they will be sold. If the benefits of planned mass production are lost by erratic market conditions the price to the consumer will soon far exceed any temporary bargains he may have secured, since the manufacturer will be unable to maintain the quality, continuity of production, and service of his products.

4. In the efficient distribution of products the manufacturer must sell and deliver in large quantities to distributors and dealers thereby using their storage facilities. The distributive trade must be assured of a reasonable profit or they would buy from day to day thereby increasing costs with resulting higher prices to the consumer.

5. When commencing the manufacture of new products it is customary for a manufacturer to make exhaustive market surveys to ascertain the demand for the product, and the quality standards and price at which his product will receive the greatest possible public acceptance. It is necessary that he informs the public of this price, otherwise his plans will be defeated, and the public will suffer because dealers may charge too high a price for the new product which will restrict its distribution.

6. The fact that consumers have not suffered because of the suggested "Resale Prices" in the Electrical Manufacturing Industry, but have undoubtedly benefited thereby, may be illustrated by the following examples which have been furnished by member companies having products on the market today, which are comparable to those marketed in 1939, but which, since that date, naturally incorporate improvements in design, convenience and operation.

Example 1—Company "A" In 1939 sold a 6 cu. ft. Electric Refrigerator for $284.50. The published price for this Refrigerator in June of 1950 was $299.75. It is interesting to note that except for the added increment due to the application of Excise Tax on April 10th, 1951, the price of this Refrigerator would still remain at $299.75—an increase of $15.25 only.

If the price of this Refrigerator had followed the increase in the cost of Food, it would not sell at $299.75 but at the equivalent price of $710.40.

If it had followed the increase in the price of Clothing it would not sell at $299.75 but rather at $608.26.

If it had followed the increase in the index for labour within the Electrical Industry, as quoted by the Dominion Bureau of Statistics, it would not sell at $299.75 but at aproximately $860.00.

If it had followed the increase in the price of Ferrous and Non-Ferrous Metals, as given by the Dominion Bureau of Statistics, it would not sell at $299.75 but at approximately $680.00.

Example 2—Company "B" In 1939 Company Member "B" marketed a 7·9 cu. ft. refrigerator with a suggested list price of $319.00—today Company "B's" 8 cu. ft. refrigerator has a suggested list price of $399.00. Eliminating, however, the amount of increase caused by the application of the excise tax in April of 1951, this refrigerator would sell today at $342.00, which it will be noted is only a 7% increase over 1939 prices.

In 1939 this same Member Company marketed a Washing Machine with a suggested list price of $127.00—Today this Washer sells at a suggested list of $184.50, but if the special excise tax is eliminated, the present day price would be $154.50, which it will be noted is only an increase of 21·6% over the 1939 prices.

Example 3—Company "C" This Company in 1939 marketed a Washing Machine at a suggested list price of $144.50, which today sells at $189.50. Eliminating, however, the special excise tax, this machine would sell at $151.70, which it will be noted is an increase of only 26%.

It is not possible for Company "C" to give direct comparisons in regard to refrigerator models, because of a complete change in design and in capacity. On a basis of cubic foot capacity, however, this Company states that in 1939 it cost $40.00 per cubic foot to produce and sell their refrigerator, but that if special taxes are eliminated, their cost of production today would be only $42.30 per cubic foot. On a cubic foot basis, therefore, this is only a cost increase of 5·7% approximately.

The above examples are only a few of those which could be given, but are considered to be sufficient in number, since in general all would conform to the same pattern.

In evaluating the above noted percent increases in prices, it should be appreciated that there have been major increases in labour and material costs since 1939.

Average weekly earnings in durable goods manufacturing increased from $24.28 in 1939 to $55.30 in August of this year, an indicated increase of 127·7%. However, a much more relevant index insofar as this Industry is concerned, is the index based upon average hourly earnings in the Heavy Electrical Machinery and Equipment Industry, as published by the Dominion Bureau of Statistics in "Man Hours and Hourly Earnings". As of August 1951 this index stood at 286 (1941=100) indicating a 186% increase since 1941.

The most relevant material index for this Industry is the Wholesale Combined Index for Iron and Non-Ferrous Metals (Table 5—Dominion Bureau of Statistics Prices and Price Indexes) which indicates an increase of 127·9 per cent over 1935-9 averages.

In the face of these increases in both labour and materials, the Electrical Manufacturing Industry's completely unrecognized achievement in keeping down prices may be contrasted with other Industries in which "Resale Price Maintenance" has not been a factor. Clothing and Food are both good examples of such commodities, and the indices of these Industries on a percentage basis of comparison with 1939 prices now stand at 213·8 per cent and 249·7 per cent respectively as quoted by the Dominion Bureau of Statistics, October 1st, 1951.

It is felt that these examples provide the most factual answer which this Association can give to the most significant question formulated by the MacQuarrie Committee in its Interim Report, in suggesting standards by which "Resale Price Maintenance" should be judged and which reads as follows:

> "Does it promote efficiency in the economic system providing the consumer with the goods and services he requires at the least necessary prices?"

It is submitted also that there is ample evidence in these illustrations to show that "Resale Price Maintenance" does not discourage economic efficiency as has been stated in the Interim Report of the MacQuarrie Committee.

7. In periods of declining prices the publication of suggested "Resale Prices" by the manufacturer prevents dealers from continuing to sell to the public at the former higher prices.

8. Prices of an individual manufacturer's product would vary in different localities, largely dependent upon whether there was more than one dealer in his products. In small communities served by only one dealer, prices would tend to increase out of line with larger communities where there were a number of dealers.

9. Large department and chain stores have complete control over the "Resale Price" of their private brands. Small dealers are entitled to similar control on national brands. It would be most unfair if price cutting should only occur on products handled by dealers whose volume is already too small to justify having their own private brands. The fact that they can successfully compete with the private brands of department and chain stores indicates that the "Resale Prices" of national brands are not too high.

10. "Resale Price Maintenance" tends to prevent peaks and valleys in the whole economic structure, eliminates lay-offs and stabilizes employment. If peaks and valleys could be controlled depressions would be eliminated.

11. This Association agrees with that portion of the Interim Report of the MacQuarrie Committee dated October 1st, 1951, dealing with the "loss-leader" device, and submits that "Resale Price Maintenance" is the most effective, if not the only method, of preventing this abuse.

12. Since the greater part of the MacQuarrie Committee Interim Report obviously refers to technical products or consumer durables of the type manufactured by members of this Association, it is important that the peculiar problem involved in the manufacture and distribution of products of this nature be brought to the attention of the Joint Committee.

These so-called products are for the most part "deferrable products" in the sense that potential purchasers may delay buying them for an indefinite period. The demand for such products therefore fluctuates violently over the course of the business cycle. When business is high and consumer expectations rise, or shortages seem likely to occur, or a special tax seems imminent, the demand for such "deferrable products" is increased at a much more rapid rate than in the case of those other products which the customer consumer cannot postpone buying. When consumer incomes are reduced, or when it is expected that incomes will be reduced, or excessive taxes are imposed, the demand for these "deferrable products" is lowered with extreme severity. Consequently, the demand for raw materials, labour, and capital employed in the production of such goods is subject to wide and sudden variations. It is also important to recognize the fact that the capacity to produce "deferrable products" is frequently inadequate to the effective demand; and under adverse marketing conditions that the capacity available for producing such goods is also greatly in excess of demand.

These fluctuations while they vary in severity are not at all unusual. The Industry experienced a minor recession in 1949 and is now in one of much more serious proportions. Between these recurring recessions, as previously mentioned, there are boom periods accompanied by shortages, when it is self-evident that "Resale Price Maintenance" protects the interests of the consumer by established and nationally advertised prices. However important this particular benefit is to the consumer, it is quite superficial to the far more fundamental one of forcing a high degree of efficiency on the manufacturer in order to survive. This high efficiency has been proved herein by the relatively lower increase in the prices of such commodities, when compared to other goods and services which have not been subject to "Resale Price Maintenance."

All the foregoing is submitted after careful study by a special Committee appointed by the Board of Directors. We have approached the subject with

the hope that the material contained herein may be helpful to you in solving the problem under discussion; and will further your Committee's efforts in assisting to suggest legislation which is satisfactory both from the view point of the consuming public and Industry as a whole.

Respectfully submitted on behalf of the Board of Directors,

B. NAPIER SIMPSON,
General Manager.

HOUSE OF COMMONS

Fifth Session—Twenty-first Parliament
1951

(Second Session)

JOINT COMMITTEE OF THE SENATE AND THE HOUSE OF COMMONS

ON

COMBINES LEGISLATION

Joint Chairmen—The Honourable Senator A. L. Beaubien
Mr. James Sinclair, M.P.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 7

TUESDAY, NOVEMBER 27, 1951

WITNESSES:

Mr. Percy R. Bengough, President, and Mr. L. E. Wismer, Director of Public Relations and Research, Trades and Labor Congress of Canada.

OTTAWA
EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
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1951

MINUTES OF PROCEEDINGS

TUESDAY, November 27, 1951

The Joint Committee of the Senate and the House of Commons on Combines Legislation met at 10.30 o'clock a.m. The Joint Chairmen, The Honourable Senator A. L. Beaubien and Mr. James Sinclair, M.P., were present, Mr. Sinclair presiding.

Also present:

For the Senate: The Honourable Senators Aseltine, Burchill, Dupuis, Golding, Horner, Lambert, Vaillancourt.

For the House of Commons: Messrs. Beaudry, Boucher, Carroll, Carter, Cauchon, Croll, Dickey, Mrs. Fairclough, Messrs. Fleming, Fulton, Garson, Harkness, Harrison, Hees, Jutras, MacInnis, Mott, Murray (*Oxford*), McLean (*Huron-Perth*), Roberge, Shaw, Stuart (*Charlotte*), Thatcher, Welbourn.

In attendance: Mr. Percy R. Bengough, President, and Mr. L. E. Wismer, Director, Public Relations and Research, Trades and Labor Congress of Canada.

The presiding Chairman presented the Third Report of the Sub-Committee on Agenda and Procedure which is as follows:

Your Sub-Committee on Agenda and Procedure met on November 26 and has agreed to recommend:

1. That the representatives of the Canadian Electrical Manufacturers' Association be recalled on Monday, December 3.
2. That the Canadian Retail Federation, who are to come before the Committee again on Friday, November 29, and the Canadian Electrical Manufacturers' Association be given an opportunity to produce such figures in relation to costs, mark ups, etc., as they may wish to supplement their briefs.
3. That all questioning of witnesses in future be confined to the arguments advanced in their briefs.
4. That notwithstanding any previous decision as to the hours of sitting, the Committee sit on Wednesday, November 28, at 3.30 o'clock p.m., and that Mr. F. A. McGregor, former Commissioner of the Combines Investigation Act, be called for that day.

Mr. Croll moved that the first, second and third recommendations of the Sub-Committee be concurred in.

Mr. Fulton moved in amendment thereto:

That for the purpose of enabling the Committee to compare profit margins and cost to the consumer in both price-maintained and non-maintained goods, Committee Counsel together with the Combines Commissioner procure from manufacturers and retailers appearing before the Committee (as individuals or through their Association) figures for typical commodities in the lines produced or handled by them, showing the following stages in the distributive process:

(1) the factory cost
(2) the price to the distributor
(3) the price to the retailer
(4) the price to the ultimate purchaser

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for price-maintained and non-maintained goods of comparable category and quality;

and that with respect to a departmental store or manufacturing concern which does its own manufacturing and distributing the figures be given with the omission of the appropriate stages outlined above;

and that Counsel be empowered to employ a cost accountant as and when necessary for the purpose of such study.

After discussion and the question having been put on the said amendment, it was negatived on the following division:

Yeas: The Honourable Senators Aseltine and Horner. Mrs. Fairclough, Messrs, Fleming Fulton, Harkness, Hees, Murray (*Oxford*), Thatcher.

Nays: The Honourable Senators Beaubien, Burchill, Golding, Lambert, Vaillancourt. Messrs., Beaudry, Boucher, Carroll, Carter, Cauchon, Croll, Dickey, Garson, Jutras, MacInnis, Mott, McLean (*Huron-Perth*), Roberge, Shaw, Stuart (*Charlotte*), Welbourn.

And the question having been put on the motion of Mr. Croll, it was resolved in the affirmative, on division.

On motion of Mr. Croll, the fourth recommendation of the sub-committee was concurred in.

Mr. Wismer was called, tabled a brief on behalf of the Trades and Labor Congress of Canada, which is printed as *Appendix A* to this day's Minutes of Proceedings and Evidence, was heard and questioned thereon.

Mr. Bengough was called and questioned.

The witnesses retired.

At one o'clock p.m. the Committee adjourned until Wednesday, November 28, at 3.30 o'clock p.m.

A. L. BURGESS,
Clerk of the Committee.

EVIDENCE

NOVEMBER 27, 1951
10.30 a.m.

The CHAIRMAN: The committee will come to order. Yesterday afternoon the Steering Committee met for almost three hours and there is the following report to be made:

1. That the representatives of the Canadian Electrical Manufacturers' Association be recalled on Monday, December 3rd.
2. That the Canadian Retail Federation, who are to come before the Committee again on Friday, November 29th, and the Canadian Electrical Manufacturers' Association be given an opportunity to produce such figures in relation to costs, mark ups, etc., as they may wish, to supplement their briefs.
3. That all questioning of witnesses in future be confined to the arguments advanced in their briefs.

At the moment I will break off and mention No. 4 a little later. You will recall that yesterday morning the committee asked the Steering Committee to meet with counsel and the Combines Commissioner to decide on just what figures and facts could be usefully produced which would help us in our deliberations. We had a very long discussion of that in the Steering Committee, especially on the question of costs. We had the benefit of the advice of the Commissioner of Combines and, I may say with all appreciation, of Mrs. Fairclough, who is an accountant, on the actual difficulty of defining the kind of costs we wanted. The Combines Commissioner pointed out that any selected group which we picked out would barely touch the field. After quite a long discussion, the question was brought to a head by a motion which brought into focus the two different points of view on the conduct of this committee, which I had expressed earlier; first of all, whether the committee is to conduct a full blown inquiry into every aspect of resale price maintenance, in other words, to duplicate the work of the MacQuarrie Committee, or whether this committee is a result of the requests of certain groups, retailers and manufacturers, who had asked the government for a further opportunity to present their views against the prohibition of resale price maintenance after the government had announced its acceptance of the MacQuarrie Committee findings and announced that it intended to introduce legislation. A motion was introduced, therefore, which cleared the air and put it up to a straight vote. The motion was that the committee hire a cost accountant and this cost accountant, in conjunction with our counsel and the Combines Commissioner, make an examination of all the factors entering into the selling price to the consumer on resale price maintained goods and on non-resale price maintained goods. That motion was defeated. Of course, the Steering Committee is only an advisory committee and the decision will have to be made here, be it either approval or rejection. If approved here the situation would be that the onus would be on these groups who come before us, these groups who have asked the committee to appear, to establish that the findings of the MacQuarrie Committee are not in accordance with the facts. After all, the briefs they submit are their considered opinion on this matter—the heart of their argument—and their coming before us for questioning is for the purpose of allowing other members of this committee who want further information on any of the points

made in their briefs an opportunity of cross-examining them. Now, that is the story offhand. These are the first three points: first of all, that the Canadian Electrical Manufacturers Association be recalled—we were not through with them, so they were going to be recalled anyhow—secondly, and this is a clause which is a consequence of our discussion, that the Canadian Retail Federation were to come before the committee again on Friday, November 29, and that the Canadian Electrical Manufacturers Association be given an opportunity to produce such figures in relation to costs, mark-ups, etc., as they may wish to supplement their briefs, and thirdly that all questioning of witnesses in future be confined to the arguments advanced in their briefs.

I might point out this one other thing: it was the opinion of the combines commissioner that a committee of thirty-eight parliamentarians would never finish the job. As long as we said we could dig up more figures, income tax, cost—whatever costs you want—the only way we could actually complete our work was the second approach.

The fourth point in this report has to do with the appearance of Mr. MacGregor before this committee.

Mr. FULTON: I have an amendment to the report.

Mr. CROLL: Hadn't we better move the motion first?

The CHAIRMAN: Let us separate the first three recommendations, if someone will move the first three.

Mr. CROLL: I move that the first three items be adopted.

The CHAIRMAN: Mr. Croll moves that items 1, 2 and 3 be adopted.

Mr. FULTON: I have an amendment to move, and in speaking to it, I would like to point out that one of the effects of the steering committee's report, if adopted, will be to reverse a decision of this committee.

Mr. CARROLL: Which item?

Mr. FULTON: I think it is item 2 of the steering committee's report. It will reverse a decision arrived at by this committee, a unanimous decision of the committee yesterday morning, that we should formulate and direct to all these witnesses who are in the manufacturing or distributing business a set of questions with respect to their costs and mark-ups at the various stages in the distribution process which would enable this committee to arrive at its own conclusion on that aspect of the price maintenance system, which concerns itself with the question of whether or not price maintenance is in the interests of the consumer or against the interests of the consumer, by either decreasing or increasing the price the consumer has to pay for goods.

It was a unanimous decision of the committee yesterday that we would formulate a set of questions designed to produce information to enable us to make up our minds on that point.

Mr. JUTRAS: There was no unanimous decision.

The CHAIRMAN: I will get the actual motion.

Mr. FULTON: I am not concerned with the legal niceties, but that was certainly the effect of yesterday morning's discussion. On Friday, of course, the committee had previously come to a similar decision when it was generally accepted without a vote that such an inquiry should be made and would enable us to shorten our work considerably and arrive at a decision.

Now, I regret I have to say it, but I see in this an attempt to limit the time we are going to be allowed to pursue this inquiry, and a very definite attempt by the government to indicate to the committee, through the chairman, just what line our inquiry should take; and in fact if this motion carries it will succeed in reversing the committee's decision and so confining the scope of

our inquiry that we will not be able to arrive at any sound conclusion but will merely be a rubber stamp for the MacQuarrie Committee and be a means by which the government can evade its responsibilities and say: we had a parliamentary committee, and they endorsed the MacQuarrie report. I for one refuse to endorse the MacQuarrie Committee's report unless we are placed in possession of the facts and figures which will enable us to arrive at a sound conclusion as to whether or not the MacQuarrie recommendations are correct. I make the point, and I have maintained it previously and I am not going into all the arguments again, that unless we follow our own line of inquiry as and when necessary, and certainly all the inquiries we have had so far indicate it will be necessary to have figures produced, we will not be able to arrive at that sound conclusion.

Furthermore, evidence given to the committee by at least two witnesses indicates clearly that the MacQuarrie Committee itself did not place itself in possession of the necessary facts and figures upon which it could base a sound conclusion. We have had two of the most important witnesses, the Retail Merchants' Federation and the Electrical Manufacturers' Association witnesses, both tell us that they were not asked to nor did they submit to the MacQuarrie Committee any facts and figures to accompany their representations to that body. It was nothing more or less than an expression of opinion before them, and apparently that is all we are going to have in this committee. If all we are to do is repeat the processes of the MacQuarrie committee simply to find out how many of these individuals, associations or manufacturers are in favour of price maintenance and how many are against it, and decide on the basis of those opinions, you don't need a committee to do that, all you need is an adding machine; and that apparently is what the government wants to turn this committee into, a combination of adding machine and rubber stamp and I am not going to lend myself to that process. I therefore move:

> That, for the purpose of enabling the committee to compare profit margins and cost to the consumer in both price-maintained and non-maintained goods, committee counsel together with the Combines Commissioner procure from manufacturers and retailers appearing before the committee (as individuals or through their association) figures for typical commodities in the lines produced or handled by them, showing the following stages in the distributive process:
>
> (1) the factory cost
> (2) the price to the distributor
> (3) the price to the retailer
> (4) the price to the ultimate purchaser
>
> for price-maintained and non-maintained goods of comparable category and quality;
>
> and that with respect to a departmental store or manufacturing concern which does its own manufacturing and distributing, the figures be given with the omission of the appropriate stages outlined above;
>
> and that counsel be empowered to employ a cost accountant as and when necessary for the purpose of such study.

The CHAIRMAN: I will accept that as an amendment to clauses 2 and 3. As far as clause 1 is concerned we can accept that as that just suggests the matter of an organization coming back for further hearing. I will accept this motion which you are now putting before the committee as an amendment to the motion moved by Mr. Croll that clauses 2 and 3 of this report of the steering committee be adopted.

Mr. FULTON: May I just conclude, Mr. Chairman?

The CHAIRMAN: Certainly, Mr. Fulton.

Mr. FULTON: I want to point out that we have made a decision on this motion twice already. The steering committee met on Thursday, and I think you will recall, Mr. Chairman, that we decided in the steering committee that it would be preferable, and that we would be justified, in taking the time necessary to pursue this line of inquiry, and that it would help us to make up our minds intelligently on the issue of price maintenance. On Friday morning you broached the issue in committee and it was obvious that there had been a change in your sentiments. On Friday morning, as reported in the committee's proceedings at page 241, you put forward the opposite point of view which was different from the position you took in the steering committee, for you then said that we would not be justified in pursuing this line of inquiry. The committee on Friday did not accept your view; and we then decided to pose certain questions along the lines which I have incorporated in my amendment. Yesterday morning the committee again confirmed the decision that we should pursue our own line of inquiry and where witnesses did not produce facts and figures which we felt they should produce to enable us to make decisions we should require them to produce them. Now, however, the steering committee under your guidance reversed that decision yesterday afternoon, with the result that we now have the report before us which you have read, and to which I have moved this motion as an amendment. I am not given to using strong language, but I want to make it perfectly clear that in my view this is an attempt to render this committee quite useless. The result would be to place us in the position where we cannot arrive at any intelligent decision on price maintenance or on the legislation placed before us; and I resent this obvious attempt by the government to dictate the course of the committee's proceedings and to reverse decisions that we have previously arrived at.

The CHAIRMAN: As far as the committee is concerned, and as far as certain references which Mr. Fulton has made concerning government dictation are concerned and as far as the members of the steering committee and I are concerned, I would like to point out that on three separate occasions we have raised this point: in which direction is this committee going to go? We did so without any hope of success and might I say that one of the main reasons for our having the Combines Commissioner before us yesterday afternoon in the steering committee was to have him outline, from his knowledge, what was involved in such a procedure as has been suggested by Mr. Fulton and, if we did get those facts and figures, what conclusion we could draw from them.

As you know, the steering committee is composed of members of all parties, and it was certainly not with the sole support of the government members yesterday afternoon, after having heard the Combines Commissioner and counsel, that the committee came to that conclusion. Mr. MacInnis of the C.C.F. party and Mr. Shaw of the Social Credit party were present and they heard the entire discussion and the reasons upon which we based our decisions.

To my mind the crux of the matter, after hearing from the people who have had some real experience with ascertaining facts such as those and then interpreting them, is that a parliamentary committee, such as ours, of 38 members, operating in a field as intricate and widespread as the retailing field, could sit here for 10 years and have figures produced before them without end. It gets back to the fact that the only real reason this committee is sitting today is that the manufacturers and the retailers protested to the government, when the government announced its intention, having accepted the report of the MacQuarrie Commission, to implement that report by legislation. They asked for a further chance to state their case to show that resale price maintenance was a good thing, and that the findings of the MacQuarrie committee

were wrong. So my job as chairman is to try to get this committee to work as expeditiously as possible.

Mr. JUTRAS: On a point of order, Mr. Chairman, I think Mr. Fulton raised the suggestion that this decision was arrived at by the committee unanimously. I know, speaking for myself, that I never could see any point in this, and I certainly did not support it. That is one of the disadvantages of our procedure here. It is difficult for us to get the floor to speak when something is brought forward. I was very anxious to speak when Mr. Hees brought this matter up, but before I could get the floor a suggestion had been made that this should be referred to the steering committee so I let it go by default, as it were, and it was sent to the steering committee. Therefore, I suggest the committee did not sound the opinions of us all.

Mr. FULTON: Oh, we took a vote on it, Mr. Chairman.

Mr. JUTRAS: No. There was no vote taken on it.

Mr. HEES: There were no dissenting voices.

Mr. JUTRAS: My understanding was that a decision was to be taken by the steering committee as to what was to be done. I could never see any point in that suggestion at all because I think that if we just consider for one moment what this does, it is in fact trying to bring about either a benefit or otherwise to the public. But this is one thing which, in the bread case, and in the match case, and in all the other cases which have come before the courts, the courts could never decide upon.

Mr. FULTON: Mr. Chairman, on the point of order raised by Mr. Jutras, whether or not there has been a previous decision, let me say that the printed copy of our proceedings yesterday is not yet available, but I have looked over the typewritten transcript and it appears to substantiate my recollection that I moved a motion yesterday that the steering committee, as I recall it, should discuss this matter with counsel and formulate a set of questions to be directed to all those who appear before us as witnesses, requiring them to produce facts and figures which would enable us to arrive at a decision. That was the motion placed before the committee as I recall it, and it was unanimously adopted. I do not think we even had a division on it.

The steering committee was instructed to formulate a set of questions; not to consider whether or not we should ask those questions. The main committee yesterday said to the steering committee: you get busy and work out a set of questions, because we want to get the facts and figures to enable us to make up our minds. On your point of order, therefore the record shows there was a decision taken yesterday.

Mr. SHAW: May I ask Mr. Fulton if he can tell the committee why the steering committee did not formulate a set of questions?

Mr. FULTON: I think I can give you the reasons. It appears to be felt by the majority of the steering committee, in accordance with the chairman's remarks, that we should not take the time to pursue this line of inquiry. The motives behind that reasoning I do not know, but I suspect—with respect to some members of the committee that they did not want facts and figures brought out—because they are concerned lest the facts and figures show this whole thing is just hocus-pocus, to deceive the public about the cost of living.

Mr. BEAUDRY: On a point of order, Mr. Chairman, I do not think it is permissible for Mr. Fulton to attribute motives to any member of the committee.

Mr. FULTON: I was asked to give reasons.

Mr. BEAUDRY: But reasons and motives are vastly different.

Mr. SHAW: Pursuing my question, may I ask if the time factor was the only factor which entered into our discussion?

Mr. FULTON: If I am under examination, I have no objection to answering the question. It was fully realized by the steering committee, and I realize too, that it would be extremely difficult to formulate a set of questions which will actually be guaranteed to produce the information we want. That difficulty, while realized, does not mean that it could not be done. That was the reason for the suggestion that we employ a cost accountant. I do not think that anyone on the steering committee, either the members of the steering committee or the experts assisting us, ever took the position that it would be impossible. They did tell us it would be difficult and it would be quite lengthy, true; but they never said it would be impossible.

The CHAIRMAN: That is one reason why I felt all along that we should have made more use of our opportunity to draw on the experience of the Combines Commissioner than we have. He certainly was very helpful to us yesterday, and that was the first point which he had. He established to most members of the steering committee what a tremendous task it would be to have figures with any reality to them. The second point was, that after having obtained the figures in a year or two, what would be their significance.

Mr. SHAW: The thing that disturbed me the most was that in our consideration of this question it became apparent we would have to go far beyond the field which we were instructed to investigate. We would have to become a prices committee. That is the thing that disturbed me and motivated me in the position I took.

Mr. BEAUDRY: May I speak on Mr. Fulton's point?

The CHAIRMAN: Mr. Carroll is first.

Mr. HEES: Did I not apply to speak?

Mr. BEAUDRY: I am speaking on the amendment.

The CHAIRMAN: Mr. Hees, I thought you were referring to the witnesses?

Mr. HEES: No. I knew this thing was coming up.

The CHAIRMAN: Mr. Carroll and then Mr. Hees.

Mr. CARROLL: My observations are going to be very brief. I think in considering this amendment to the resolution brought in we have to go to the reasons why this committee was appointed.

Personally, I may say if I had had any voice in the appointment of this committee that I would have said: No, we do not need any committee.

However, in the good judgment of the government, as a result of the objections of certain manufacturers and retail men who asked to come before this committee to give reasons why the MacQuarrie committee report and recommendations were wrong and would not be helpful to the consumers of this country, they were given that opportunity.

So far as I can see, if they wanted to show that the MacQuarrie committee report was wrong they should have produced information to show that on their own figures this enquiry was not enhancing or correcting the cost of living in this country. To date they have not produced one figure to indicate that. Whether or not they have produced any arguments against the MacQuarrie committee report is for the committee to decide. I am in agreement with my friend who said that we should not be rubber stamps in this thing, and I want to assure him that I am no more a rubber stamp in this matter than he is, and I am just as independent a member of this parliament as you can find within the confines of Canada. I say that the various organizations should be given the opportunity of going ahead with their arguments, if you will, but one member of that organization said yesterday it was impossible to show the costs, impossible! I think he was a member of the organization that came before us yesterday. I did not agree with him of course, but that is one of the things that they should have brought in here, that the various organizations

should have brought here to show that this resale price maintenance is not enhancing the cost of living in this country. Now, so far as the evidence that was adduced before the MacQuarrie Committee is concerned, my friend said that those people were not given the opportunity of producing evidence or that they did not produce evidence. That was not the fault of the MacQuarrie Committee. They had the opportunity of producing evidence if they wanted it there, and they had the same opportunity yesterday. Now, I do not know what evidence was before the MacQuarrie Committee that led them to that conclusion that this resale price maintenance practice was contributing to a greater cost of living in this country than should exist, I do not know that, and I do not know if there is any member of this committee that knows that or not.

Hon. Mr. ASELTINE: That's what we are trying to find out.

Mr. HEES: And we will not find it out this way.

Mr. CARROLL: No, we are not here for the purpose of trying to find out what evidence was before the MacQuarrie Committee. What we are here for is to ascertain whether or not the organizations who come before us are showing in their evidence that the MacQuarrie Committee came to a wrong conclusion.

Mr. FLEMING: In the light of the statements made by Mr. Carroll, may I ask where does he find a statement to warrant such a conclusion in the terms of reference to this committee.

Mr. CARROLL: The conclusion I came to was the statement made in the House by the Minister of Justice on the formation of this committee.

Mr. FLEMING: Listen to the terms of reference to this committee—"that the Senate do unite with the House of Commons in the appointment of a joint committee of both houses of parliament to consider the interim report of the committee appointed to study combines legislation". It is not a case of accepting the report of the MacQuarrie Committee. We are appointed to consider the report.

The CHAIRMAN: Everyone of us here is a parliamentarian. This is not a court of law. Everyone here knows what this committee is set up to do.

Mr. HEES: If we are to be denied access to all the figures that we believe we should have to make our decision in this important case, then we are going to have to make our decision on the MacQuarrie report. I think it is impossible to base our decision on that report, because I believe that the conclusions of that report were the result of a completely inadequate examination of the facts in the case. This committee on Friday agreed that only by a presentation of comparative figures showing the profit margins on both resale price maintained goods and on goods which are not resale price maintained can a worthwhile opinion be formed as to whether resale price maintenance is in the public interest or against it. The MacQuarrie report, on which the government bases its proposed legislation dealing with resale price maintenance, contains no comparative figures whatsoever, but is, in effect, a theoretical discussion of a problem which can only be decided, as the committee agreed on Friday, on comparative figures. These comparative figures are available. Mr. Harris, of the Canadian Retail Federation, said on Friday that he would produce figures in the course of the next few days. Mr. Simpson, of the Canadian Electrical Manufacturers Association, is to return shortly with figures showing manufacturers' margins. They do not see any difficulty in this. I have talked to them both afterwards; they see no difficulty in producing these figures, figures which we agreed on Friday are necessary to prove this case one way or the other.

During the past three days it has been stated by witnesses appearing before this committee that they were never asked to submit comparative figures to

the MacQuarrie Committee. As I understand it, the people who were asked to submit evidence were simply asked to give their opinions, and in doing that they did not know that this kind of inquiry was going to develop later. I suggest that Mr. Justice MacQuarrie be asked to appear before this committee and explain why these figures were never asked for, and how he came to the conclusion that resale price maintenance is against public interest, a conclusion on which the government should base such vitally important legislation, a report which contains nothing but theory. That requires a great deal of explanation, I believe. Perhaps Mr. Justice MacQuarrie can help the government to that extent. I sincerely ask that he be asked to come before this committee so that we can find out on what basis his committee came to the conclusion that resale price maintenance was not in the public interest, because to arrive at a proper decision in this committee we have to know the basis on which we are asked to make this important decision. This concerns a large number of people in the retail business in Canada. This is not something that we can pass off lightly by saying "You have heard the evidence, let us pass the legislation". You cannot deal with the amount of business that is concerned in this matter in a lighthearted way. This is vitally important to a great section of Canadian business and I say we have to give it a thorough examination; we should examine all the facts we have before us, and I think Mr. Justice MacQuarrie should be asked to come before us and explain his position. Two weeks will not be sufficient to complete the work of this committee, but even if it takes another three months to come to a right decision, it is worthwhile, because if we do come to a wrong decision it will be a terrible wrong to a large number of business people in this country.

Mr. BEAUDRY: I am speaking on Mr. Fulton's amendment, Mr. Chairman, not on Mr. Hees' speech. Mr. Fulton suggests by his amendment that this committee procure from manufacturers and retailers appearing before the committee figures showing the following stages of the distributive process, the factory costs, the price to the distributor, the price to the retailer, the price to the ultimate purchasers of all price maintained and non price maintained goods of comparable category or quality. I would suggest that, if we are to do a thorough and conclusive job on this, we definitely would need an adding machine because the conclusive proof would only be arrived at by determining if there is a vast or considerable difference between one group and the other group, and I do not think that we can set up some goods of comparative equality as standards, because the standards or conclusions that we might arrive at from a group would not necessarily be conclusive for another group, or for all groups. I would, further, state again on this amendment, that perhaps a review of the history of prices investigations is not ill-placed at this moment. In 1948 the House of Commons appointed a committee to deal with prices. Many members who are sitting on this committee sat on that committee. It held, and I am subject to correction on this, some 168 sittings and studied, in part, the question of resale price maintenance. I will be pleased to submit this afternoon from the record of the Prices Committee of 1948 that the question was found of relatively little importance by this committee in so far as its effect on prices was concerned, but, in any case, after the Prices Committee had sat for 160-odd times the whole matter was referred to a Royal Commission on Prices, which in turn dealt very thoroughly with the factory costs, the price to the distributor, the price to the retailer and the price to the ultimate consumer, and dealt with it at a very considerable length over a long period of time, and eventually brought out a report stating in fact, if not in these words, that while it had investigated very thoroughly the question of prices, there was one small aspect in which it thought it had not explored far enough, and which it recommended to the government that it be gone into further by some

body to be decided upon by the government, to weigh the question of resale price maintenance, and following that report the government then appointed the MacQuarrie Committee to specifically study the question of resale price maintenance. Now we have reached the stage in that long series of historical events dealing with prices where in turn a group of Canadians have represented to the government that they cannot agree with the report of the MacQuarrie Committee, and the government in turn has said, "Perhaps, indeed, there should be further representations from the gentlemen interested in trade, and for that purpose we will set up a committee which will deal with, as is stated in the terms of reference, consider the interim report of the MacQuarrie Committee". Now, I suggest that unless we want to be thoroughly ludicrous we are not going to start repeating the whole process over again and re-beginning the Prices Inquiry which concludes in this small phase now, because if we follow through with this amendment, in fact we will be re-beginning and redoing the work that the Prices Committee did in 1948 plus, naturally, all the normal extensions, going through the royal commission, the MacQuarrie Committee and this committee, and none of us will be members of parliament long enough to eventually see the final reports. I submit that the amendment should be defeated.

Mr. THATCHER: I am a small retailer, Mr. Chairman, and I am rather disturbed by several aspects of this motion. Rightly or wrongly, I think every retailer in Canada is in court today, and I feel they are being treated like criminals. I listened to Mr. Carroll who argued that these people should come before this committee and prove their case. I am not a lawyer, but I think a fundamental principle of British law is—

Mr. CARROLL: To prove that the MacQuarrie Committee report was wrong, not to prove their case.

Mr. THATCHER: —I think that a fundamental principle of British law, is that a man is innocent until he is proven guilty. The government, in effect, has said that resale price maintenance is not in the public interest. Surely under British law it is up to the government to prove their contention. They certainly have not done it so far. On the contrary I have not seen one figure here to show that the practice is detrimental. The original motion says in effect, to every small retailer in Canada, "You must come before us and prove that price maintenance is not harmful". Such a demand is absolutely contrary to the principles of Canadian justice, if I understand law correctly.

The CHAIRMAN: Let everybody listen without interruption.

Mr. THATCHER: Surely fairness demands, that if the government maintains that the practice is harmful, they must bear the onus of proof. We have been told by the Minister of Justice and others that the MacQuarrie Committee has already proved that it is not in the public interest yet in the next breath the minister refused to make available to us the information on which they based their conclusions. I think there is only one way for us to arrive at a sensible decision, and that is to compare mark-ups on price maintained goods and on non-price maintained goods Therefore I am going to support this amendment. If the government does not want to make a farce of this committee they will accept it.

Mr. HARKNESS: I think we are in a situation that was very well summed up in the brief that we were to consider today, that of the Trades and Labor Congress, where it shows on page 4:

> Whatever the committee had in the way of information before it about the extent of the practice of resale price fixing, it certainly didn't present your committee or any other interested party with any concrete evidence on which to base a case either for or against resale price maintenance.

Now, I think that is the situation at the present time. There has been no concrete evidence on which to base a decision as to whether resale price maintenance is good or not, and until we have that evidence I do not think we can turn in anything in the nature of a reasonable report. Now, that statement is not my statement, it is the statement of a body which has come here to give evidence against resale price maintenance, but, in any event, I think that there is no question that until we have some concrete evidence on the matter nobody in Canada knows whether resale price maintenance is working against the public interest or whether it is in the public interest. The MacQuarrie Committee report certainly does not give us any concrete evidence on this matter it merely makes a statement and that is all. And, therefore, as I say, I think we should follow the procedure which was decided upon yesterday, that of calling witnesses to secure evidence in regard to what the margins are on the price maintained goods and on non-price maintained goods, and try and get some concrete figures to show what the situation actually is. Therefore I would support Mr. Fulton's amendment.

Mrs. FAIRCLOUGH: It was said earlier this morning that it was because this question was so intricate that the recommendation came forth from the steering committee, and it is for that very reason, Mr. Chairman, that I support this amendment. After all, criticism was levelled at witnesses both in this committee and in the steering committee for their failure to supply statistical information, but any statistical information is useless unless it is understood. There is an old saying that "figures do not lie but liars can figure". Unless we are going to have available expert advice on the interpretation of these figures, it is useless to ask for them. I believe we should have the figures and, in addition we should have the expert advice on the interpretation of these figures. The point on which the steering committee broke down yesterday was on the difference of opinion as to what figures should be asked for, they could not decide on whether they wanted factory costs or prices to the first distributor, or any costs or figures in between these two—I should not say extremes—positions. The committee more or less threw up its hands and said "We do not know what to ask for", but I still maintain that if legal counsel and the combines commissioner had met with an accountant who understands costing, they would have produced the proper questions in very short order. I do not think that this committee can rise unless it has established whether or not it is in the public interest to abolish resale price maintenance or to permit it, because there are far too many things that are dependent upon the even, equitable, and profitable distribution of consumer goods in this country, and most important are the jobs of our people, and if you are going to have a spotty distribution, and spotty manufacturing as a result, we are consequently going to have no continuity in jobs, and that, in my opinion, is the most important thing we have to decide on. Unless it is eventually proven that resale price maintenance is wrong and works to the detriment of the ultimate consumer, then I cannot support the report of the MacQuarrie Committee, but right at the moment I believe the only way to proceed along these lines is to adopt the amendment which has been put forward by Mr. Fulton.

Mr. MACINNIS: Mr. Chairman, I am rather amazed and somewhat disturbed at the seeming value that people in this committee put on figures. I suggest to the committee there is more than figures involved in this matter. There is a very definite principle involved and that principle is—and we cannot tell at the moment just what effect it may have later on—to allow the economy of the country to get into the hands and to be controlled by a small group of people who are responsible to no one but themselves. That is what you have. Who makes the maintained products? The manufacturers. Who enforces the maintained prices? The manufacturers. Has anyone else outside of the manufacturers any say in the matter at all? Now, it seems to me that is the question,

and it is not necessarily the question of whether or not at the moment it does not adversely affect the consumer. It might for a time indeed be in favour of the consumer. Take a combine; a combine works for a while in favour of the consumer by reducing prices until it gets control and then it raises prices and squeezes the consumer. You are in the very same position here; as Mrs. Fairclough says, figures are no good unless we understand the figures, and I just say I do not see the understanding in this committee that will understand the mass of figures we would have put before us if this amendment is going to carry. I am grey headed already, but the youngest person here would be grey headed, even my friend Mr. Fulton, before we could get through this mass of figures and make a reasoned and logical report on the figures put before us. It is just an impossible task.

It has been stated the MacQuarrie Committee did not ask the manufacturers and retailers for factual information. Well, surely that is an amazing assertion. These people were to appear before the MacQuarrie Committee, which was making an investigation. Now, what do you suppose the MacQuarrie Committee would think a witness appearing before that committee would put before it? What would a lawyer taking a witness to court expect that witness to say in court? He would expect evidence that would prove the case either one way or the other. These people were appearing before the committee to prove price maintenance was not bad even if it was not a good thing.

Then on the basis of the evidence the MacQuarrie Committee received, and it came from these people, they came to the conclusion that price maintenance was a bad thing and so recommended to the government. Now, we were asked to review, as it were, the MacQuarrie report and suggest amendments to the Combines Investigation Act. If we are to make amendments surely we are to make those amendments after we have discussed the whole thing because if we do not find price maintenance is a bad thing we do not make amendments at all.

I suggest to you Mr. Chairman, there is a whole lot more here than this mass of figures. There is a definite principle as to who is going to control the economy of this country. If economy is going to be controlled, in my opinion it should be controlled by people responsible to the consumers and not by people who benefit through price control.

Mr. BEAUDRY: On a point of order, Mr. MacInnis states we are here, I hope I understood him correctly and if not will you please correct me, but I believe he stated we are here to determine a principle which might disturb the whole economy of the country, that is, resale price maintenance.

I would point out that in the testimony we have before us it has been established, I believe, and disputed by no one that price maintenance affects approximately 15 per cent of goods sold in this country on dollar volume and I submit on that score we are not dealing with a problem which will disturb of necessity the economy of Canada at large.

The second point by Mr. MacInnis is that the manufacturer, under present conditions, is the only controller of Canadian economy, and I would refer Mr. MacInnis to page 277 of the record to a question put to Mr. Harris of the Retail Federation of Canada, or a series of questions which place the matter in a vastly different light.

Mr. MacInnis has, in my humble opinion, made two statements of fact which do not agree with the facts.

The CHAIRMAN: At this stage each person is in turn to state his views.

Mr. MACINNIS: I am sorry if I am the only person here who has made statements that do not agree with the facts. I congratulate the other members on their intelligence, but the point that Mr. Beaudry seems to have overlooked, and

he overlooks it because he has a static mind, is that there may be 15 per cent today but if one set of manufacturers find it is a good thing, what will it be tomorrow, what will it be ten years from now?

Mr. HARKNESS: On a point of order.

Some Hon. MEMBERS: On a point of order.

The CHAIRMAN: Let us have a point of order which is a point of order.

Mr. HARKNESS: We are discussing now the desirability or undesirability of getting further evidence.

The CHAIRMAN: We are actually discussing the amendment Mr. Fulton has made to clauses 2 and 3 of the report.

Mr. HARKNESS: I think the last two or three speakers instead of discussing that have been discusing the pros and cons of resale price maintenance, which I maintain, as far as this point is concerned, is out of order.

The CHAIRMAN: I think each speaker, at least up to this interjection, has more or less kept to the thought expressed in the report of the steering committee or the amendment of Mr. Fulton. I think the way to get on is to let each member state his case.

Mr. FLEMING: Mr. Chairman, I think if the report of the steering committee is adopted this committee will have completely stultified itself and I think it will have offended some very elementary principles of justice and fair play, to which I think we should give more than lip service in parliament. These statements made this morning by Mr. Carroll and Mr. Beaudry and one or two others, and yourself, Mr. Chairman if they have any validity at all should have been offered in the House. I do not think this committee is the place now to undo what both houses of parliament clearly did, and it seems to me if we follow the reasoning of Mr. Carroll that is precisely what the steering committee asks this committee to do now.

The terms of reference of this committee are perfectly clear and there is no room for any misunderstanding of them. Here are the words:

> That the Senate do unite with the House of Commons in the appointment of a joint committee of both houses of parliament to consider the interim report of the committee appointed to study combines legislation, tabled in the Senate Tuesday, November 6, 1951; and to consider appropriate amendments to the Combines Investigation Act based thereon.

That is based on a consideration of that report and further down we are given power to examine witnesses under oath. And for what purpose? Of course it is for the purpose of considering the report. The House of Commons and Senate did not say to this committee that this question is generally pre-judged, and you are simply to hear such adverse comments on the report as interested people care to make and you will require such persons to give chapter and verse for their statements. That in substance is the argument addressed to the committee this morning by Mr. Carroll supported by Mr. Beaudry. If this subject was pre-judged before the committee was set up it is just a hollow farce to sit here at all. If this committee was appointed for a serious purpose it was for the purpose of conducting an intelligent and thorough study of that report to determine for ourselves as judges, appointed by the people of Canada, whether the conclusions in that report are sound or unsound. We do not arrive at a decision as to whether these recommendations are sound simply by accepting opinions from here or there. We should not simply say to some group "You are suspect because the case is pre-judged and you have the burden of proof against you before you ever come here." I do not think that is the situation at all. That would surely offend against any proper conception of our duty as members of parliament. Certainly what we were sent here by both houses to do was to get the facts, consider the evidence and arrive at our

decision. As competent judges appointed by the people as to resale price maintenance we have to decide whether it is against public interest or in favour of public interest, and this committee will not have discharged its duty, it will not have carried out the reference given it by both houses of parliament unless it gets at the facts.

Now, why hesitate about this? Some have said it is too big a job. Well, if it is too big a job then I suggest we had better examine again our sense of responsibility as members of parliament. It would be a fine travesty of a sense of parliamentary responsibility if we were to go back to parliament and say, "We didn't do half a job, we did about one-tenth of a job because the job is too big." I would hate to be in that position, and I do not think the members of the committee want to be in that position. We should search out the facts and we will not have any intelligent opinion unless we get at those facts.

The MacQuarrie report catalogues a lot of opinions. It does not give essential facts and if it had facts before it then I think this committee ought to have the same facts, but we have not been given them. We are simply working at the moment within the four corners of the report which is a catalogue of opinions. I do not think mere opinions are good enough for a parliamentary committee to proceed on. I understood the whole purpose of setting up the committee is to get at the facts so that as judges we can determine whether the opinions are supported by the facts. I think the facts are available if we make up our minds to go out and get them. There is not a member of this committee, I say with all respect, who is competent to judge this question simply on scattered opinions from various sources. We will be competent to form an intelligent decision on this question if we get at the facts. It is not difficult for members of parliament to form an opinion if they are given the facts, but if we merely have a lot of opinions then I do not think we can have a report that will do justice to it.

Mr. Beaudry speaks of the Prices Committee of 1948. I shared with him the unhappy experience of sitting through the long sittings of that committee. He argues we should not seek conclusive proof. There is his argument against the parliament of Canada seeking conclusive proof. Surely we are not going to shut our eyes to what may be evidence. Should we not look for evidence? Should we shut our minds to evidence and simply take some opinions which may or may not be based on facts?

Mr. BEAUDRY: I did not state that this committee should not seek conclusive proof. I said that this committee should not seek conclusive proof of something proven to my knowledge by two different bodies in the process of investigation.

Mr. FLEMING: If this question has been pre-judged why have a committee set up at all? If we are in the position of having something pre-judged before it ever comes before us it is a hollow farce we are engaged in here. I do not think the members of the committee want to be a party to that. Is the plain language of the reference to this committee to be reversed, is the situation to be completely reversed on the argument of Mr. Carroll that the question is pre-judged?

Mr. CARROLL: I never said it was pre-judged.

Mr. FLEMING: The hon. member did not say it was pre-judged, but the clear effect of his argument is that it is pre-judged. He says we are only here to listen to those opposed to the MacQuarrie report and if they come and bring before us facts and figures we will listen to them, but not otherwise.

Now, Mr. Chairman, is the Minister of Justice going to say to this committee—

Hon. Mr. GARSON: I will say something if I get a chance here.

Mr. FLEMING: —that it should not be undertaking an intelligent effort to get at the facts of the situation, because if he does I think he is trying to undo something parliament clearly directed this committee to do and he is simply inviting this committee to make a farce of parliamentary procedure.

Hon. Mr. GARSON: I wonder if I may be permitted to reply to my hon. friend's rather lengthy question and get down to the facts in this matter. In order to deal with the issues which have been raised in any basic way I am afraid I would have to, perhaps for the third or fourth time, review what actually took place in this matter.

To begin with, statements have been made, which in my opinion are quite inaccurate, to the effect that this or that evidence was given before the MacQuarrie Committee. The MacQuarrie Committee, as is on record, when it opened up its proceedings decided upon grounds for which good support can be found in logic, that it would reach a wiser decision if it received its views in confidence.

Anyone who has examined the experiences in resale price maintenance in the United States knows there have been examples in that country where powerful manufacturing companies, who were not anxious to sell their products by resale price maintenance, attempted to maintain a free market for their products. They were brought to their knees by the combined retail trade and had to make a public apology, at their own expense in advertisements, and contributed in one case $25,000 to the organized retailers campaign for resale price maintenance in that country.

It would be an entirely reasonable assumption that the reception by the MacQuarrie Committee of views in confidence would likely produce from people who might be otherwise afraid of the consequences which would be visited on them, much more accurate information. At any rate, the Committee decided to receive those views in confidence.

I put it to the members of this committee there have been one or perhaps two witnesses only who have undertaken to say that they themselves did not submit any figures, although they have no knowledge of what other people submitted. I do suggest, Mr. Chairman, if they did not submit any figures there was nothing in the invitation sent out by the MacQuarrie Committee which prevented them from doing so. This is what the MacQuarrie Committee said to these various bodies who were invited:

> For its assistance in this study the committee is anxious to receive as soon as possible from organizations, firms and individuals whatever views they may wish to express upon matters within its terms of reference.

There was nothing whatsoever that prevented them from presenting figures to the MacQuarrie Committee.

Apart from the statements of these two particular witnesses in relation to their own business we have no information here at all as to whether or not there may have been volumes of statistics produced before the MacQuarrie Committee.

Mr. Chairman, lest we fall under the heavy fulminations of my honorable friend from Eglinton and his colleagues in the Conservative party about our intellectual incompetence and under statements that we should never dare reach conclusions on resale price maintenance unless we have a lot of statistics to support them, I have here a statement by the Board of Trade of Great Britain, which is a statement of policy by Sir Hartley Shawcross shortly before the recent elections in that country.

Mr. FLEMING: He is not making them now.

Hon. Mr. GARSON: If my friend will contain himself for a minute, I have here also a debate in the House of Commons on a resolution by one of the Labour members, supported by another Labour member, and I may say supported by a number of members of the Conservative party; and they were able to reach conclusions on resale price maintenance without having a lot of statistics; so if we here are to fall under criticism we at least have the satisfaction of knowing that although we are criticized by distinguished people in this country we are not in too unhappy company, as Sir Hartley Shawcross is by no means a moron.

Now, it is true what the terms of reference are, as has been stated by the honorable member for Eglinton—that is the reference of the MacQuarrie report to this committee—I suggest to him that it would be very difficult indeed to frame these terms of reference in language which would instruct the committee exactly what it should do. At any rate what was done in this particular case was that in moving the resolution in the House I went to what I think were great pains, but for all the benefit it produced on some of the members of the House I might have saved my time. However, I went to very great pains to state just exactly what the position was in relation to this resolution. This is what I said:

> The MacQuarrie Committee has reached its conclusions and has made its recommendations which are—as honorable members who have read this report know—of a most specific character. The MacQuarrie Committee has recommended in effect that the practice of resale price maintenance should be prohibited. Now, therefore, there is a specific and concrete proposal upon the record.
>
> In the light this specific and concrete proposal the government has been strongly urged, by many individual merchants and manufacturers and by the executives of several representative industry or trade associations, to afford them an opportunity to present their views to the government or to a parliamentary committee. The government has decided that it ought to accede to this request but that it is preferable from many standpoints that this presentation of views should take place before a joint parliamentary committee open to the public and to the press of Canada in such a way as to make the information which is presented there available to all concerned, including all the members of this House. The joint committee will therefore be directed to consider the MacQuarrie Committee's interim report and to consider appropriate amendments to the Combines Investigation Act based thereon.

Then I went on to say further:

> It is the hope and the expectation of the government that this joint parliamentary committee will get its work under way at the earliest possible moment and will proceed with sufficient dispatch to enable the appropriate legislation it is set up to consider to be dealt with by parliament before the end of this session as forecast in the Speech from the Throne.

Now, I would like to know how it is possible in the English language to put the position in more plain terms than those which were used. We have stated in the Speech from the Throne we had accepted the MacQuarrie report upon the basis of a much broader investigation than appears to have been the basis of this document here that was brought into the British House. Supposing we had not had any previous inquiry at all but as a matter of government policy had brought that policy down and had introduced it. That would be quite properly within our constitutional powers; because remember we not only had the MacQuarrie report but we had supplementing it and illuminating

it the advice of the Combines Investigation branch, which as it happens has been engaged in this enterprise for over a quarter of a century and in that time has accumulated a certain amount of competence in the field.

Now, we said we were submitting it to this committee simply in order that the committee might consider the MacQuarrie report to make sure that these men who were objecting to it could not bring forward some strong and cogent reason as to why we should reconsider the matter and not act upon that report. In doing that we were not being unreasonable. Every one of those organizations had been before the MacQuarrie Committee over a period of months, and had had all kinds of opportunity to prepare its case; and all that it needed to do was come in before us and repeat what it had previously said with whatever interpolations or additions it might see fit to introduce. Then we can decide whether the MacQuarrie committee report is so utterly unreasonable that we should reverse the statement of policy which we have made in the speech from the throne, tear up the MacQuarrie committee report, and start all over again.

This is not a case at all of people being held to be guilty before they have been proven to be so. This is simply a case of where the MacQuarrie committee gave the fullest possible opportunity with no limitations of any kind at all to these organizations to present their case; and having heard the cases for and against the committee reached a judgment which seems to be a reasonable one—one which the government has accepted and announced as policy. Then, out of an abundance of caution the whole purpose of this committee is to see whether or not perhaps the people concerned could show that the report was in some respects defective.

Now, what do we find when we listen to these representations—and in this I am in agreement with Mr. Hees and I have already said so. They come up here, if I may adopt his language, with a long statement of generalities that really mean nothing. You cannot put your hand into their arguments and get anything tangible to touch.

Now, whose fault is that? Is that the fault of this committee? There is nothing to prevent these gentlemen whose business is so vitally affected as some members have said, from submitting their figures to the MacQuarrie committee—there is nothing to prevent them submitting their figures here. But why, until they have shown that there is something wrong with this report, should this committee start on a great inquiry that cannot be made in less than a year.

Some Hon. MEMBERS: Oh, oh.

Hon. Mr. GARSON: I must contend that if my honourable friend embarks upon the field that he is proposing to embark upon he is doing exactly that. The chairman has said that is what the Combines commissioner told the steering committee yesterday. I do not know about the exact period of time but it would be a very long period of time; and, in this matter, with all deference I am inclined to accept those views as against my honourable friend's.

Mr. FLEMING: We sat on the Prices Committee in 1948 with a far bigger question and we brought in a report in four and half months with all those meetings Mr. Beaudry speaks of.

Hon. Mr. GARSON: I wonder if my honourable friend knows how long it took the Federal Trade Commission in the United States to consider to make a report on this very thing? If he did he would not make his statement.

Mr. FLEMING: I am concerned with Canadian evidence not British evidence nor American evidence.

Hon. Mr. GARSON: My honourable friend will find, no matter whether he is considering British evidence, American evidence, or Canadian evidence, that the problem of resale price maintenance is pretty much the same in its main

outlines in all three of those countries. If those very capable men in those other countries were not able to do it in a short time, with all his wisdom he is not likely to be able to do it in this country.

Now the situation, I think, is this. Up to the present time, speaking only for myself and not for other members of the committee, I must say that no evidence has so far emerged from the deliberations of this committee which would lead me to suppose for one single moment that the MacQuarrie Report was incorrect. It may be that other evidence will be submitted, but until it is submitted in the form of—figures if you like—until those figures are submitted I think there is no warranty for dismissing the recommendations of the MacQuarrie committee, for objecting to the terms of the committee's reference from the House of Commons, for attacking what was said in the House of Commons, or what has happened up to date, or for our doing anything but continuing to hear evidence brought before us by these witnesses. For that reason I propose to vote against the amendment and support the motion of the steering committee.

Mr. HEES: You said you would permit a question?

Hon. Mr. GARSON: Yes.

Mr. HEES: You said there was nothing to stop these people submitting evidence—

The CHAIRMAN: Before we have this general exchange, I think it is only fair since earlier members had an opportunity of stating their opinions without interruptions, that we should do the same with those who are left.

Mr. THATCHER: Could we not ask the minister a question?

The CHAIRMAN: That is what Mr. Hees wants to do. Once we get into that we will never get back to the other members.

As chairman, I am going to rule that other members have the privilege of stating their views and then we will have questioning.

Next is Mr. Dickey.

Mr. DICKEY: I think I can be very brief. I feel that there have been some very unfair presumptions stated this morning about what the feeling of this committee has been and about the agreement of certain members to suggestions that have been made. For that reason I think we had better be pretty careful to state our views so there will not be any misunderstandings.

I was quite content the other day to let the question that was raised go to the steering committee, but I did that without being convinced that it would be possible or advisable for the steering committee to draw up the kind of set of questions that has been suggested. Now, we discussed essentially this question for an hour and ten or fifteen minutes the other morning and I thought it was pretty well settled. As I see it, there is no question of prejudging any essential matter. The MacQuarrie Commission heard evidence and came to a conclusion. They stated that conclusion and in that sense there is a prejudgment—in that we have before us the recent conclusion of a competent committee. In that connection I certainly, for one, want to have it thoroughly understood that I am not by silence agreeing with any suggestion as to incompetence of the MacQuarrie committee, or any impropriety in the way they have conducted the work that was placed before them. There has certainly been nothing before this committee to show that they did their work in anything but a thoroughly complete and competent manner.

We have this decision before us and, quite apart from the point the minister has made with respect to the way this matter arose and came before us, and the discussion that took place in the House which I think clearly sets the position right—quite apart from that, the proper and sensible, and from the point of view of time the economic way for us to consider this problem which has been

put before us is to hear the people who disagree or agree with the findings of the MacQuarrie Commission. We should hear everything they want to put before us on this subject, and there is no suggestion that anybody has up to now or will in the future be prevented from placing relevant evidence before this committee.

The only thing we are deciding this morning is whether or not we should badger the people who really know what they want to put before us into placing before us something that they, perhaps, in their best judgment, think will not help their case or is not available to them. I do not think this committee should get itself in that position and I think we should proceed to hear the evidence that will be placed before us.

This rather lengthly discussion may have had some value in suggesting to witnesses the kind of thing that will perhaps impress the committee, and it may assist them in placing their views before us.

On that basis I certainly intend to vote against the amendment of Mr. Fulton.

The CHAIRMAN: Senator Golding?

Hon. Mr. GOLDING: Mr. Chairman, this has been another interesting discussion and I do not wish to refer to anything that any of the other members have already said. However, speaking personally I thought we were coming to this committee to study this whole situation and ascertain, if possible, whether this policy or this practice of resale price maintenance has been detrimental to the public, whether it has increased the cost of living, or anything else along that line. Now, up to the present time we have not heard any evidence to show that this practice has been a detriment—

Some Hon. MEMBERS: Hear, hear.

Hon. Mr. GOLDING: And that is the thing that I expected to hear as a member of this committee.

In my life I have always had to deal with problems in a practical way. I would not want to support this amendment this morning because I do not think there is any necessity of going to large expense in getting information that would satisfy me and would perhaps satisfy other members of the committee. I think we should take six, or five, or four commodities, trace those commodities through, and show to the committee that this practice has a detrimental effect on the public—I think we could do that. Then I for one would be satisfied to agree with the MacQuarrie recommendation that it be an offence ". . . to recommend or prescribe a minimum resale price for his products . . .". That is the first of the recommendations they made.

As a matter of fact, Mr. Chairman, our whole economy is honeycombed with systems of price fixing. We have the legal fraternity, the medical profession, and numerous others, and our friends here this morning—and the Trades and Labour Congress. They too try to fix the price for the commodity which their people have to offer in the production of any commodity—that is the price for labour.

Mr. CROLL: Labour is not a commodity, Mr. Golding.

The CHAIRMAN: Order, order.

Hon. Mr. GOLDING: I think we should give them credit for what they try to do for their people, nevertheless they do try to fix those prices.

So, when it comes to a manufacturer fixing a price on his commodity the principle is there and we have it established in marketing boards and so on. We want to be satisfied that the principle is working to the detriment of the public. I hope some witness that wants this whole practice changed will show us that it is harmful and is not beneficial to the public.

That is my submission and I have nothing to say about anybody else.

Mr. STUART: The things I had in mind have pretty well been gone into by the minister and I would like to know whether it is in order for me to ask the Minister of Justice one or two questions?

The CHAIRMAN: It will be in order once we come to the questioning of the minister, but Mr. Hees is going to lead off.

Mr. STUART: Then I have one statement to make.

I was of the opinion that you had to get down to manufacturer's costs and the like in order to form any opinion in this committe. That statement was made known a short time ago. However, after our deliberations yesterday afternoon, and after looking the whole situation over, I can see where if it were not for the representations made by the manufacturers and the retailers, we would already have legislation in the House of Commons to take care of the situation. The government was convinced that it should adopt the suggestions or recommendations of the MacQuarrie committee. It has been put forward by a group who felt they were in a position to convince a committee such as ours, that the MacQuarrie report was all wrong.

It has been stated here that a man is innocent until he is proven guilty but in this connection I think the onus is on the people who asked to come before this committee. I believe they are the people who should bring forward figures which will convince us that the MacQuarrie Report is wrong. That is the job they have; it is not our job. I think they should give us that information voluntarily in order to strengthen the position they have taken.

When I get a chance I want to ask the Minister of Justice a couple of questions.

Mr. FULTON: Did you not say yesterday that we are wasting our time unless we get this information my motion calls for?

The CHAIRMAN: Order, order. The questioning will take place after members have made their statements—whether it is a matter of questioning the Minister of Justice or any other members of the committee.

Mr. Carter?

Mr. CARTER: Thank you, Mr. Chairman.

As I understand it this committee has two uses. One is to consider the MacQuarrie committee report and the other is to recommend amendments to the Combines Legislation based on that report. I find myself somewhere between the two extremes of opinion that have been presented here this morning. I think that we all want to do what is right and we all want to search as much as we can for the truth with which consideration of the MacQuarrie report is involved. Whether or not the position contains all truths, I do not know, but, as far as the information is concerned, Mr. MacInnis spoke of the principle that was involved; that principle is a very important thing and when we come to consider the amendment later on we have to make recommendations which will incorporate that principle in such a way that it will function properly. I do not see how we can do that second part of our job without having certain evidence before us that we have yet not been able to get. I do not think that we should duplicate all the investigations that have taken place before, I do not think we should duplicate the work of the MacQuarrie Committee, nor should we overlap, but I cannot see in my own mind why we cannot make a spot check, take two or three items, washing machines, refrigerators, radios, and make a spot check on that and see what happens. I do not know, but perhaps the steering committee found that that was impossible, but that was a thought that I had in mind. I do not think that we should prolong these sessions unduly, but it seems to me that there is a middle situation somewhere between the two extremes that have been brought in this morning.

The CHAIRMAN: Mr. Croll, have you something to say?

Mr. CROLL: I wanted to wait for a while, Mr. Chairman.

The CHAIRMAN: Senator Lambert.

Hon. Mr. LAMBERT: It seemed to me that this discussion this morning is suggestive of an earnest young man setting out on a long journey with an objective, and the young man is stopping every mile or so to try to make up his mind whether or not he is going to go on to the objective. Now, we have heard three groups of witnesses apart from Mr. Forsey; we have heard the pharmaceutical people and we have heard the electrical people, and we made it quite clear to them, I think, there was certain information that we would like to have that they did not include in their offerings at the time. As a result, I think of the question that was crystallized by Mr. Hees the other day, when it was decided that a certain course of procedure would be followed in relation to the retail dealers association. They are to come back here on Thursday and try to supply us with that information, as to the distinction between the resale price maintained goods and the non resale price maintained goods. Now, in a similar way, the electrical manufacturers are supposed to come back here again and give us some information on this question of spreads between the manufacturer's price and the retail price, the mark-up figure. I submit now, as I tried to convey yesterday in the steering committee, that that information is very essential to our problem of trying to make up our minds as to whether or not the conclusions reached in the MacQuarrie Committee report are justifiable or not, and I am rather opposed to Mr. Fulton's suggestion here because of its impracticability. I do not think this committee is competent —with all due respect to it—to go into all the details of accountancy and examination of costs, and so on. If that is what we are coming to, then I am inclined to think that this committee will have to suggest that another commission of inquiry similar to the Curtis Commission be set up to do this job, because I do not think it can be properly done here. What we are really called upon to do, it seems to me, is to assess the conclusions reached by the MacQuarrie Committee. It is not a question of whether they are wrong, to me, or whether they are right. I cannot tell, to be quite honest about it, so far, as to whether those conclusions are right or wrong. I want to know a little bit more about the circumstances or evidence upon which their conclusions are based. I think, too, that we are going to get nowhere at all on this and, with all due deference to Hon. Mr. Garson's remarks, I think we have to divorce ourselves entirely from the fact that this subject was first of all mentioned in the speech from the throne. Now, that is a fact. This committee is set up to do something. Let us divorce ourselves entirely from the pros and cons of this fact, because if we do not, it simply means we are in a political discussion of pros and cons and of a partisan kind of feeling running in this thing, and I do not feel we will get anywhere with that atmosphere hovering over this committee. I could suggest a very simple way out of it, and that is to refer it to a senatorial committee where you have some judicial point of view and non-partisanship in it—

Mr. FULTON: It is all one party, Senator.

Hon. Mr. LAMBERT: As a matter of fact, I might commend it to your consideration, but for the moment I would like to say I think we should proceed on the basis of examining these witnesses that have been submitting briefs to us and try and get the information we want, which, in my mind, is essentially this question of mark-up, spread, between the manufacturer's price and the retailer's, and then it is for us to judge whether or not it is too much, and if we want to go into any details of the question that Mr. Fulton raises about accountant's investigation and so on, it can be considered.

The CHAIRMAN: Gentlemen, the time now is 12.15. We have the Trades and Labour Congress here waiting patiently to give evidence. I have given every person who wanted to speak an opportunity to state his case; now we could get into an endless cross-examination of members by members, which I do not think it desirable. Shall we take a vote, first of all, on the amendment?

Mr. FULTON: Before you do that, Mr. Chairman, I would like to read out the resolution that was carried yesterday in committee.

The CHAIRMAN: That is perfectly all right, Mr. Fulton. Mr. Fulton will read the resolution. I just want to say that this committee is master of its own destiny, Mr. Fulton.

Mr. THATCHER: May I remind you, Mr. Chairman, that you promised we could ask the minister one question.

The CHAIRMAN: One question that will be asked of the minister! I have never heard a member of this committee ask one question; it is always eight, nine or ten questions in a row. Mr. Thatcher, you have had every opportunity up to now to state your case, and you did state your case.

Mr. THATCHER: I want to ask the minister one question.

The CHAIRMAN: I am going to put it to this committee whether or not we are going to vote on this procedure. Mr. Fulton has his one point to make, which he raised in his speech, about the motion we are about to put.

Mr. FULTON: I will confine my remarks to the one point, although I had wanted to follow the normal practice in closing the debate and reply to a number of the points raised—

Mr. MacINNIS: On a point of order, Mr. Chairman, there is no normal practice of a person moving an amendment closing the debate.

Mr. FULTON: Very well; but I want the opportunity to read what we decided yesterday. The proceedings of yesterday's meetings are not yet printed, but I will read from the typescript: After a discussion the chairman said—and here I am quoting from the record—

> "Again that is a matter for the steering committee to decide.
>
> Mr. FULTON: I move the steering committee with our commission counsel and combines commissioner formulate a series of questions to this association for them to bring before the committee at a later date."—

which means, of course, the answers were to be brought before the committee at a later date. Continuing to quote:

> "The CHAIRMAN: Not necessarily just this association. I think Mr. Croll suggested it should be all manufacturers' groups coming before us.
>
> Mr. FULTON: Yes, I accept that.
>
> The CHAIRMAN: Let us deal with this one first.
>
> Mr. FULTON: I think we might incorporate in it that our counsel and the combines commissioner sit in with those producing the figures if they want to keep them secret. Committee counsel and the commissioner could sit in so they could satisfy us these are the figures on which we can base a conclusion."

Then Mr. Jutras asked the following: "What does the last part actually mean?" and I said, for purposes of clarification: "The information, of course, would be confidential."

So there was a motion that the steering committee, with our counsel and the combines commissioner, formulate a series of questions for this association to which they would bring back the answers at a later date; and that motion was

enlarged to include all manufacturers' groups coming before the committee. The motion was put to the main committee and the record contains, then, the entry "Carried".

So the committee decided yesterday that we should draft a series of questions to submit to the witnesses.

The CHAIRMAN: The steering committee having met with counsel and the combines commissioner, the ten members of the steering committee decided actually what is here.

Mr. FULTON: They discussed it and decided they should not follow that course. Thus they reversed the decision of the main committee.

Mr. SHAW: I should like to have one matter clarified: does the acceptance of this motion in any way involve nothing but a spot check, or does it involve going into the entire field and securing all available information on which we can base our decision and upon that alone?

The CHAIRMAN: I had better, in fairness, read the amendment in full:

1. That the representatives of the Canadian Electrical Manufacturers' Association be recalled on Monday, December 3.
2. That the Canadian Retail Federation, who are to come before the committee again on Friday, November 30, and the Canadian Electrical Manufacturers' Association be given an opportunity to produce such figures in relation to costs, mark ups, etc., as they may wish, to supplement their briefs.
3. That all questioning of witnesses in future be confined to the arguments advanced in their briefs,

to which Mr. Fulton moves this amendment:

That, for the purpose of enabling the Committee to compare profit margins and cost to the consumer in both price-maintained and non-maintained goods, Committee Counsel together with the Combines Commissioner procure from manufacturers and retailers appearing before the Committee (as individuals or through their Association) figures for typical commodities in the lines produced or handled by them, showing the following stages in the distributive process:

(1) the factory cost,
(2) the price to the distributor
(3) the price to the retailer
(4) the price to the ultimate purchaser

for price-maintained and non-maintained goods of comparable category and quality; and that with respect to a departmental store or manufacturing concern which does its own manufacturing and distributing the figures be given with the omission of the appropriate stages outlined above; and that Counsel be empowered to employ a cost accountant as and when necessary for the purpose of such study.

Mr. CROLL: Mr. Chairman, if I may. I had not intended to say anything.

The CHAIRMAN: Mr. Croll, I gave you an opportunity to speak.

Mr. CROLL: I know you did, but I did not take advantage of it until Mr. Fulton read from the record that I supported him yesterday, that I supported his view yesterday in the committee.

The CHAIRMAN: I suggest that in all fairness to the committee we can expedite our business now by having a vote.

All those in favour? Contrary?

Mr. FLEMING: Will you record this, Mr. Chairman?

The CHAIRMAN: We will have a roll call. Answer yes or no.

Mr. FLEMING: On the amendment.

The CHAIRMAN: Those in favour of the amendment.

There are nine in favour and 21 opposed.

The question now is on clauses one, two and three of the report of the steering committee. All those in favour? Contrary?

Mr. BEAUDRY: Would you be kind enough to read the few words of the report, Mr. Chairman?

The CHAIRMAN: I will read clauses 1, 2 and 3 of the report:

1. That the representatives of the Canadian Electrical Manufacturers Association be recalled on Monday, December 3.
2. That the Canadian Retail Federation, who are to come before the committee again on Friday, November 29, and the Canadian Electrical Manufacturers Association be given an opportunity to produce such figures in relation to costs, mark ups, etc., as they may wish, to supplement their briefs.
3. That all questioning of witnesses in future be confined to the arguments advanced in their briefs.

Mr. BEAUDRY: May I speak to this motion, Mr. Chairman. I would like to point this out and bring out a viewpoint which has not been expressed yet. In the first place, may I point out this, that in two instances during the testimony of the Canadian Retail Federation, the witness stated—I am referring to pages 265 and 266 of the record—that, in one case, it may be well worthwhile to have the Dominion Bureau of Statistics make a survey to find that out, and in a further point in answer to a question, which was this:

> By Mr. Fulton:
>
> Q. Are there any statistics available, or have you any statistics from which we could find the percentage of volume of the total trade in Canada which is sold subject to price maintenance?—A. No, sir. The only suggestion I can make is that the Dominion Bureau of Statistics might make a study of it. Every store differs in its proportion and every department of that store will differ in its proportion. There may be a statistical method of discovering it, but I am not sufficiently well informed to say.

I would like to point out this, I would further recall to this committee that on page 249 of the record I myself asked the chair and counsel to secure from various government departments sets of figures which I believe are likely to help the committee in laying down grounds for its own thinking. I want to refer for a moment, if the committee will be kind enough—

The CHAIRMAN: Just on this one point of order as to what line the main committee is going to take. That is for the committee. At the moment, however, we are considering the report of the steering committee on this point here. I think it is for the majority of the committee on both sides to bring this matter to a conclusion, to hear our witnesses and then decide. However, I am in the hands of the committee.

Mr. CAUCHON: Question.

Mr. BEAUDRY: If I may raise this question immediately after the vote—

Mr. HEES: I had some views, and Mr. Thatcher had some views to express, and we both gave way.

Mr. BEAUDRY: I would like to speak on a point of privilege. Everybody in this country is concerned with what we are doing—

The CHAIRMAN: At the moment we are concerned with the report of the steering committee.

Mr. BEAUDRY: I appreciate that, Mr. Chairman, but I am still speaking on a point of privilege. I would like to have the chair's direction as to when I can submit a view which I think has some bearing on the amendment, on the main motion, and all our labours, and I would like the direction of the chair as to when I can make this statement.

The CHAIRMAN: What this committee needs very badly at the moment is a breathing spell. I thought we could hear from Mr. MacDonald. The fourth point in the steering committee's report contains such a suggestion in it, except that we substitute for the name of Mr. MacDonald that of Mr. MacGregor, and Mr. MacGregor is to be called at 3.30 tomorrow.

Mr. BEAUDRY: In this particular case I wanted to submit a view to the Minister of Justice pertaining to the statement he made earlier.

The CHAIRMAN: I will put myself in the hands of the committee. In view of what other members did who wanted to make points, Mr. Hees and Mr. Fulton and Mr. Croll and others all stood down...

Mr. THATCHER: I did not stand down, Mr. Chairman. You told me I could not go on.

The CHAIRMAN: I did not include you, Mr. Thatcher

Mr. FULTON: You are going to put the question on the report of the steering committee, I just have to indicate that I am bound to oppose that report, because I consider the wording is too narrowly restrictive of the committee's work. I do not say we should divide and have a recorded vote, but I think the vote should be on division.

The CHAIRMAN: All those in favour of clauses 1, 2 and 3 say yes, and contrary, no.

Carried on division.

Now, clause 4:

4. That notwithstanding any previous decision as to hours of sitting, the Committee sit on Wednesday, November 28th, at 3.30 o'clock p.m., and that Mr. F. A. McGregor, former Commissioner of the Combines Investigation Act, be called for that day.

All those in favour? Contrary?

Carried.

Gentlemen, we have before us Mr. Percy Bengough, President of the Trades and Labor Congress of Canada, and Mr. L. E. Wismer, also of that association. I think on behalf of the committee, Mr. Bengough, we must first express our apologies for this delay, but I am quite sure that in your own organization at times you have points of procedure to decide upon. Mr. Wismer will start by giving us a short summary of the points raised in the brief, which has already been circulated to the members.

Mr. L. E. Wismer, Director of Public Relations and Research, Trades and Labour Congress of Canada, called:

The WITNESS: Mr. Chairman, I think I could say, on behalf of President Bengough, that we listened with a great deal of interest to your debate this morning because to some extent it indicated the same difficulties in the minds of the members of the committee that we have, and that is whether or not we should be in favour of the interim report as to whether or not resale price maintenance is a bad thing or a good thing, and in saying that to you I think

we should lay our cards on the table. We are speaking for the largest organized group of consumers in this country. There are at least 500,000 paid members of our organization and they have in many cases wives, families, relatives and so on, and they represent a very large proportion of the consuming public. It is important, in our point of view, that we should try to know, before we make up our minds, whether the practice of resale price maintenance grows up as a normal human protection in an economy, or whether it grows up as a predatory practice. In the case of working people, wage earners and their representatives, the combining of men in a trade union grows up from necessity; it grows up as a human practice to protect yourselves, not to hurt anybody, not as a predatory thing but as a protection to the people involved. Now, we are not employers and we are not the representatives of employers, so we do not know if employers have the same problems or not. We know what our problems are like. We know we have to chase a continually rising price level with wages, and we have never yet found a way in which we can do it successfully.

We are always lagging a little behind in spite of what some people say and we know from our own experience that the price gets ahead of us. We are very interested in anything you can do or parliament can do to bring some parity between prices and wages. We would like to improve the standard of living; we are not interested in just going around seeking higher wages, and we are not sure whether amending the Combines Investigation Act would help that.

This is the point we tried to make in the brief, we are very sure in our own minds that over the years gradually trade unions were recognized in law as legitimate associations of people capable of making a bargain under law with their employers. If it is necessary that some sort of similar bargains should be made by the employers for the maintenance of their business and their interests, it also should be done under the law. In other words, we favour whatever price fixing has to be done, whether it be done by trade unions and their employers, by lawyers or doctors or any other association of people, and that it be done under the law. We think if you set up a law of that sort in a positive sense, with a consumers' price board where these arrangements can be considered and approved in whatever form they may necessarily take, that we would be moving in a direction which would uphold the principle of free economy.

The CHAIRMAN: We will now proceed with the questioning and because of the time it will be limited to five minutes instead of ten minutes.

By Hon. Mr. Garson:

Q. Supposing a number of members of your union were working for a certain manufacturing plant, would you like the idea that the manufacturer should have the sole right to fix wages by himself?—A. Definitely not.

Q. At the present time he has the sole right to fix your prices, his own mark-up of them and the retailer's mark-up on them and all the rest. Do you like that?—A. Has he got that, Mr. Garson?

Q. Did you not know that?—A. What bludgeon does he use on the retailer to force him into that?

Q. Under resale price maintenance he does fix your price. I put this question to you, are you not as anxious to get out from under the manufacturers' power to fix the prices you have to pay with your wages, as you are to have some say in the fixing of your own wages?

Mr. BENGOUGH: It applies in some instances but there are, shall I say, many variations of that.

By Hon. Mr. Garson:

Q. Will the witness tell me if they are under any different impression of resale price maintenance?—A. Our views are simply that the manufacturer

finds a way to compel the retailer to sell his goods at whatever price he wants them sold at.

Q. He fixes the price of, we will say, $10 for a certain article that you have to pay the retailer. He fixes the retail price, the retailers' mark-up and distributors' mark-up and his own price; is that not right?—A. Right.

Q. That is all.

By Mr. Fleming:

Q. May I ask Mr. Wismer if he feels that this so-called practice of price maintenance is a detriment to or perhaps in harmony with public interest?—A. I think we can say this, in so far as the deal is made privately and enforced privately we would have to say no, but where it is a general practice I think we would have to have a lot more information.

Q. Have you examined the draft bill on page 34 of the proceedings of this committee?—A. I have read the original draft.

Q. You will recall it purports to propose blanket prohibition on resale prices. Would you think that is a proper and desirable way of going about this matter, that we have blanket prohibition, or if we are going to have legislation on it should it be left to determine whether in the particular case the particular type of agreement is in the given circumstances harmful to the public interest or not?

Mr. BENGOUGH: It would have to be flexible.

Mr. FLEMING: You wouldn't favour a general prohibition?

Mr. BENGOUGH: No.

By Hon. Mr. Horner:

Q. The experience, of course, of all governments in business is that their business is done on a set price. For instance, in the liquor business, and some governments in other businesses work on a set price throughout all parts of the province in order that people in small communities are served at the same price as those in larger communities. Do you not think in many cases price fixing serves the little local store and those in smaller communities get goods at the same price as the man in the city?

Mr. BENGOUGH: It might soak them more. We cannot guarantee the prices fixed on a minimum; it may be fixed on a maximum.

By Hon. Mr. Horner:

Q. Do you not think the manufacturer interested in selling his goods would not price them so high that he would price himself out of market?—A. Not always. Sometimes it has been demonstrated they would rather sell less articles at higher prices than more articles at a reasonable price.

Q. That wouldn't help employment in his plant?—A. No.

By Mr. Fulton:

Q. What is your position with respect to the loss-leader practice as it has been described to us by those who object to it, that is, the selling of a commodity at less than what it costs?—A. We are very much opposed to it.

Q. What is your view, would you agree that it would only be fair, if we are going to introduce legislation to outlaw in blanket fashion all price maintenance agreements, that we should at the same time introduce legislation to prevent the loss-leader practice?

Mr. BENGOUGH: I think it would be vital it should be done.

Mr. JUTRAS: We know there is some unemployment in the country at the present time; in your opinion do you think if the retailer was not subject to price maintenance the unemployment situation might improve?

Mr. BENGOUGH: I would not be prepared to answer.

By Mr. Jutras:

Q. On page 11 of your brief you say:

> We would like to see an end to the need for private alliances among manufacturers and distributors which tend to maintain prices at too high a level. Unfortunately, an amendment to the law which prohibits the alliances will not necessarily remove the need for the alliances as well.

Now, the word there is "need". Do you recognize there is a need for private alliances at the present time?—A. I do not think our brief says we recognize the need; it is if they recognize the need. That is the point we want to make. We have long recognized the need as working people for alliances between ourselves in order to protect ourselves.

Q. I just put the question to you as to what your opinion is as to whether there is a need or not?—A. I think I can say this in fairness, there was a big inquiry by parliament in the thirties to prevent price spreads and at that time that inquiry was concerned with the ability of the retailer to co-operate with the manufacturer without subsequent disadvantage to the consumer or those who were working for a living.

Q. You just mentioned a moment ago that you were definitely opposed to prices fixed privately. Now, do you know of any other way they are fixed?—A. Well, there are freight rates, all wages are fixed under the law, milk prices are fixed in most provinces now, wheat prices, liquor prices—they are all fixed publicly.

Q. Do you know if any prices are fixed in any other way under price maintenance apart from those regulated by the government?—A. There are prices fixed; for instance, the large national retailing organizations operating in the large centres across the country in a sense fix prices. I think we have made the point in the brief that one very large clothing organization would not be touched by the legislation whereas others would be, and it would seem to us to leave one organization free.

Q. You recommend in your brief a consumer price control board as a solution of the problem. Now, in theory wages are regulated to a certain degree, and since labour is such a large factor in prices, would you neglect wages or would you be willing to consider including wages under the board?—A. You may recall earlier this year we made a submission on prices and I cannot give you the exact words, but in effect we said if there is going to be price control we are prepared to sit down and discuss how wage stabilization is to be fitted into that. After all we are basically trade unions and concerned with working conditions and of the maintenance of a high level of wages. We are also consumers and concerned with what price we pay, so we have a double interest. If this board is set up we would like to see a substantial consumer representation on that board and we are representing a large organization.

Mr. SHAW: Just one or two questions; would you say your congress or executive body have made a comprehensive study of resale price maintenance and its effect on the consumer?

Mr. BENGOUGH: No, I would not say that; not to the extent it could be done over a longer period.

By Mr. Shaw:

Q. I understood Mr. Wismer to indicate they would register objection to private industry establishing a private system of price maintenance. I understood you to take the position you were opposed to that. Would you

say that would be your principal objection at the moment?—A. I think our basic objection is it is done privately and outside of the normal process of public law.

Q. One other question: would you condone action on the part of the manufacturers in establishing retail prices if it involved a principle of private law?—A. And at the same time things were cheaper?

Q. No, as a matter of principle, would your congress condone it?

Mr. BENGOUGH: It may be beneficial in some spots and may be entirely the opposite in others. You cannot say yes or no to that.

Mr. SHAW: I believe, Mr. Chairman, we can get an answer to that. I am asking you if the congress would condone a system of private law in the field of resale price maintenance as far as maintenance is concerned without appeal to the courts? Would your congress condone an action of that character?

Mr. BENGOUGH: If it was definitely to the benefit of the consumers.

Mr. SHAW: I didn't bring that in.

Mr. BENGOUGH: You have to, you cannot separate it.

Mr. SHAW: I am asking you if you would condone the principle of a private system of law?

Mr. BENGOUGH: Generally we would condemn it but we would not say blanketly we are going to condone it.

Mr. SHAW: Would it be fair to say that in certain circumstances your congress might approve a private system of law?

Mr. BENGOUGH: I would say we would not object if it was beneficial.

Hon. Mr. GOLDING: You realize, and I am sure everybody in this room realizes, that any manufacturing company, in order to exist at all, must have a reasonable profit on the products that they put on the markets?

Mr. BENGOUGH: Yes.

Hon. Mr. GOLDING: If they put a reasonable price on the product, which will give them a reasonable working profit, and a reasonable profit to the retailer, and you were satisfied that it was a reasonable profit, you would not have any objection to the manufacturer saying to the retailer that this is the price we must sell this product for; on the other hand, if it could be shown to you or to the public that these prices were unreasonable and unjustified then, of course, you would have strong objections to that?

Mr. BENGOUGH: Yes.

Hon. Mr. GOLDING: That is your position?

Mr. BENGOUGH: Yes.

Hon. Mr. GOLDING: I imagine you want to get the information I want to get, whether these products are taking from the public a profit which is unreasonable, and if we get that information I think you and I can agree upon what we have to say

Mr. BENGOUGH: That is true.

By Mr. Hees:

Q. Now, am I right in assuming you and I a short time ago represented the same riding?—A. There was an election in Ontario but I did not run.

Q. I would like to start off, just to get myself straight on the record, by saying I believe union security is in the best interests of both employer and employee. Now, I think you will agree that a closed shop is a form of price maintenance. I am not speaking of it in any derogatory sense, it is the same sort of thing?—A. It works the same way for moulders as it does for lawyers and doctors.

Q. My question is this, if the government decided to make a closed shop illegal on legislation based on a purely theoretical thing such as the MacQuarrie report, would you consider that would be fair legislation?—A. We would be fighting it as hard as we could.

By Mr. Thatcher:

Q. Mr. Bengough, I think Mr. Wismer stated that you are here representing the largest body of consumers in Canada. Did your organization at any time ever make representations to the government asking them to abolish resale price maintenance?—A. No.

Q. You didn't?—No.

Q. Can you tell the committee whether your congress has any specific information showing that the practice of resale price maintenance is harmful to the consumer?

Mr. BENGOUGH: I have experienced some myself.

Mr. THATCHER: Can you give such evidence to the committeee today?

Mr. BENGOUGH: It would be very small. At one time I happened to be on the board of governors of the University of British Columbia.

Mr. FULTON: A splendid institution.

Mr. BENGOUGH: I do not want to go into the history of my life. At that time we had a depression and arrangements were made with a cheese factory that some of the students take it over and operate it themselves and in return for free lodging and heat they would provide certain tuition in the art of cheese making. It went on very well until one of the unions happened to organize some of the staff and of course I was in a somewhat difficult position. As a result of that an investigation was made because the employer had pleaded inability to pay. Now, we found the cheese he was turning out cost 8 cents and 11 cents and in the retail stores they sold for 40 cents and 45 cents, which was a large spread between what they manufactured them for and what they sold them for, and the storekeepers made 5 cents apiece. There are many instances, you do not have to look far to find instances of that.

Mr. THATCHER: After reading your brief, am I correct in assuming that you are not yet convinced in your own mind, whether this practice is harmful or beneficial to consumers as a whole?

Mr. BENGOUGH: It varies. We did say in here too that you could not separate it from the question of loss-leaders. There has to be some protection there, otherwise your large department stores would be able to have quite a heyday.

Mr. FULTON: Some of them have already indicated their readiness to do so.

Mr. THATCHER: Would you turn to page 10 of your brief. Would it be fair to say that you sum up your position in the third paragraph:

> "Working people learned very early in the industrial period that, despite the law and the attitude of the state, it was necessary to combine to protect themselves, their families and their interests. Perhaps, from the employers' point of view, some combination is necessary for their protection regardless of the attitude of the state".

Is that a fair summation of the attitude of the congress towards this problem?—A. We have no objection to employers organizing. He may in some spots set prices which would be advantageous and to the benefit of the consumer and in others it would not be.

Q. You would say as a labour leader, that there may be some parallel between the needs of small retailers for an alliance to protect themselves, and

the need of an alliance or union among your workers for the same purpose?—A. There is no question about the retailers. We have to get together on that.

The CHAIRMAN: Now, Mr. MacInnis.

Mr. MACINNIS: I think you said when answering a question that in regard to price maintenance you would not be opposed to it if it would benefit the consumer. Is that correct? I think you said that if the consumer got cheaper goods under price maintained articles, it would be all right to have them price maintained. Well, you said that you were opposed to loss-leader selling. But does not that also benefit the consumer?

The WITNESS: It may, but it goes to the other extreme. You see, there is a degree.

Mr. MACINNIS: That is just the point I am making. There is a degree. Well, if there is a degree, you cannot accept the mere fact that you can buy a thing more cheaply or dearer as a criterion for a decision in this matter.

The WITNESS: No.

Mr. MACINNIS: So there are other factors?

The WITNESS: Many other factors enter into it, yes.

Mr. MACINNIS: That is all.

The CHAIRMAN: Are there any further questions? Thank you very much. Oh, Mr. Mott.

Mr. MOTT: I do not know exactly, from listening to your remarks, if you are in favour of this legislation or not; but I noticed in the newspapers published at Port Arthur that you mentioned that the government was stalling on this legislation.

The WITNESS: I believe that.

Mr. MOTT: Did you or did you not say that?

The WITNESS: No, but I believe that.

Mr. MOTT: If you are in favour of this legislation and price maintenance that is going into it, then why did you make the remark that the government was stalling?

The WITNESS: No. What I said at the time was: I meant: the information had just come through that the government was going to do that. I was happy to see that they were going to do something, but it turned out that they were not. They set up this committee.

Mr. FULTON: Yes, they set up this committee and then they will not give it any information.

The CHAIRMAN: We shall now adjourn until 3:30 p.m. tomorrow, when Mr. MacGregor will be our witness.

The committee adjourned.

APPENDIX A

SUBMISSION

By

The Trades and Labor Congress of Canada

To

The Joint Committee of the Senate and the House of Commons

to consider the Interim Report of the Committee appointed to study combines legislation tabled in the House of Commons, Friday, October 12, 1951; and to consider appropriate amendments to the Combines Investigation Act based thereon.

The Trades and Labor Congress of Canada appreciates this opportunity of placing before your Committee its views upon the feasibility of amending the Combines Investigation Act so as to render it illegal to enter into arrangements as between productive and distributive organizations for the maintenance of resale prices and upon any public advantage which such amendments might produce. As an introduction to our submission to your Committee we would like to place on record our general reactions to the Combines Investigation Act as it now stands and we believe that can be done best by repeating here a few paragraphs from our submission to the MacQuarrie Committee in 1950.

At that time we said:

> This Congress is not especially critical of the Combines Investigation Act. What, we believe, should be admitted is the limitations of this type of legislation.
>
> Official references by the Congress to the Combines Investigation legislation over the years since its inception in 1910 indicate approval of the legislation but not much enthusiasm. In the high cost of living conditions of post war inflation in the 1920's, labor was hopeful of anything that would tend to bring prices down into line with wages.
>
> When the Combines Investigation Act, in 1935, was transferred for administrative purposes from the Registrar under the Minister of Labor to the Dominion Trade and Industry Commission (actually the Tariff Board) this Congress made no comment.
>
> The Congress did express its views in 1937 when the Act was again placed under the Minister of Labor, only this time under the administration of a single Commissioner. Approving of this change, the Congress said, in an editorial, in March of that year: 'With prices once more on the upward trend, there is more need than ever for the detection and prevention of price fixing arrangements to give the public protection against artificial price rises, when many will be finding the natural increases in cost sufficiently burdensome.'
>
> In October, 1945, the administration of the Act was transferred from the Labor Department to the Minister of Justice. A month later

a report submitted by the Commissioner of the Combines Investigation Act was tabled in the House of Commons by the Minister of Justice on "Canada and International Cartels". In an official statement in an editorial which appeared in the Congress Journal in December of that year, the Congress left no doubt about its attitude to cartels and the limitations of the Combines Investigation Act. After reciting the many ways in which private organizations restricted production and distribution of materials and commodities, through private trade agreements, as these were listed in the Report, the editorial said this: "There is no question that the inquiry did a good job as far as it went, or possibly was allowed to go. However, to get down to brass tacks, most Canadians would like to know who in this country were in on this racket. The people who suffered the evils of unemployment should certainly be told. They are certainly interested in knowing just who deliberately contributed to their misery."

Then this editorial continued: Now that the legislation has been taken over by the Department of Justice, is justice going to be meted out to the guilty, or is the old procedure to be continued whereby a fellow gets six months for stealing a ride on a box car while another gets a title for stealing the whole railroad?

In the opinion of this Congress, nothing has been done in the last five years to redress the fundamental inequality so aptly stated in the words of the quoted sentence above. And it has become readily apparent that little can be done effectively along this line through the Combines Investigation Act alone, since it is largely a policing and punitive measure capable of action, in effect, only after the damage has been done.

This Congress does not suggest that the Combines Investigation Act is worthless. On the contrary, we would like to see it strengthened to the point where both investigations and prosecutions after the results of the inquiries are available would both be capable of effective execution. But we stress again that we are of the opinion that such legislation will always remain greatly limited in its powers to counteract and reduce, let alone remove, the unfortunate influence upon the public and the consumer of private commercial arrangements concerning markets and prices.

This Congress believes that more positive measures of price control should be undertaken, and with these, positive methods of freeing our economy of the unfortunate influences of those whose approach to business is one of selfish gain regardless of the public interest.

Your Committee, however, is not concerned with the full compass of the Combines Investigation Act, but merely with what was dealt with in the Interim Report of the MacQuarrie Committee, namely, Resale Price Maintenance. Your Committee is concerned with whether the practice of Resale Price Maintenance is good or bad, in the public interest or against it, and with what, if any, amendments to the Combines Investigation Act could effectively stop these commercial practices.

For the purposes of this submission Resale Price Maintenance may be defined as it was at page 256 of Volume II of the Report of the Royal Commission on Prices: there it suggests that resale price maintenance means a fixed price at which the retailer must sell the product to the public as determined by the manufacturer of the product.

How widespread are such practices? It is the answer to this question that would seem to determine the importance of this current inquiry and the work

of your Committee. The Interim Report on Maintenance of Resale Prices refers to the Report of the Royal Commission on Prices. At page 41 of Volume I it reads:

> Throughout our inquiry we have been impressed by the degree to which individual manufacturers fix the resale prices of their products and so narrow the area in which price competition amongst wholesalers and retailers is operative.

The Interim Report goes on to say that some estimates were obtained by the Committee from private sources but that these were not very accurate. Then it winds up its statement on "the extent of the practice" by saying that "the practice of fixing resale prices is widespread . . . (and) . . . of significant and growing proportions."

Whatever the Committee had in the way of information before it about the extent of the practice of resale price fixing, it certainly didn't present your Committee or any other interested party with any concrete evidence on which to base a case either for or against resale price maintenance.

Surely it was not necessary for the committee to be so bashful in its Interim Report. Surely it is readily apparent to anyone that resale price maintenance is very prevalent in most drug lines, and particularly among the best known lines of cosmetics. Surely it is quite as apparent that this practice is usual among the automobile manufacturers, among the cigarette and tobacco companies, and in some sections of the men's clothing and furnishings trade. Without attempting to make this an exhaustive list, the existence of such practices in certain grocery and canned goods lines could be mentioned.

In short it may be admitted at once that the practice of resale price fixing exists, and, perhaps, on a fairly broad scale. The next question, of course, is whether the practice of resale price maintenance is desirable or undesirable, whether it is in the public interest or not.

The Interim Report attempts an answer to this all-important question through an appraisal of the affects of resale price maintenance upon two aspects of general economic activity: competition and efficiency. Under the heading of "standards of judgment" the Interim Report asks the two questions: 1) does the system facilitate or restrict competition? and 2) does it promote efficiency in the economic system providing the consumer with the goods and services he requires at the least necessary prices? At page 21, of the Interim Report under the heading of "General Conclusion and Recommendations", the answer to these questions is given by the Committee as: "The Committee has studied resale price maintenance in the light of the two standards of judgment originally set up, namely, the desirability of a free economy and the need for economic efficiency. This study has led the Committee to the general conclusion that resale price maintenance, on the growing scale now practiced, is not justified by either of these standards."

It is worth noting that, between page 7 of the Interim Report where these "standards of judgment" are set up and page 21 where they are answered as quoted, in part, above, there is some recital and paraphrasing of the various briefs and opinions submitted to the Committee on this subject, and beginning at page 17 a summary of the Committee's own views. In all of this section of the Interim Report the only references to actual fact or concrete investigation of the situation are to "A Statement on Resale Price Maintenance, Board of Trade, June, 1951" (a statement made by the President of the Board of Trade of the Government of the United Kingdom to Parliament in June of this year on the extent of the practice in Britain), and to certain analyses made by individuals of the situation in the United States. No reference whatever is made to actual conditions or any survey of the situation in Canada.

Regardless of what decisions your Committee may reach in regard to the desirability or undesirability of resale price fixing, it would seem well worth

your while to give some thought to the "Standards of judgment" established by the MacQuarrie Committee and as to whether these are satisfactory yardsticks assessing the advantages or disadvantages from a public point of view of resale price maintenance.

The conclusion of the Interim Report leaves no doubt that "a system of control by private law or agreement", in the opinion of the Committee, "does prevent the consumer from exercising his full influence in determining what services he is willing to pay for" and that it does "restrict competition."

Before accepting these general conclusions without reservation, it might be worth while to consider what would happen in specific cases when and if the law is amended to make resale price fixing practices illegal. Take for example two large manufacturers of men's clothing. The one manufacturer owns or controls, or owns and controls, his retail outlets. He, of course, has full control of the resale prices of his products. The other manufacturer operating in direct competition with the first does not own any retail outlets. He, however, provides services to those independent retailers who handle his products and, as well, fixes the resale price of his goods. If the practice of resale price maintenance is ruled illegal, it would seem fairly obvious that the second manufacturer would be required to cease his present practices. Would the first be required to stop fixing the retail price of his goods which are sold through his own retail stores? If the answer to this question is in the negative, then will not the result of the new law be to reduce effective competition in the men's clothing trade rather than to strengthen it?

In 1934-35 a Special Committee of Parliament made an exhaustive study of "Price Spreads and Mass Buying". At that time it seems that the prime concern of Parliament was the exercise of exhorbitant power by distributive enterprise against not only the consumer but the manufacturer or supplier and those who worked for both the supplier and the distributor. Then Canadians talked of poverty in the midst of plenty. Now we are still confronted with poverty although our dollar earnings are larger than ever before. We are still poor because prices have skyrocketed and we are prone to clutch at any straw that may appear to be helpful in causing any reduction in retail prices.

One possibility your Committee should keep in mind, and, in the opinion of this Congress, make every effort to guard against, in any amendments that may be suggested, is a swing of distributive business away from the smaller outlets and a concentration of such trade in a few very large establishments. This trend toward concentration in the retail field has been argued as a possible result of banning resale price fixing before the MacQuarrie Committee (see bottom of page 9 of the Interim Report). No concrete evidence has been produced in the Interim Report to show the real influences in this regard and in the absence of such facts your Committee is, in essence, acting in the dark.

On the other hand, resale price fixing seems to be used very successfully by the larger distributive organizations as a competitive device. The larger merchandisers offer brands of their own in competition with nationally-known products on which resale prices are fixed. This is noticeable in the drug and cosmetic fields particularly. Yet the brand placed in competition by the large distributor is in the very nature of the operation subject as well to resale price maintenance.

This raises two very important questions for consideration by your Committee: (1) Does this indicate that resale price maintenance does not always lead to reduced competition? and (2) Would the banning of resale price fixing make it impossible for the large distributor to offer his own brands at his owned fixed prices? If not, and it is difficult to see how such a law could be made to fit this type of situation, then it would appear that the large distributor would gain a tremendous advantage over the manufacturer without any apparent advantage

having been gained by the ultimate consumer. Such a development would merely place more economic power in the hands of the larger distributors. It is hard to see where it would increase effective competition or efficiency. It is even more difficult to see where the public interest would be served.

In the automotive field the practice of fixing resale prices seems well established. Since the motor car and its allied products have become necessities for most Canadians, it is very evident that here at least the general public interest could be well served by any move that would tend to reduce the consumer price. And considering the substantial spread between the manufacturer's cost of an automobile and the price paid by the consumer, there can be little doubt that a substantial decrease in car prices is possible.

The question to be considered by your Committee, however, is whether the banning of resale price fixing will tend to reduce the consumer prices of motor cars. The national advertising of motor car companies seems usually to indicate every feature of the automobile except its price. On the other hand, when one seeks to buy a new car he ordinarily finds that all dealers in the district are offering at the same price. Variations in price, of course, could easily be produced by varying the extras offered in the new car price by the dealer.

More important, however, in our opinion, than the intricate problems of discovery of resale price maintenance in the motor car field that would confront the Administration, should such practices be banned through amendments to the Combines Investigation Act, are the difficulties that this may create for the motor car dealer. Your Committee should give consideration to a specific case such as the following: the dealer under the amended law decides to reduce the price to the consumer of a certain model of automobile. As a result the car manufacturer desirous of maintaining resale prices regardless of the legal position refuses to sell the dealer any more cars. The dealer seeks redress under the new law and the Administration proceeds against the car manufacturer. While it may be assumed that even the largest motor car companies would dislike endless litigation and might fear that such action by the Administration for illegal practices might cause a deterioration in their relations with the public and their goodwill, what will happen to the small dealer who has been refused delivery of motor cars? Is your Committee prepared to recommend, along with the changes in the law to ban resale price maintenance, that the Administration protect the business of the motor car dealer in such cases while it is proceeding against the manufacturer?

We have raised these doubts about these matters not because we favour resale price maintenance as such, but because we are not favourably impressed with the Interim Report. There is an air of artificiality about the Interim Report. It states its case and reaches its conclusions without adducing any pertinent or concrete evidence of resale price fixing practices in Canada. The effect of its vague and quasi-technical exposition is to suggest that it is merely a contrived argument to support a preconception.

We believe in a free economy. We are therefore naturally opposed to any private arrangements which would tend to lessen or restrict a free economy. On the other hand, we are practical people and know the need and value of bargaining power in all economic situations.

The state for a long time refused any protection to working people. It is not so long since any combination of workers was classed as a conspiracy and so dealt with under the law. As a result of the unrelenting efforts of our forefathers among the working people of Canada that situation has gradually been changed. Today there are laws recognizing combinations of workers and which provide for orderly procedures to assist in the reaching of agreements between employers and the certified agent of the employees.

The history of combination among employers and the attitude of the state to such arrangements is rather different. Such combinations have been con-

sidered as opposed to the general public interest and laws have been devised to deal with them. However, such laws, including the Combines Investigation Act, take a negative approach to the problem and combinations among employers exist in all sorts of ways and appear to continue to exist even after action has been taken against them and they have been found guilty by the courts.

Working people learned very early in the industrial period that, despite the law and the attitude of the state, it was necessary to combine to protect themselves, their families and their interests. Perhaps, from the employers point of view, some combination is necessary for their protection regardless of the attitude of the state. While we may all agree that private arrangements such as resale price fixing which restrict a free economy and the competitive flow of prices and goods are undesirable, it may still be true that economic necessity, as that is experienced by the person, or organization directly involved, may dictate that some such arrangement is imperative. Under such conditions it would seem readily apparent, that failing provision of some social control facilities by the state, private groups and organizations within the economy will at all times act for their own protection and self-preservation.

While your committee may recommend in favour of a ban on all resale price fixing practices, and in so doing earn the commendation of the consumers of Canada, of which this congress is happy to represent the largest single organized group, still you will not be attacking the main problem, and you will lead your constituents astray if you do not caution them against the possibility that no prices may go down as a result of such amendments or the possibility that resale price fixing may continue in new forms despite the new law.

We would like to see a reduction in consumer prices and the cost of living. We would like to see an end to the need for private alliances among manufacturers and distributors which tend to maintain prices at too high a level. Unfortunately, an amendment to the law which prohibits the alliances will not necessarily remove the need for the alliances as well.

What we should all be concerned about at this time is how to protect the individual whether he be consumer or merchant, distributor or manufacturer, worker or employer in a free economy. At the same time we must remember that a free economy does not exist because of some law; it exists because of the private arrangements, agreements, alliances, organizations and the whole welter of checks and balances which serve to offset any possibility of one group dominating it completely.

There are those who fear the domination of the economy by the state. Whatever grounds they may have for such alarm, it must be noted that the state already has a hand in the economy. Your committee is asked to consider what further hand the state shall take in the economy. What appears most important is not whether the state shall play a part in the economy or whether the economy will remain free if it does, but what part the state shall play; and whether the state shall play a negative and confusing role or a positive one.

While we would not recommend the repeal of the Combines Investigation Act, we believe that the negative approach of this type of legislation and administrative practice is unlikely to ever have very substantial influences upon consumer prices or to provide very effective means for reducing the private alliances that restrict the free flow of goods and services in a free economy.

We believe, on the other hand, that your committee should recommend positive measures for dealing with restrictive practices in our economy and in so doing provide parliament with suggestions for immediate action against inflation and rising consumer prices.

Rather than say that a manufacturer may not make an arrangement to protect the price of his goods and thereby, presumably, his business, it would seem much more practical to suggest that the relationships between suppliers and distributors should be subject to broad social regulation thereby providing for the protection of both along with the consumer.

We suggest that your committee recommend the creation of Consumers Price Control Board which will have power to deal with all aspects of this problem of resale price maintenance as well as with consumer prices generally. We make this recommendation to you because we believe that it would provide for a positive approach to the problem of restrictive practices in the economy and at the same time for a sensible and immediate attack on rising consumer prices in all lines.

Parliament has already granted the power to the government to deal with prices. Your committee, in our opinion, should recommend that action be reserved along the negative lines of amending the Combines Investigation Act and rather that immediate positive action be taken through a Consumers Price Control Board to free the whole economy from restrictive price practices whether these arise as the result of agreements or arrangements or simply from the customs of the trade.

We have made this submission and these recommendations in the hope that they may be useful to your committee in reaching conclusions which will benefit our own affiliated membership and Canadians generally in these difficult days of inflation and outrageous prices and living costs.

Respectfully submitted,

On behalf of the Executive Council,

(Sgd.) PERCY R. BENGOUGH,
President.

(Sgd.) GORDON G. CUSHING,
General Secretary-Treasurer.

THE TRADES AND LABOUR CONGRESS OF CANADA

November 19, 1951

O.E.I.U.
Local 225

HOUSE OF COMMONS

Fifth Session—Twenty-first Parliament
1951

(Second Session)

JOINT COMMITTEE OF THE SENATE
AND THE HOUSE OF COMMONS

ON

COMBINES LEGISLATION

Joint Chairmen—The Honourable Senator A. L. Beaubien
Mr. James Sinclair, M.P.

MINUTES OF PROCEEDINGS AND EVIDENCE
No. 8

WEDNESDAY, NOVEMBER 28, 1951

WITNESS:

F. A. McGregor, Esq., C.B.E.

OTTAWA
EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY
1951

CORRIGENDA

Evidence, Thursday, November 22, 1951.

Page 146, line 31: *higher on things, on maintained items* should read *higher on non-price maintained items.*

Page 158, line 23: *but it is not for advertising purposes* should read *but it is for advertising purposes.*

Page 162, line 1: *The mark-up price is 76 cents* should read *The marked-up price is 95 cents.*

ORDER OF REFERENCE

WEDNESDAY, November 28, 1951.

Ordered,—That the name of Mr. Blair be substituted for that of Mr. Churchill on the said Joint Committee, and that a Message be sent to the Senate to acquaint their Honours therewith.

Attest.

LEON J. RAYMOND,
Clerk of the House.

MINUTES OF PROCEEDINGS

WEDNESDAY, November 28, 1951.

The Joint Committee of the Senate and the House of Commons on Combines Legislation met at 3.30 o'clock p.m. The Joint Chairmen, the Honourable Senator A. L. Beaubien and Mr. James Sinclair, M.P., were present, Mr. Sinclair presiding.

Also present:

For the Senate: The Honourable Senators Aseltine, Burchill, Dupuis, Fogo, Golding, Horner, Vaillancourt.

For the House of Commons: Messrs. Beaudry, Blair, Boucher, Carter, Cauchon, Croll, Dickey, Mrs. Fairclough, Messrs. Fleming, Fulton, Garson, Harkness, Harrison, Hees, Jutras, MacInnis, Murray (*Oxford*), McLean (*Huron-Perth*), Roberge, Shaw, Thatcher.

In attendance: F. A. McGregor, Esq., C.B.E.

Mr. McGregor was called, heard and questioned.

Mr. Thatcher moved that the Committee do now adjourn and that Mr. McGregor be recalled on Thursday, November 29.

And the question having been put on the said motion, it was negatived.

At 5.03 o'clock p.m., the proceedings were interrupted by the division bell in the House of Commons.

At 5.30 o'clock p.m. the Committee resumed.

The witness retired.

At 6.00 o'clock p.m., the Committee adjourned until Thursday, November 29 at 10.30 o'clock a.m.

A. L. BURGESS,
Clerk of the Committee.

96644—1½

EVIDENCE

NOVEMBER 28, 1951
3.30 p.m.

The CHAIRMAN: The meeting will come to order. Mr. Hees, do you want to raise a point of order?

Mr. HEES: Yes, Mr. Chairman. Yesterday I made a request to this committee and I would like an answer to this request before we start proceedings today.

The request I made was that Mr. Justice MacQuarrie should be asked to appear before this committee, so that we can find out on what basis he came to the conclusion that resale price maintenance is against the public interest.

I pointed out yesterday that this committee agreed last Friday that only by a presentation of comparative figures, showing the profit margins on both price maintained goods, and on goods which are not price maintained, can a worthwhile opinion be formed as to whether resale price maintenance is in the public interest, or against the public interest.

I also pointed out that the MacQuarrie report, upon which the government bases its proposed legislation outlawing resale price maintenance, contains no comparative figures whatsoever, but is, in fact, a theoretical discussion of a problem which can only be decided, as the committee agreed on Friday, by comparative figures.

I believe that Mr. Justice MacQuarrie should appear before this committee and explain if these comparative figures were secured and reviewed by his committee, and if not, how they came to the conclusion that resale price maintenance is against the public interest.

The CHAIRMAN: On this matter of summoning witnesses I think first of all, it should be done after consideration by the Steering Committee in view of other briefs and representations made to us here. We will have a meeting of the Steering Committee tomorrow, at which time I will raise it. The other point is the propriety of having a Judge who is still heading an inquiry coming before another body to give evidence as to the methods by which he is conducting that inquiry, but I think that whole question can best be proceeded with in the Steering Committee tomorrow.

Mr. HEES: On that point, although he is conducting another inquiry, it is the same inquiry, and this is the most important part of it, the part on which the government is prepared to base most important legislation. Having read through that report, to me it is a theoretical report only and I do not believe the legislators—

The CHAIRMAN: Mr. Hees, you raised a point of order and you asked for an opportunity to make that point, which was to be in reference to Mr. Justice MacQuarrie, and not to make a speech. I said the Steering Committee will decide two things tomorrow: what other witnesses we will have and, on the other hand, to discuss the propriety of having a Judge, who is heading an inquiry, come before another inquiry or group to tell them how he is conducting that inquiry.

Mr. DICKEY: On a point of order. There have been statements made in this committee, and also in Mr. Hees' presentation of his point of order, that this committee made a certain decision regarding the basis upon which this inquiry

should proceed. Now, anybody who will refer to the minutes of the proceedings of these meetings will see that what actually happened was that you stated as is the proper thing, that this matter would be decided by the Steering Committee, and that was certainly my understanding of the motion that was made: that that matter be considered by the Steering Committee. That was the way it was left and the way it appears in the record.

The CHAIRMAN: Thank you, Mr. Dickey. We have before us today as our witness Mr. F. A. McGregor, the former Commissioner of the Combines Investigation Act. We are very pleased to have Mr. McGregor come at such short notice. He was not subpoenaed, he came voluntarily, but he explained to me that on account of the time limitation he has not been able to get copies of his submission mimeographed in time to distribute them in advance here, but some time in the course of this afternoon we hope to have copies of his submission. I have also decided on my own volition, in view of the great interest members have taken in this particular phase of the inquiry, that members themselves will have the first opportunity to question Mr. McGregor and our counsel can sum up rather than open the interrogation.

Mr. FULTON: Just before Mr. McGregor starts—have you received a telegram from Mr. C. J. Harris, secretary of an organization called Canadian Unity Council. I just want to know if you have received the wire.

The CHAIRMAN: Yes, I have. One of the matters we will have to discuss in the steering committee is the disposition of the great number of wires and letters that we have received. We will have to sort them out into various groups. They are being acknowledged as they are received.

F. A. McGregor, C.B.E., called:

The WITNESS: Mr. Chairman and members of the committee. Some of you may feel that I am making a sort of Pete Karpuk play by coming out onto this field from the sidelines. I am not a manufacturer, I am not a wholesaler nor a retailer, not even a civil servant. I am a consumer, and consumers have some rights. My only justification for appearing is that I have been invited, and I can assure you I did not ask to be included in the invitation list. When my name was mentioned several weeks ago as a possible witness before a possible committee, I began to give thought to what I might say. When the suggestion was repeated in this committee two weeks ago, I began to jot down a few headings in case I should be called. When the blow finally—rather, when I learned a day or so ago that I was likely to be called, I started to fill in some things under the headings. I have brought with me all I have written, completed only an hour or two ago, and I would appreciate it if you will let me read it. It is not as brief as I would like it to be, but it will take less time than if I attempted to cover the same ground without benefit of manuscript. I am sorry no copies are available at the moment. If mimeographed copies come in, as I think they will very shortly, they will be distributed to members of the committee for their convenience in following what I have to say.

I presume I have been called to appear before this Committee because in my work as a civil servant for quite a few years I had to deal with various types of restrictive business practices, including the practice described as resale price maintenance. Some useful purpose might be served if I were to review briefly my experience of that particular problem and add a few comments largely based on that experience.

My very first major inquiry related to resale price maintenance. It was started in September 1925 within a few days of my appointment as Registrar

of the Combines Investigation Act. At that time we learned that an organization had just been formed, the Proprietary Articles Trade Association (P.A.T.A.) which included between 80 and 90 per cent of the retail druggists of Canada, practically all the wholesale druggists, and as many manufacturers of so-called drug-store products as could be induced to join. There were 157 manufacturers in the early stages. From time to time additions to membership were made in all three branches. The object of the Association was to prevent any reductions in the prices of a long and growing list of articles below the minimum prices which were named by the respective manufacturers. Any retailer or wholesaler who reduced any price had his name placed on the "Stop List", which meant that he was unable to get supplies of any of the goods included in the Association's price list. Two extensive investigations were made, one by myself and a later one by a special commissioner, Mr. L. V. O'Connor, an Ontario barrister. The conclusions reached were virtually the same: it was a combine to prevent prices being reduced and to prevent price competition from operating, as far as the listed articles were concerned, in the retail and wholesale drug business. Both reports were published, and the Association ceased operations within a few months of its inception.

It was a certain satisfaction to see the end of such a comprehensive scheme of price control by manufacturers for the benefit of wholesale and retail dealers. But there still remained the problem of dealing with the fixing of resale prices by a single manufacturer who insisted that no dealer should sell his goods below the minimum price which he, the manufacturer, established. It was still a serious limitation of price competition, but it was unilateral action, each manufacturer who adopted the practice applying it only to his own products. It was questionable then, and still is questionable, if under the Combines Act the courts, dealing with only one arrangement of the kind between one manufacturer and his distributors, would declare that competition had been unduly lessened. Other manufacturers might be doing the same thing in the same trade, but their activities could not be brought before the court in the same action.

If only one or a few of the manufacturers in any one field adopted the practice, and there were plenty others who did not, the damage to the consumer through such a limiting of price competition would not be devastating. But an exceedingly serious situation develops if the practice extends to most or even many of the manufacturers who supply the trade, particularly if they are the important sources of supply. In many lines of business such an extension of the practice is not only a serious danger, it is a fact. Once one manufacturer adopts it, his competitors are immediately under pressure by the dealers to follow suit. Dealers will push the lines of the manufacturers who befriend them and do not hesitate to let the non-complying manufacturers know why they make no attempt to further the sale of their goods, and on occasion, why they refuse even to display them, a threat which has often been made and occasionally carried out. These are the methods which retailers, usually acting independently but sometimes in concert, can and sometimes do use to induce manufacturers to protect them from the annoyance of price competition.

If the dealers were to combine to apply such pressure, the Combines Act as it is now would presumably be applicable. There would still be, of course, the task of securing the evidence, a peculiarly difficult task if the pressure is applied with great subtlety and equal secrecy. I have known of many instances, however, of many business secrets that have been covered that have been revealed, and hid that have become known.

Even such pressure, individually or collectively applied, could be resisted, and such difficulties at least partially overcome, if the manufacturer were to make his appeal direct to the buying public. By creating consumer demand he

might all but compel the dealers to cease such discrimination. Such effort would, however, involve very heavy additions to selling costs, and all costs, as we all know, must be borne ultimately by the consumer, even the cost of persuading him to buy one particular brand of goods rather than another.

I have referred to the Combines Act in this context because of the comment that is frequently heard that the Act in its present form is sufficient to meet whatever disadvantage the public may suffer by reason of a series of manufacturers fixing and enforcing the resale prices of their own goods. Even though they are acting independently of each other, and even though their decision is not made because of external pressure, the result is the same when many engage in the practice—the elimination of dealer price competition. The purpose sought to be achieved by the P.A.T.A. in the drug trade in 1925 is now being achieved to a considerable extent by unilateral action on the part of manufacturers. The methods are different, but the results are very similar. In my opinion, for the reasons I have indicated, the Combines Act in its present form is not sufficient to prevent such action. The Act needs amendment. I am convinced that such legislation as is now proposed will benefit the public by checking and stopping a practice which is designed to prevent, and is preventing, retail price reductions in a large and increasing number of important commodities.

I see I have almost sidetracked myself. I intended, after referring to the P.A.T.A., to speak of other cases in which the practice of resale price maintenance appeared during my day. In several formal investigations, the results of which have been shown in published reports, resale price maintenance was found to be a factor of some significance, of central importance in some, of less importance in others. It was dealt with at considerable length in the reports on tobacco and optical goods. Its detrimental effects were disclosed, along with those of other restrictive practices, in the reports on dental goods, bread and matches. In these instances, however, it was only one of several restrictive practices which were considered as parts of a whole pattern and the whole reported on adversely because of its undue restraint of trade. The cases before the courts have likewise included a variety of practices in each instance, such as restriction of entry, buying up of competitors, horizontal price fixing, and in the end the court has made up its mind on the basis of the overall restrictions. None of these inquiries, however, clearly involved the fixing of prices by a single manufacturer, except in the case of matches, in which industry the single manufacturer was in the end the only producer of wooden matches.

Apart from the formal inquiries, the issue of resale price maintenance has arisen over and over again. In these instances, it arises as the practice of an individual manufacturer. If a dealer sells below the minimum price he may be dealt with by outright refusal of further supplies, by a warning, or the manufacturer may use his persuasive powers to induce future observance of the fixed prices. These are not the only ways of achieving the desired result of preventing further price reductions. In such cases, however, the essential control is not a matter of combination; it is exercised through the unilateral action of the particular supplier. In the absence of clear-cut prohibition in the law there must necessarily be an element of doubt as to when the action of one manufacturer shades over into the area where collective agreement is an essential feature. Because of the element of doubt, and the adoption of the practice, by many others, some manufacturers have decided that there could be little risk and thus the area of price maintained goods has been further widened.

The extension of the practice in recent years has been alarming. If it continues it will not be long before price control by manufacturers will become the rule in the distributive trade and price competition the exception, as far as branded goods are concerned. Indeed in some trades the practice has already

become so general that practically none of these goods can be reduced in price without the authorization of the manufacturer. The development of such a system may be very enterprising on the part of the dealers and manufacturers, but it can hardly be described as "free enterprise" in the meaning of that term which used to be commonly accepted. Nor can it be said to have any rightful part in a competitive system, which has been recognized by Parliament as a basic element in our whole economy. The undoubted right of the public to the safeguard afforded by price competition is being supplanted to this extent and in these broadening areas, by the questionable right of manufacturers and dealers to prevent price competition in the wholesale and retail selling of their particular products. If the vital element of price competition is removed from a competitive system, what you have left is not a competitive system at all, but a price-controlled system—with prices controlled by manufacturers. In the case of resale price maintenance it is control by the manufacturers with ready acquiescence and indeed urgent advocacy on the part of a very large proportion of the dealers, whose interests it is primarily designed to protect. The minority of dealers who would prefer to maintain their independence and determine their own selling prices have no alternative but to fall in line.

I cannot understand the logic of those who say "But resale price maintenance does not prevent manufacturers competing amongst themselves and they are competing; their prices to the trade are not uniform". From what I have come to know of such things I would agree that they are competing, and competing in price. But price competition between the manufacturers is seriously affected by their maintenance of resale prices. One has only to note how frequently the same or very similar retail prices are named by the manufacturers of similar products, even when their selling prices to the trade differ significantly, to realize how seriously weakened is the consumer's protection through active competition in retail price, the price the consumer pays. But how can you possibly justify price-fixing amongst dealers merely on the ground that the makers of the products are not fixing common prices? So long, the argument suggests, as price competition is operating at one level it need not be insisted on at every level. I have no doubt, indeed I happen to know, that the very men who most strongly advocate resale price maintenance declare themselves to be staunch believers in the competitive system. But it becomes a matter of "competition for thee but not for me". It is highly desirable, they say, that their suppliers should compete in price freely, should be free to reduce their prices to dealers without consulting their competitors. But for us, they go on to say, the special conditions under which we operate would make life intolerable, business unstable, bankruptcy certain, if dealers were free to sell at whatever prices they liked, if they started to cut prices. "Price-cutting", by the way, is the trade word used to describe price reductions, just as "cut-throat competition" is commonly used to describe any competition that affects price reductions. To describe efforts to prevent price reductions such euphemisms are used as "price stabilization", "orderly marketing", "ethical merchandising", and I might add, "resale price maintenance".

The attitude I have just referred to, competition as a good thing for the other fellow, is frequently the attitude of the man who is most vociferous in his declaration of firm faith in free enterprise and the competitive system. I have heard them say, so often, that they are one hundred per cent in favour of the principle of competition, but "Of course," they add, "it must be kept within reasonable limits, particularly in an industry such as ours. It is a peculiar industry; if price-cutting were to break out in our field we would all be ruined, plants would be closed, unemployment would be rampant, the whole country would suffer". One wonders how many "peculiar" industries there are in Canada.

The fact that the costs of distribution service represent a very considerable part of the consumer's dollar (at least 50 cents of the dollar paid by the consumer for some articles and much more for others) makes it doubly important that the normal checks on dealers' margins and prices should not be removed. If price competition is doing its work in keeping down manufacturers' prices to retailers, why should it not operate equally to reduce the prices which retailers charge to consumers? If all dealers in any trade were to enter into a horizontal agreement not to sell a substantial part of their goods at less than certain prices, it would unquestionably be regard as an unwarranted interference with competition and the Act would apply. Why should the law not be made to apply to vertical arrangement which have the same effect of fixing irreducible retail prices? Why should the consumers' right to competitive prices be eliminated by either type of control? Why should dealers' margins not be subject to the kind of pressure that price competition applies?

I don't need to labour the point about the high cost of distribution. People in the trade know how high it is, but people in the homes are much less aware of what they are paying for. I have before me a recent number of a publication issued by the National Drug & Chemical Company. It contains an appeal to retailers to sell "National" trade-marked goods. The heading is "40% Profit to You". Then the appeal continues:

> "In keeping with Nation's long-standing policy of assisting the druggist in every way possible to meet changing trade conditions, we are pleased to announce a new price policy giving retailers a minimum 40% profit, and in many cases ranging as high as 54% profit on sales. This new profit policy applies to National Family Remedies and National Specialties, and is available to all druggists from coast to coast."

By Mr. Fulton:

Q. Where is that paper published?—A. It is published by the National Drug & Chemical Company. It is really a house organ.

Q. Where is their head office?

The CHAIRMAN: Is it in Canada or the United States?

The WITNESS: It is a Canadian concern. I always thought of it as having its headquarters at Ottawa.

Mr. HARRISON: Is that percentage on cost or on selling prices?

The WITNESS: On selling price.

"That is not all", as the advertisement says, for it goes on to indicate what the "pluses" are—Plus 1, Plus 2 and Plus 3. Plus 1 reads:

"GROUP ORDER DISCOUNTS THE YEAR ROUND

as follows:

On a $10.00 assorted order; additional 3%
On a $20.00 assorted order; additional 5%
On a $50.00 assorted order; additional 7½%
On a $100.00 assorted order; additional 10%."

Plus 2 offers a further attraction to the retailer—free goods, 13 to the dozen if he buys a $20.00 assortment. Plus 3 on the next page offers further free goods, and shows several items in which the prices to the consumer are slightly less or slightly more than double the retailer's cost. The first item on one list is Baby cough syrup—retailer cost 21 cents, price to consumers 40 cents. The first item on the second list is liver-iron capsules—retailer cost 98, price to consumers $2.00.

I suggest that these figures should not be taken by themselves alone. I am submitting them merely as an illustration of an appeal made to the trade by one manufacturer. My information is that these margins are typical of margins generally charged for proprietary medicines and pharmaceutical products. When one producer gives such an inducement to retailers to stock up with his goods, other producers must be under great temptation to offer similar or better margins. The result may very well be another kind of competition, the kind that keeps prices up, competition among manufacturers to secure the goodwill of the retailer by offering better and better margins.

This particular advertisement shows also how large-volume dealers pay much less than small-volume dealers. On purchases of a $10.00 assortment, 3% quantity discount is given; on purchases of $100.00 more the discount is 10%. Yet the suggested selling price is the same for all. Under resale price maintenance consumers cannot get any reduction in price whatever quantity they buy.

It has been suggested that resale price agreements should be prohibited only when the margins on prices are fixed at unreasonable levels. It should not be necessary to argue such a point before this Committee. Since however, the suggestion has been put forward seriously, I would like to make one or two comments. Nothing that I can think of could do more to render the legislation unenforceable than the application of such a test. Who can say what would be the reasonable return for selling any group of articles, taking into consideration the widely varying costs of selling different items, each having its own peculiar cost of distribution? Even a single item may involve more selling cost at one time than at another. The cost of selling is certainly less for the most efficient dealer than it is for the least efficient. Fast-moving goods cost less to sell than slow, packaged goods less than bulk, highly advertised less than the little-known, imperishable products less than the perishable. One type of store is less costly to operate than another. You have only to compare neighbourhood and downtown, chain and independent, specialty and general, clerk-serve and self-serve, credit and delivery as against cash-and-carry. And these are not the only variations by any means. No one reasonable price can be established for any article in all stores, or any one reasonable margin for all dealers. Their costs are not the same and no system of minimum prices or margins should prevent these varying costs being reflected in varying prices.

If any such criterion were established as the basic test of legality or illegality, it would entail the creation of a sizeable organization of statisticians and accountants to assemble and analyze costs and prices and margins. In some respects also such an organization would become a government price fixing and regulating organization which would virtually authorize all margins and prices which it could not declare were unreasonable.

Such a test has never been applied by Canadian courts in dealing with cases of combines which lessen competition. They have realized the impossibility of determining what prices are reasonable and what are not, and have followed with approval on more than one occasion a frequently quoted judgment which says: "The reasonable price fixed today may through economic and business changes become the unreasonable price of tomorrow." A sentence from one Canadian judgment is typical:

> "The duty to inquire into and regulate prices which may change from day to day need not be imposed on the Court but rather the Court's endeavour should be to seek out the real agreement and to determine whether it interferes with the free course of trade . . ."

It seems to me that the members of the MacQuarrie Committee were very wise in not submerging themselves in a sea of statistics. They concentrated on the essence of the things which the proponents of resale price maintenance are

seeking to accomplish. They followed the principle laid down by another Canadian jurist, in another combines case, who said:

> "The system . . . is not to be judged by its accidents, but by its tendency—not by the circumstance that sometimes the members of the association made no profit, or sometimes too much, but by what the thing was in essence that the defendants were seeking to accomplish. That thing was the prevention or lessening of competition."

The CHAIRMAN: I see the briefs are here. Would you rather follow Mr. McGregor point by point?

Mr. THATCHER: Mr. Chairman, why can't we have the brief?

The CHAIRMAN: From long experience on committees I have found we have some members who read faster than others and when they finish the brief they are rustling around and talking to others, and you are a pretty good person, Mr. Thatcher, at talking when you finish your brief. I will put it to the committee as to whether they should be distributed now.

Mr. FULTON: What are your grounds for opposing it?

The CHAIRMAN: I will put it to the members of the committee who are the masters of their own fate.

Mr. MACINNIS: Would it not be better to leave it to each member and when he wants to get a copy of the brief he can pick it up from the secretary?

The CHAIRMAN: The only point is that in following a brief like this you will be rustling around and talking and Mr. McGregor has not a strong voice.

Mr. HEES: Surely we are big boys, now.

Mr. CROLL: But boys, that is what he is saying.

Mr. HEES: I have not been called a boy for a long time.

Mr. FULTON: I wish we had some better qualified teachers.

Mr. THATCHER: Let us not make a farce of this. You are the majority, go ahead.

Mr. FULTON: This is the first instance we have had of a witness reading a brief.

The CHAIRMAN: The point being that this witness was called before us on very short notice and was not subpoenaed. Every other group presented a brief to us. Mr. McGregor made no opposition to being called without a subpoena on very short notice and I do not think there is any objection to his finishing the brief. Continue, Mr. McGregor.

The WITNESS: I would like to express regret for not having mimeographed copies ready. I completed my work on this about a quarter past two and I did not have time.

The CHAIRMAN: On behalf of the committee I wish to thank Mr. McGregor for coming here on such short notice to be of assistance to us.

Mr. THATCHER: If the chairman had been doing his job he would have called you tomorrow instead.

Mr. BEAUDRY: That is uncalled for.

The CHAIRMAN: It is entirely uncalled for. Mr. Thatcher knows we have witnesses for tomorrow; but that is on the level of most of Mr. Thatcher's remarks.

The WITNESS: I want to apologize for speaking in a voice that has not been heard in every part of the room. I resent the suggestion, though, that I have a weak voice; my voice is not weak.

Mr. FULTON: That correction is also noted, Mr. Chairman.

The WITNESS: In inquiries under the Combines Act the guiding principle has been the same. That does not mean that statistics have been ignored; but they were not permitted to dominate our thinking or to limit too seriously consideration of vital principles that were involved. I confess I have little faith in conclusions that are based primarily on figures. Few accountants, representing clients with different points of view, seem to be able to agree in their conclusions as to what a series of complicated figures really mean. Any measure which imposed reasonableness of costs or prices or margins or profits as the basic test would certainly be a step toward general regulation of prices by government, which sometimes turns out to be regulation by civil servants—a poor substitute for price competition as a public safeguard.

Perhaps I had better revert to a more moderate tone of voice, this seems to be giving more punch to my words than I intended; they sound more belligerent than I am.

Mr. HEES: Keep punching.

Having in mind the possibility that this Committee might undertake extensive comparisons of costs, prices and margins under different sets of conditions, I have made a few notes which might be worthy of consideration. I should like to preface them, though, with a comment that any comprehensive examination of the kind, by competent accountants as I presume it would have to be, would take months or perhaps a year to complete. I question the usefulness of any such survey, for I believe that in the end it would provide little or no assistance in arriving at proper conclusions. At the end of a year the statistical picture might be completely changed.

It has been suggested by some supporters of the practice of resale price maintenance that the effect of the practice from the viewpoint of the consumer can be determined by comparing the margin which the retailer obtains on price maintained goods and the margin which he obtains on the sale of similar non-price maintained goods. In my opinion, such a comparison would be meaningless as a method of establishing the effect of resale price maintenance on the actual price paid by the consumer, which is the essence of the problem. In the case of a price-maintained article, the consumer wants to know whether that particular article would be higher or lower in price if the retail selling price were not controlled. As the very purpose of resale price maintenance is to prevent sales below the minimum price established, it is obvious that the effect is to keep prices, right across the board, higher than they would otherwise be. The fact that the retailer may secure a larger or smaller margin on some other product not price-maintained cannot be related to the actual price which the consumer must pay for the price-maintained lines. In fact, the practice of resale price maintenance may encourage wider margins on non-price maintained goods when they can be sold under the umbrella established by the higher price on a well advertised, price-maintained line. When Aspirin sells at 79 cents per 100, other ASA tablets may be sold well below this level but not as low as they would be if all Aspirin and other price-maintained tablets were being sold on an active competitive price basis.

It is also necessary to keep in mind that the margin secured by the retailer is not the only margin which affects the price of price-maintained goods. The marketing costs of the wholesaler and manufacturer also enter into the price, as well as any margins which may be taken in addition. If by large promotional or marketing expenditures, the manufacturer of a price-maintained line assumes some of the distributive functions, the margin of the retailer may be reduced but the price paid by the consumer will have to cover such expenditures. On the other hand, if a retailer takes a line and does his own promoting

of it he will naturally require a larger margin, because he is bearing all distribution costs; but the actual price which the consumer pays for the article may be substantially lower than in the case of the well-advertised line.

The only sound comparison of the effect of resale price maintenance on the price of an article would be a comparison of the price of the same article under resale price maintenance and under similar conditions of distribution when the price was not so controlled. Unfortunately it is not possible to make any such general comparisons in Canada as requirements of resale price maintenance have been nation-wide in extent in most cases of price-maintained goods. Because there have been a few states in the United States which have not adopted the so-called fair trade laws, some limited comparisons have been possible in that country. These have borne out the conclusion that resale price maintenance does prevent price reductions. Some examples that can be given are very enlightening.

It is one of my strong convictions that active price competition is a much more effective regulator of prices than any form of direct public control. I am speaking, of course, of normal times and not of periods of national emergency. I have in mind, also, *active* price competition—it must be made to work. If those who are engaged in industry and trade won't let it work, and government agencies cannot make them let it work, then most of us will have to pin our faith in some other type of control. I still believe that price competition is the dominating factor in controlling most prices in Canada. There are exceptions, but excellent work is being done to restore competition where it has been suppressed and to prevent further suppressions.

I have often wondered why more businessmen who are so anxious to retain the competitive system do not regard the Combines Act as one of their strongest allies in achieving that end. They must realize that every price-fixing agreement, and every shift to such control as we find under resale price maintenance, has a certain effect in shaking the confidence of the public in the competitive system itself. If such restrictions extended to the point where business control of prices was the rule and competitive control the exception, and where it was evident that price competition could not be made to work, public opinion would surely demand establishment of direct government price controls. There are three principal methods of price control—competition, government regulation, and business control. And the greatest of these, and the most effective in the public interest, is competition. But it has to be made to work and made to keep working. Everlasting vigilance is required to keep competition free. The same kind of vigilance was necessary, in the days of the Wartime Prices and Trade Board, to keep prices from going through the ceiling. For that type of control it was necessary to have several hundred prosecutions every month to make direct price control work, and several hundred civil servants to do the policing job. Because competition operates automatically, or can be made to operate on its own, no such elaborate organization is necessary to make it work.

I should perhaps add that in wartime, under conditions of scarcity, direct price control is the appropriate method rather than competition. If competition were free, it would be a matter of buyers competing for scarce goods, with the inevitable result of skyrocketing prices, supplies going to those who could afford to pay exorbitant prices.

In the course of the inquiries we made in my day into the practice of resale price maintenance, several considerations impressed me strongly, and I should like to pass them on to you for what they are worth.

First of all, resale price maintenance is a system that is obviously designed to prevent, and which does prevent, reductions in retail prices. Not the prices of all goods, but of all the goods which are made subject to this type of control. The very words that describe the practice, "resale price maintenance", disclose

its object: it is to maintain retail prices—not to prevent them from going higher, but to prevent them being reduced. That is its object: that is its effect.

Most of us know, certainly our wives know, that in some grocery stores the same goods can be bought at prices much lower than in others. That is an indication that price competition is working. Merchants are free to sell at lower prices if they want to. It is not necessary for every grocer to match the low prices of his low-cost competitor. Many are giving services such as delivery and credit, clerk-service, telephone orders, personal attention, which many customers are ready to pay for. But those who don't provide such service and who can effect other economies are not obliged to charge for services they don't give. And in turn customers who prefer to get along without such services are not obliged to pay for what they don't get. Retail grocers are free to pass on to their customers whatever they like of the economies they may effect in their methods of distribution. Retail grocers have been free, and their customers have had some bargaining power, because in that particular field of retail trade resale price maintenance has not been operating except to a very limited extent.

A few grocery items have been subject to that kind of price control, only a few, much less than 5 per cent in my day and most of the items controlled were not foods; they included such goods as floor wax and shoe polish and other household supplies sold in grocery stores. Even then it was disconcerting to say the least, when we learned of the efforts that were being made to add to the number. It comes now as a real shock to be informed by the representative of the Retail Trade Federation (I refer to his evidence at page 262 of your proceedings) that the percentage has risen until it is now "possibly in the neighbourhood of 15 per cent". And this is 15 per cent of foods alone, not including "sidelines". In other words, if this evidence is correct, retail grocers are restrained from reducing the price of 15 per cent of the foods they sell. If we were right in our estimate a few years ago of less than 5 per cent of all grocery items, it would appear that there has been an enormous increase in the number of price-controlled goods in that field. Whether the percentage is less than five or as much as fifteen, price competition still has its effect on from 85 to 95 per cent of grocery store products.

Contrast that with what you would experience if you made a canvass of retail drug stores, in which we are told approximately sixty per cent of the items are subject to resale price maintenance. I gathered from the evidence I read the other day that the estimate was 60 per cent of all drugstore sales including the prescription and soda fountain departments. If that is so, then the percentage of proprietary medicines and toilet goods which cannot be reduced in price is very much higher than 60 per cent. In the drugstores you will search in vain for any lower price on these price maintained goods as between one store and another. These retailers are not free to sell any of them at less than the retail price that has been fixed for them. If they do undersell, they are subject to a penalty, imposed by the manufacturer who fixed the resale price of his goods—and the penalty would be the withholding of any further supply of those goods. Here is a field in which resale price maintenance is flourishing. Here is a field in which price competition amongst dealers, as far as these branded goods are concerned, has been eliminated.

There are other lines of business in which resale price maintenance is operating to a greater or lesser extent. What is alarming about it is that it is on the increase. Within the fields in which it has been introduced, more and more manufacturers are welcoming it or succumbing to it. Of course many retail dealers are welcoming it too, indeed are fighting for it—and how they are fighting—because it removes any serious danger of anyone underselling them and thus forming them to reduce their prices. It guarantees their margins.

Another very disconcerting aspect is the way in which the practice has been spreading from one industry and trade to another. Drug store products are not the only ones affected by any means. One has only to think of cigarettes, electric appliances, many hardware items, men's shirts and other lines of clothing, optical goods, matches. But one other product has made its appearance in the list, a commodity which, of all the things we buy, should never be permitted to be controlled in price in this fashion. I refer to bread. Serious enough it is when products such as toilet goods and proprietary medicines and cigarettes and electric irons and toasters cannot be reduced in retail price unless the manufacturer says so. Serious enough to have the public's right to retail price competition in so many of these commodities eliminated, even if it is through unilateral action by each of a number of manufacturers in so far as his own branded goods are concerned. All this is serious enough, very serious indeed. But when it comes to preventing retailers from making any reduction in the price of bread, the limit surely has been reached.

I might have given that more emphasis by reading it louder.

Mr. FULTON: You didn't need to.

The WITNESS: What is happening wherever resale price maintenance is applied is that many retailers, who should be performing their rightful function as purchasing agents for the community, are becoming the selling agents of the manufacturer. An increase in the manufacturer's price does not bother them too much, because they are working on a percentage basis, which means that an increase in the manufacturer's price to them is almost automatically accompanied by a step-up in their resale price. Not an increase in their percentage, but an increase in their guaranteed margin in cents or in dollars. Under this system the relationship between manufacturer and dealer is changing: the dealer is sacrificing his independence, he is becoming the paid employee of the manufacturer, or, to change the figure, merely the pipe-line through which goods are channelled from the source of supply to the consumer.

The dealers say that, even if they are not free to reduce prices, they are still engaged in active competition, each one striving to increase his own sales. There is the keenest rivalry, they say, to get customers into their stores. I think all of us will agree that that is so. But when they eliminate *price* competition, they remove the vital element of a really competitive system. They are under no competitive pressure to sell at lower prices because their competitors are subject to the same restriction. Unable to compete on a price basis, they seek to attract customers in other ways, such as installing costly store fronts and polished and beautifully lighted interiors, mirrors, carpets (no carpets yet in grocery stores!), additional clerks, extensive advertising, extended credits, special deliveries, and other kinds of extra services. Not that we object to most or many of these things. The consumer likes them and, if prices have to be the same in all stores, many will prefer the swanky shop to the ones that are less attractive. Inevitably the owners of the less attractive establishments have to keep up with the Joneses if they are to stay in business. But all these means of attracting business cost money. Such non-price competition is the kind of competition that adds to costs and ultimately adds to prices. Many consumers don't realize that all these extras have to be paid for, and that they are the ones in the end who have to pay for them. If they had their choice between swell stores and swollen prices on the one hand and plain stores and lower prices on the other, many of them, many of us, would choose the latter. But resale price maintenance permits no such choice. Under it dealers are not free to offer them any such choice. Competition of the kind that adds to costs and prices is no acceptable substitute for competition in price, which reduces costs and prices.

I should be made subject to some maximum time limit. If I had unlimited time I would like to discuss the effect of resale price maintenance in increasing the number of outlets. The assurance of a guaranteed margin is naturally a feature that attracts into the price-controlled lines of business many more dealers than are needed to provide adequate service for the community, and maintains in business many more than are needed. It invites those in other lines of trade to add price-protected goods to their stocks. You have only to glance at the shelves of some grocery stores to see how they have been encroaching on the territory of the drug stores. The druggists should, of course, be the last to complain; their stocks include nowadays a multitude of lines which bear no relation to the traditional stock-in-trade of a drug store. It would require a lot of statistics to prove the perfectly obvious truth that guaranteed margins tend to increase the number of outlets. Instead of offering statistics I submit an extract from a statement which was made several years ago by the Secretary of the British National Pharmaceutical Union:

> "In our country all proprietary medicine vendors have to be licensed and we woke up to the fact that the number of those vendors was increasing at the rate of eight to nine thousand per year . . .
>
> It is a fact that owing to the success of the price-maintenance movement initiated by the P.A.T.A. 38 years ago, the prices of proprietary medicines are in fact maintained and the 20 to 30 per cent profit which those articles yield has proved a tremendous temptation to other shopkeepers to invade the proprietary medicine business. Grocers and other trades with large turnovers in household goods are accustomed to a gross profit of 12½ to 15 per cent; hence any goods selling at a protected price which yields 25 per cent gross are regarded as extremely profitable merchandise lines to be cultivated.
>
> Hence you will see that the success of our own war to prevent price cutting within our own ranks has produced an army of competitors in our own business . . ."
>
> —Drug Trade News, September 13, 1937, p. 18.

Resale price maintenance is not all that it is cracked up to be even as a benefit to retail dealers. As outlets increase the volume of business left for each dealer declines and therefore his own profits decline.

One argument is used probably more than any other by those who want resale prices controlled by manufacturers rather than by price competition. They say that many small businessmen will be driven out of business. It is rather an appealing argument because most of us have strong sympathies with the small independent retailer. If it were true it would weigh very heavily with most of us. But surely the independent retailer can justify his existence as an independent element in the community without this artificial protection of his margins. As a matter of fact he has done it in many fields of business without calling on manufacturers to guarantee his margins on branded goods. For years grocery stores carried on without any such restraint, and the independent retail grocers were not eliminated. They are still going strong.

There are widely varying estimates of the extent to which resale price maintenance is practised in Canada. Some say it affects only about 5% of all retail sales, and therefore there is nothing to worry about. Well, if 5% is accurate, how does it come that the other 95% of retail business is being carried on without manufacturer interference. If, as some other price-maintainers maintain, as much as 30% of retail trade is controlled in this fashion, it would seem to be high time that something were done about it. In any event, whether it is 5% or 30% there can be no question about the prevalence and spread of the practice. There should be no question either, about the

desirability of positive action to eliminate a practice which has as its avowed object the maintenance of retail prices and the prevention of retail price reduction.

In every argument I have heard in favour of resale price maintenance, prevention of "loss leaders" has been emphasized as one of the most important of its objectives. The term has always been used as loosely as "cut-throat competition", as an epithet of opprobrium. I have always suspected that when it was used by businessmen who favoured the so-called "stabilization" of prices they had in mind any article sold at any time at any price lower than the price that generally prevailed, or lower than the price they would like to have prevail. I never expected to find as bold a statement of this attitude as that given by one of your witnesses on Friday last, a representative of the Retail Trade Federation. May I remind you of his evidence on this point:

> If I asked around business what a loss-leader is, I would learn that in the opinion of some dealers a loss-leader is a price at which their full-mark-up is not achieved; and in the opinion of others, a loss-leader is one in which they fail to recover their costs; and in the opinion of still others, a loss-leader means merchandises which they have failed to sell to the public, and which the public has found to be unacceptable at the price at which they have offered it, and that any release from that price is a loss-leader.

I find it difficult to understand the last part of that sentence. Then he goes on:

> I think if I were to give a personal definition of loss leader—

and this is an official of the Retail Trade Federation who is in charge of the foods division of that organization—

> the closest I could come to it would be: a loss-leader is a price which does not represent the full mark-on, and which is designed to attract traffic into your place of business.

On second thought the witness would no doubt wish to revise the definition, but I thought he rather let the cat out of the bag by indicating that what dealers really want is to prevent anything in the way of price reduction. Even a one-cent reduction is a "loss leader" under this definition because the resulting price would yield less than the full mark-up. In such a case the dealer who reduced the price would be suffering the loss of a cent on the particular item, but he would not be selling "at a loss", would not be selling below his invoice cost for example. If he did sell below his own cost for the purpose of attracting customers to his store, such a practice might properly be described as loss-leader. The big stores seldom resort to such a practice. When they do, there may or may not be economic justification for this action.

The argument goes on to claim that the consumer suffers in the end. There may be a price advantage in the purchase of a single loss-leader item, they say, but the dealer recovers his loss by charging consumers exorbitant prices for other goods once they are enticed into the store. But the question arises, how can the dealer exact excessive prices on other goods if in selling them he has to face the competition of his rivals in business. The remedy that is applied under resale price maintenance is not designed for the protection of a gullible public. It is designed for the protection of the dealers, not only against loss leaders but against all price reductions that are not acceptable to them.

Even if the loss-leader practice were something that should be condemned in every instance, there can surely be no justification for drastic measures which would prevent all dealers from reducing the prices of their goods by even a fraction of a cent. The penalty for such an offence, if offence it be, is a severe one. It falls not upon the offending merchant but upon the whole

community. It is too heavy a penalty to impose upon the public because an odd dealer sells an odd article at an odd price. It is too costly a premium to pay for insurance against the occasional outbreak.

There are many other things that should be said. Even if your patience were not by this time exhausted, I find that my brief time for preparation is. You may have gathered from what I have said that I am opposed to the practice of resale price maintenance.

Some Hon. MEMBERS: Hear, hear.

The WITNESS: I am opposed to it because of the rigidity it imports into our economy, a rigidity that makes it difficult for many retail prices to decline. It is a system whereby many retail prices are fixed by one party (the manufacturer) for his benefit and the benefit of a second and third (the wholesaler and retailer), but to the serious detriment of a fourth (the consumer). They call it an outgrowth of a system of free enterprise. To my mind it is a negation of freedom that will kill the kind of enterprise that is so much needed by the Canadian public today.

The CHAIRMAN: While these copies are being distributed we should take a few minutes recess, perhaps.

The quotation Mr. McGregor mentioned and of which he did not have the page number appears at page 259.

Mr. BEAUDRY: And there is a correction of fact—the gentleman was not interested in retail foods but he was the general manager of a departmental store.

The CHAIRMAN: He referred to Mr. Harris, the principal witness for the Canadian Retail Federation.

Mr. BEAUDRY: He was not interested in food. As a matter of fact we had a separate food expert from the federation. That is on the record.

The CHAIRMAN: Mr. Hees?

Mr. HEES: I think Mr. McGregor has answered all my questions.

The CHAIRMAN: Mr. Hees declines. Mr. Croll? Mr. Shaw? Mr. Beaudry? Mr. Fulton? Mr. MacInnis? Mr. Thatcher—we do not want both voices of one party at the same time so it will be Mr. Croll? and then Mr. Thatcher.

Mr. THATCHER: Why not put me on next week sometime?

Mr. CROLL: Mr. Chairman, I think it is my turn, is it not?

The CHAIRMAN: Yes.

Mr. CROLL: Following just what Mr. Thatcher has said, as far as I am concerned Mr. McGregor "has spoken", and I have enjoyed every moment of it.

The CHAIRMAN: That was Mr. Hees' comment too.

Mr. CROLL: Yes, but I am going to add something else. I would like to give my turn to Mr. Thatcher because he is opposed to the legislation and I am not.

The CHAIRMAN: Yesterday I was pretty rough on the question of whether one member of the committee could cross-examine another member—

Mr. CROLL: I am not cross-examining, Mr. Chairman, I am just giving Mr. Thatcher an opportunity—because he may not be here next week. I am giving him my turn.

Mr. THATCHER: You are just making a snide remark, Mr. Croll.

The CHAIRMAN: Mr. Thatcher, Mr. Croll has very generously given way—

Mr. THATCHER: I will just take my regular turn. All I want to have is fifteen minutes and I will take it after Mr. MacInnis.

Mr. MACINNIS: I didn't ask for any time.

The CHAIRMAN: You were nodding.

Mr. MACINNIS: I was nodding in approval. Mr. McGregor has said some things which I have been trying to say in this committee for the last two or three days.

The CHAIRMAN: In that case Mr. Shaw is the next one.

Mr. SHAW: I am pleased that you observed a nod but you misinterpreted it this time. I did not have a question.

The CHAIRMAN: Well, certainly one member was not nodding, his hand was up. I refer to Mr. Beaudry.

Mr. BEAUDRY: Is Mr. Hees next?

The CHAIRMAN: Mr. Hees stood down. The ten minute rule will apply for the first round of questioning.

Mr. BEAUDRY: If the ten minute rule applies I would rather someone else questioned.

The CHAIRMAN: Well, I am in the hands of the committee.

Mr. CROLL: Mr. Chairman, let us have the position quite clearly. There are some of us who are in favour of this legislation and there are others who are in opposition. It is obvious what position Mr. McGregor took—and those of us who are in favour have no questions to ask. We are more than happy that the others should be given ample opportunity. We know who they are, so give them all the time they want.

Mr. CHAIRMAN: I am thinking of those who are opposed—unless they have elected Mr. Beaudry as their sole spokesman.

Mr. CROLL: I am suggesting that the people who are opposed take all the time—

Mr. MACINNIS: We made a rule a few days ago, with the unanimous consent of the committee, that each member should have ten minutes. The chairman does not know how many more want to take some time and if Mr. Beaudry takes forty or fifty minutes, as he did the other day, it is then going to take the time of opponents of what Mr. McGregor has said—they will not have any time. He can have a second chance if there are no other questions.

Mr. THATCHER: Mr. Chairman, Mr. McGregor has made some very strong assertions this afternoon and some of us only had the opportunity of seeing them or hearing them when we came to the meeting. We have not had a chance to go through the brief. I think everybody on the committee wants to be fair—

Mr. CROLL: Do you?

Mr. THATCHER: I think every member of the committee has expressed the opinion that the two sides to this question should be heard, but in fairness could we not adjourn until tomorrow morning?

Some hon. MEMBERS: No, no.

Mr. THATCHER: Just a moment—to give those who are not so sure this practice is not in the interests of the community as a whole an opportunity of looking over the brief, studying it, and examining it properly. I respectfully suggest that just after having this thing in our hands three minutes we should not be expected to know all the answers. I do not think it is possible. I would move that we adjourn.

The CHAIRMAN: I would suggest that perhaps both groups would be pleased if we gave Mr. Beaudry whatever time he wants and during that period Mr. Thatcher can study the brief.

Mr. THATCHER: No, no. I would move that Mr. McGregor be called back tomorrow morning—that the committee adjourn and hear him first tomorrow.

The CHAIRMAN: On this matter of witnesses being called back, we have to have some planning in advance. As a matter of fact the steering committee has agreed that we would call back tomorrow the druggists, on Friday, the Canadian Retail Federation, and on Monday the Electrical Manufacturers. We are a public group and we owe a little courtesy to these people who have to leave their businesses, come here, and go away again. I think we are all now getting pretty well versed in resale price maintenance and I think we can profitably spend the time until six o'clock with Mr. McGregor. However, I will accept the motion. You move that we adjourn.

Mr. FULTON: No debate on the motion.

The CHAIRMAN: It is not debatable.

Mr. BEAUDRY: I have a point of privilege—

The CHAIRMAN: Mr. Beaudry, the motion is not debatable under any circumstances.

Mr. BEAUDRY: I am not debating it—this is a point of privilege.

Mr. CROLL: There is no point of privilege.

Mr. BEAUDRY: It is this. Twice my name has been mentioned as wanting to question, and I do, but I do want to state that it brings up a slight difficulty with your statement that I am opposed to price maintenance legislation.

The CHAIRMAN: I apologize to you for that statement.

Mr. BEAUDRY: I am interested in the question of that legislation. I do not represent a group of members of the committee. When I speak I speak for myself and I certainly do not want to take on myself the responsibility, which you just very kindly but nevertheless actually thrust upon me, of upholding one side. I am upholding Beaudry only.

The CHAIRMAN: I want to tender you my apology. I merely picked up Mr. Croll's remark. My views, and the views of every member of the committee are his own, and his alone.

Mr. FULTON: I was going to raise the same point. Mr. Croll may have applied it to a certain member, but it is on the record that those who might wish to question Mr. McGregor must obviously be those who are opposed to this legislation. I want to point out that there is no basis for such an assumption.

The CHAIRMAN: I entirely agree with you, there is no basis.

Mr. BEAUDRY: And there was no sufficient evidence—

Mr. CROLL: The one man who knows what he meant is Mr. Croll. He meant just what he said, but he does not want to hurt anybody's feelings—

The CHAIRMAN: And you will withdraw?

Mr. CROLL: Of course.

The CHAIRMAN: All those in favour of the motion?

Motion lost.

Mr. BEAUDRY: Mr. McGregor, we have both reached an age in life where we can state our ages without fear of losing any further favour. I am 45, would you mind telling me how old you are?

The WITNESS: 63, and a grandfather.

Mr. HARKNESS: How about you, Mr. Beaudry?

Mr. BEAUDRY: I stand on my constitutional rights—

The CHAIRMAN: A little louder.

Mr. BEAUDRY: I assume that you have reached the age, quite some time ago, where your opinions do not vary considerably?

Some MEMBERS: No, no.

The CHAIRMAN: Mr. McGregor is quite competent to answer any question which any member of this committee might ask him—I am sure of that.

The WITNESS: There is no question.

By Mr. Beaudry:

Q. There is no question? That is the answer?—A. Take it whichever way you like.

Q. Have you in the last five years acquired any special or general experience which might make you view things in a light different to that which you viewed them up to five years ago—in connection with combines and price maintenance?

Mr. MACINNIS: Mr. Chairman, on a point of order.

The witness should be questioned on matters of fact and he should not be questioned—by leading questions—as to whether he is biased, or whether he has come to a conclusion that changed his opinion five years ago. He should be questioned on facts and nothing else.

Mr. FULTON: In Mr. McGregor's brief he has expressed a great many opinions which are unsupported by facts.

Mr. CROLL: By thirty years experience.

Mr. FULTON: I am speaking to Mr. MacInnis' point of order, that the questions put to Mr. McGregor should be confined to facts. It is impossible to confine them to facts because the brief is a statement of opinions. I am not questioning his qualifications as to his opinion, but you cannot question him as to his brief on facts.

The CHAIRMAN: After two hours of debate we passed clause 3 of the report of the steering committee—"that all questioning of witnesses in future be confined to the arguments advanced in their briefs."

Mr. BEAUDRY: May I speak on a point of order?

The CHAIRMAN: Surely.

Mr. BEAUDRY: I will refer to the opening five lines of Mr. McGregor's brief in which he states:

> I presume I have been called to appear before this committee because in my work as a civil servant for quite a few years I had to deal with various types of restrictive business practices, including the practice described as resale price maintenance. Some useful purpose might be served if I were to review briefly my experience of that particular problem and add a few comments largely based on that experience.

I submit that it is quite in order for me to probe a little bit in view of these lines. I think I am strictly within the meaning of the decision yesterday.

The WITNESS: May I answer the question, Mr. Beaudry? You ask about the last five years.—As I have indicated in the statement I have just made, when the information came to us first in 1948 that the resale price maintenance principle had been applied to bread, I took a very much more serious view of it. I have taken an even more serious view of it since 1948. Within the last month there has been occasion for greater concern because of statements made before this committee by witnesses who have indicated that the practice has been widely extended and in now operating in many industries.

By Mr. Beaudry:

Q. May I divide my question. Until you read the evidence of this committee some of the opinions which you now hold you previously did not hold?—A. It has confirmed the opinions I held. Additional evidence has been brought to light which confirms my belief in the opinions I expressed three years ago.

Q. I do not want to quibble with you but I would like the record to be reread as to what your answer was, sir?

The CHAIRMAN: It has not been the practice in any committee I have been on to have the record read back. The witness is here and he can answer from either another question or from recollection or both.

By Mr. Beaudry:

Q. I am sorry—and I am quite willing to defer.

In your capacity as Commissioner of Combines from 1925 on, do I understand that there was no prosecution made by you under the Combines Act such as it was instituted for the purpose of obtaining conviction against someone on the grounds of illegal resale price maintenance?—A. I explained in my statement that some of the actions taken have related to resale price maintenance—associated with a number of other restrictive activities. There have been some.

Q. I would change my question. Did you ever institute proceedings from 1925 on with respect to the specific subject of resale price maintenance?—A. I did not institute proceedings. I have had nothing to do with the court proceedings; it was my job merely to bring facts together and submit a report. Our reports have included references to resale price maintenance practices; in them we have expressed our opinion that they were against the public interest. Usually—in all cases I think—they were not confined to the one practice.

Q. You are answering my question and saying that to your knowledge since 1925 there was never any prosecution launched on that specific question by itself?—A. By itself—yes, you are right.

Q. In your capacity as Commissioner of Combines did you testify before the Special Committee on Prices during the year 1948, and more specifically, on Monday, February 16, and Tuesday, February 17th, 1948?—A. Yes.

Q. Will you accept my quotation of the original record as authentic?

The CHAIRMAN: I think Mr. McGregor would like to hear what you are going to read.

Mr. BEAUDRY: I just want to know.

The CHAIRMAN: Well, I do not think that any member of this committee is going to take a document and mis-read it—but read it so the witness's memory may be refreshed.

Mr. BEAUDRY: I refer you to answers made by you to questions put to you by members of the committee—the Special Committee on Prices. I refer particularly to a question put to you, following a series of other questions, by Mr. Harkness, who is also a member of this committee.

The CHAIRMAN: What page?

By Mr. Beaudry:

Q. Page 221. If after reading it it is thought the question is misleading, that it does not allow enough of the context, I will go over more of the context.

Following a series of other questions Mr. Harkness asked:

> It is in connection with resale price maintenance paragraph 12 on page 6. I would take it you do not as a general rule look on resale

price maintenance as an inimical practice. I am thinking of the best example I know, of the case of automobiles in which every automobile dealer has the price set by the manufacturer, and he is required to sell at that price. That is the general practice and commonly accepted, and the same thing applies to a considerable number of other commodities. I take it from the fact that the situation exists you do not look on resale price maintenance as a bad practice as far as a large number of commodities are concerned. Is that correct?

The answer as set out in *Hansard* is:

I have indicated in a later paragraph, paragraph 18:—

I believe that is a reference to a statement or a brief which has been then submitted by Mr. McGregor as commissioner of Combines.

I have indicated in a later paragraph, paragraph 18 that: One cannot deal with the problem of resale price maintenance without recognizing that some manufacturers might have some justification.

I have taken a pretty strong attitude in this brief on the question of resale price maintenance. I realize that a case can be argued on the other side. If these issues were all capable of being referred to as black and white it would be a very much easier job of administration. Here is a case where I think you have to examine the particular commodity and the particular circumstances in every instance.

Have you anything to change in that testimony, Mr. McGregor.—A. No, no change. I would like to explain that under the Act as it was then, that was an obligation placed upon us—to examine each particular case in the light of the circumstances.

I should refer you also to the sentence you have read from paragraph 18, part of the statement I had made on the previous day. It was a written statement:

One cannot deal with the problem of resale price maintenance without recognizing that some manufacturers may have some justification in seeking to protect the prestige of their products by maintaining some supervision over the conditions under which it is sold to the public.

That doesn't mean they would be justified in imposing something as drastic as resale price maintenance provides. They may have some justification in seeking to maintain the prestige of their product—but not in seeking to prevent all price reductions. The words used are, "by maintaining some supervision". "Some supervision" does not mean going to the lengths that resale price maintenance goes to.

The CHAIRMAN: What is the page on which that reference is to be found, Mr. McGregor?

The WITNESS: Page 161 of the proceedings of the Special Committee on Prices, February 16, 1948.

By Mr. Beaudry:

Q. Mr. McGregor, you have, at least in my mind in the answer you gave to the committee, interpreted the evidence you gave to the committee at that time. I want to establish the difference in the citation between the quotes and unquotes. The unquote reads:

I realized that a case can be argued on the other side. If these issues were all capable of being referred to as black and white it would be a very much easier job of administration. Here is a case where I think you have to examine the particular commodity and the particular circumstances in every instance.

—A. You quote me, and I agree that a case can be argued on the other side. I still agree you can argue a case on the other side.

Q. Do you agree with the last two sentences, or the last one—and that was not part of your brief, it was an answer to a member of the committee:

> Here is a case where I think you have to examine the particular commodity and the particular circumstances in every instance.

That answer was made in a committee discussing prices, when you were asked your opinion on resale price maintenance and its effect on prices?—A. You are asking me if my opinions ever change. Yes. In this particular case, they have been conformed—because of all I have heard since then of the extension of this practice into so many lines. I do not see any alternative but to make the legislation apply to all lines—

Q. To your knowledge how long has that practice been extant?—A. From what I have learned during the proceedings of this committee—

Q. That was not my question, pardon me. To your knowledge, how long has the practice of resale price maintenance been in effect in this country on a wide scale?—A. I think certainly in the last ten years it has been very widely extended.

Q. What was the cause of your special investigation in 1927—the letters you quoted—P.A.T.A.?—A. In 1925?

Q. Was it in 1925?—A. Yes.

Q. What was the cause of the investigation? Was it not resale price maintenance?—A. Yes.

Q. Would you not say that resale price maintenance was a factor more than ten years ago—perhaps as far back as 1925?—A. Yes, but at that time the practice then had a setback because of the action taken under the Combines Investigation Act.

Q. I appreciate that but I am speaking of your knowledge. I will try not to refer to the record but I will if the chairman will authorize me, or in case my memory is at fault. You have just stated in the last ten years, or that it is only in the last ten years that the practice has come into such wide effect; and that you have had occasion recently, I would say in the last two or three or five years, to revise your opinion. I am suggesting the practice has been a well-known practice as far back as 1925. Therefore, it is hard for me to understand the statement you now make?—A. And what is the question, sir?

Q. Well, the question is logically, I believe, against your statement that it was a wide practice only in the last ten years. Was it not a widespread practice as far back as 1925?

The CHAIRMAN: Pardon me, in fairness to Mr. McGregor, the question you are asking now is not the question which you asked three or four minutes ago.

Mr. BEAUDRY: Would you authorize the reporter to read the question?

The CHAIRMAN: No. You asked whether the practice was known, and I think there is a difference between a practice which is "known" and a practice which is "widespread".

By Mr. Beaudry:

Q. Was it known and widespread?—A. May I answer the question this way. It was extensive even after 1925. It has been very much more extensive in the last ten years.

Q. Was it extensive enough from 1935 till 1941 for the commissioner of combines to be able to delve into it and formulate an opinion on its good or bad effects?—A. Yes, the commissioner of combines did delve into it and formed opinions about it and, as I indicated in the statement I have made, difficulties

appeared as far as the Combines Act was concerned in dealing with the case of an individual manufacturer fixing his own resale prices.

Q. In that case, in 1948 the commissioner of combines had very definitely ample time to formulate in his own mind definite opinions—and I refer to page 212 of the same report, again answering Mr. Harkness. The first question may only be the introduction to the later stages. Mr. Harkness asked the witness:

By Mr. Harkness:

Q. This discussion on monopolies, it seems to me, has been of rather a general character and in order to get some idea of how important they have been in our economy, and therefore in raising prices, which is the matter we are trying to get at, I wonder if Mr. McGregor could answer me this? Leaving out of your consideration what is generally known as a natural monopoly, such as the lighting of a town, and also monopolies based on patents, how many monopolies have operated to your knowledge in Canada in the last ten years?

The answer was in the form of a question:

"A. Single firm monopolies?

Q. Yes, say monopolies in the distributive trade or the manufacturing trade.—A. I do not think there have been any in the distributive trades."

And, further—I am overlooking a question, but I will come back to it if it is necessary to establish the sequence of thinking—

"Q. I think the part we want to get at is what effect monopolies have on raising prices and the economy generally. As I understand your answer, in the last ten years you have had no monopolies in the distributive industries. What do you say about the manufacturing industry?—A. In two or three cases that we are examining, as I have indicated in the brief, the monopoly element enters.

Q. Can you give us any indication of the number of cases of monopoly in the manufacturing industry in the last ten years?—A. The cases in which we have made examination might number a dozen in the last ten years but it is not all single firm monopoly. I think the other is just about the same kind of thing, where you have two or three companies which have what we refer to as monopolistic control. That is the same thing.

Q. What would you say has been the degree to which monopoly has entered into our general economy? Would you say it entered in 5 per cent of the cases or 1 per cent of the cases or what would you say?—A. I do not think I could give you any figures. I would like to be more exact in any statement.

Q. At any rate, I understand from your answer that it has been relatively small?—A. I do not think, as far as the work of this particular parliamentary committee is concerned, that the single firm monopoly is a question to which you would have to give a great deal of consideration."

The CHAIRMAN: We will pick up at this point when we come back from the chamber. We are not adjourning, Mr. McGregor. We will come back when the vote is over.

(Upon resuming:)

The CHAIRMAN: Order. Mr. Croll will lead off and give way as soon as Mr. Beaudry comes in.

Mr. FULTON: Is he next on the list?

The CHAIRMAN: Pardon me, Mr. Fulton is next. You will go on until Mr. Beaudry comes in.

By Mr. Fulton:

Q. Mr. McGregor, to my mind at any rate you are not quite clear on one matter on which you have been asked some questions. I would like to ask a further question. Did you, as Combines Commissioner, make any inquiry or institute any investigation directed specifically to the matter of resale price maintenance?—A. Of a particular manufacturer?

Q. Yes?—A. Yes. In our preliminary inquiries we did very frequently have that problem before us. However, as I have indicated in my statement, we did not have legislation which would enable us to deal effectively with it.

Q. For that reason you never recommended prosecution or prosecution was never undertaken?—A. Our work ceased at the filing of a report, and there was never any formal report bringing in any finding that it was against the public interest.

Q. Did you, at any time when you were Combines Commissioner, suggest legislation or recommend legislation to be an effective answer to this practice which you viewed with such concern?—A. We worked on draft legislation at different times, more particularly after we renewed our activities in 1946. From that time on there were some very serious cases before us. The International Cartel Report had just been published and we were engaged in a number of very important cases. The problem of dealing with resale price maintenance was one we had before us; and at one time I hoped we might have an examination of that particular problem and get advice from someone who would go closely into the matter.

Q. Did you ever recommend legislation?—A. No.

The CHAIRMAN: Mr. Beaudry, Mr. Fulton was just filling in until you returned.

Mr. BEAUDRY: Mr. McGregor, I have gone over part of the evidence you gave at the Prices Committee hearings in 1948 and, to refresh our minds since half an hour has intervened, I will recall your statement:

> I do not think there have been any in the distributive trades.

—referring to single firm monopolies. And there is a second statement to the effect that the degree to which monopoly entered into our general economy was not, in 1948—as far as the work of this particular parliamentary committee on prices was concerned—a question to which the committee should give a great deal of consideration.

Those statements were made by you after you had twenty-three years experience as Commissioner of Combines and had seen the operation of resale price maintenance for those twenty-three years.

Do I understand you to say that you have revised substantially in your mind the thoughts you then expressed—that were expressed by those statements in 1948?—A. I would like first of all to refer to the statements that were made. I have not got the second day's proceedings before me, but I call your attention to the fact that the whole discussion was prefaced by a statement that we were referring to a single-firm monopoly, and I said I did not think we had any in the distributive trades.

The CHAIRMAN: May I interrupt for a moment. Some of us here would like to have the term "single-firm monopoly" defined? What do you mean by it?

The WITNESS: One firm that has a complete monopoly of business in any one field, might be a rough and ready definition. There is no such thing in the distributive fields in Canada. There was not then and I do not think there is now.

We were referring to the single-firm monopoly and I said we did not have any in the distributive trades. All the discussion that followed was on the basis of that first question that I asked of Mr. Harkness. I asked:

"Are you referring to the single-firm monopoly",

and he replied, "Yes".

The second answer I would like to give to your question is that in the light of the legislation at it was then, and as it is now, I do not think the particular practice of individual manufacturers fixing their own resale prices can be adequately dealt with I referred to that in the next paragraph of my statement in 1948 which appears on page 161:

> "The avoidance of price competition, of which price leadership and resale price maintenance are important aspects, is admittedly one of the most difficult to deal with in public policy."

—difficult because of the character of the legislation. That last comment is not part of the quotation.

> "Investigations on a more comprehensive scale may indicate the possible application of existing remedies where serious restraint is established. Publicity itself is a very effective weapon when circumstances justify its use. Fuller examination may also lead to more effective public safeguards being devised and applied. The work of this parliamentary committee should contribute to that objective."

You may recall that that particular parliamentary committee did deal with the problem of resale price maintenance but passed it on to the next investigating agency which was established—the Royal Commission on Prices. That commission in turn dealt with the problem to some extent, but suggested that the Combines Commission should be called upon to make further investigations into it.

You may recall that that was in the spring of 1949, and at that time we had a very considerable number of investigations under way. Without enumerating them I do not think there was any year in which we submitted more reports to the minister.

May I continue?

By Mr. Beaudry:

Q. Yes, do.—A. The impossibility of our doing it with the organization we then had was apparent. I recall that in 1949, shortly after the Curtis Commission Report had been filed, I tried my best to find some competent person who would carry on the kind of study that was needed before we could make adequate recommendations. We could not find the man and then, in the following year, 1950, the government appointed the MacQuarrie committee. The MacQuarrie committee has done the kind of thing we hoped we might be able to do in the earlier years.

Q. May I have the copy back if you do not need it? I would like to refer to a part of a sentence which you just used—although I had a list of references which I must have lost. The statement or part of the statement is this: " . . . may where serious restraint is established . . . "—A. Pardon me?

Q. "May where serious restraint is established"—does that imply there are cases where there is no serious restraint established by resale price maintenance? —A. They vary in seriousness, there is no question about that. An industry in which most manufacturers or all practice resale price maintenance presents a very much more serious set of circumstances than when only a few practice it.

Q. We will return to this in a minute. That would confirm then this statement today, and I assume you would make it as of today, or was that a

quote—"may where serious restraint is established"—is that a quote from an old testimony or is that a statement as of today?—A. Well, I will repeat it now.

Q. Then I imagine that would fully corroborate your statement on page 222 I referred to earlier as part of an answer read here, where you have to establish a particular commodity and particular circumstances in every instance. I take it, in other words, that the statement you made then was not made in reference to the existing Act, or not necessarily in reference to the existing Act, but in reference to the necessary examination of the Act of that date as it affected a particular case or industry or commodity before one could establish to one's satisfaction that this had constituted something detrimental to the public?—A. We had no authority to make investigations unless it appeared there was contravention of the legislation.

Q. I am asking you if this statement which I have read from your answers applies broadly? In other words, when you say you have to examine the particular commodity and particular circumstances, you mean that before one could determine that a crime has been committed, or a would-be crime has been committed, an examination has to be made of the facts, or whether this examination was necessary on account of the provisions of the present Combines Act under which you were operating?—A. We had to examine into the facts and had to consider them in the light of the legislation bearing on them.

Q. That still doesn't answer my question.

Mr. CROLL: Mr. Chairman, I think after putting the question three times perhaps Mr. Beaudry will reword it so the witness can understand it? I am having difficulty, and I am trying very hard.

The CHAIRMAN: Three people around here have reminded me about the ten-minute rule.

Mr. FULTON: Mr. Chairman, in view of the fact we have been interrupted and lost a substantial portion of our time today—and I am prepared to say Mr. McGregor's brief has made a considerable impact on every member—wouldn't it be better, if Mr. McGregor is willing, to have him back at a later date for further questioning?

The CHAIRMAN: It would have to be in the afternoon in view of our commitments up until next week.

Mr. BEAUDRY: If that is the case I would gladly interrupt my questioning at this stage.

Mr. HARKNESS: There is one point of privilege I would like to make. I think Mr. Beaudry, I am sure without intending to do so, by quoting the questions I asked in the Prices Committee in 1948 may possibly have left the impression as far as the committee is concerned that by these questions I was attempting to defend resale price maintenance and even monopolies. Such was the farthest thought from my mind and I am sure Mr. McGregor will confirm that.

Mr. BEAUDRY: I will state so. Mr. Chairman, I would submit that I am under some handicap, as all the other members are, by having this brief read without having a chance to study it. I would like to question on the brief and I will leave it entirely in your hands whether somebody else proceeds now.

Mr. CROLL: I can exhaust my questions in three minutes.

Mr. BEAUDRY: I will defer then.

By Mr. Croll:

Q. May I put this to you? A great number of the merchants, small merchants in this country, having in mind that this committee may pass this

legislation, are very much worried, confused and frightened about the possibility of impact of loss-leaders upon their business. Now, I have noted what you said today about loss-leaders. Will you please be a little more exhaustive and explain it in a practical fashion—not that you weren't, but I would like your point of view. You seemed to imply it had not done a great deal of damage, is that correct?—A. So much depends on what is meant by loss-leaders. You had a variety of definitions given by one man on Friday last.

Q. Let me say, selling below cost as a lure or bait to get people into the store?—A. I do not think you can put through legislation that will prevent any dealer from selling below cost. On some occasions it is desirable to do so to get rid of old stock. To find what purpose a man had in mind in selling at cost or below cost is just an impossible task. It is impossible to find out what his motives were unless, as in some of the combine cases, he has written down what his motives were.

Q. Let us take the one cent sale the Rexall people use.—A. I do not think they are sold below cost, they can sell two for one and still make money.

Q. The point is the little merchant cannot meet that competition and it is unfair competition to him.—A. The Rexall Stores sell their own products, made by their own principals, and the small merchant is not carrying that line to any extent.

Q. No, but he carries similar lines.—A. He has been at a disadvantage, but as someone explained the other day, the two-for-one sales carry on for only three days in the spring and three days in the fall.

Q. Without mentioning names, very large department stores, whether in Toronto or here, will run a sale, say, a package of kleenex, a very attractive and essential thing for the home, for almost half the price you can buy it in another store. Now, that is the practice the little merchant is troubled about.—A. Look at the practice in grocery stores. I have occasionally done the family shopping in Loblaw's and I cannot recall any instance of a single item that has been cut to a very low level. Now, there may be the odd individual who will do it at some particular time, with some particular item, but I do not think the cure for that is such a drastic remedy as resale price maintenance, which will prevent all dealers from reducing prices.

Q. I am assuming that the legislation will pass. I am not supporting price maintenance, I am assuming we will put the legislation into effect, and I start from there, and at that particular moment the door is thrown wide open and there is no price maintenance at all, and no one is bound by price maintenance and you see what happens. Now, what is your comment on that?—A. I think legislation can be devised. We were never able to hit upon the particular formula that might be effective. It is not a particularly serious problem under present day conditions; it may be at a later time, and possibly if it were sent back to the MacQuarrie Committee—this might be appropriate—sent it back to the MacQuarrie Committee and ask them to draft legislation that will meet the problem. We have article 498A in the Criminal Code, but it is not satisfactory.

Q. You probably remember this by heart, it is the last paragraph of the MacQuarrie Committee report. They express the same view that you do with respect to it. If we were able to devise legislation that could look after that particular aspect of that, you think it would be wise?—A. Yes.

Q. Thank you.

Mr. THATCHER: What if you could not?

The CHAIRMAN: Order.

By Mr. Fulton:

Q. I think, Mr. McGregor, in an earlier answer you went a little further than that and said in your opinion such legislation could be devised.—

A. Perhaps I did in the statement I read. I think it can be devised, but it is exceedingly difficult because you do not want to prohibit a dealer from selling even below his own costs; when you say "selling below cost", that may mean selling below the cost of a particular distributor, but not necessarily below the cost of the most efficient.

Q. Then you think it would be possible to devise legislation which would deal with harmful loss-leader practice; because there is a danger that in eliminating harmful loss-leader practice you would also eliminate what you regard as proper.—A. I think it could be done. I am amazed at the capacity of the legal profession to draft provisions that will meet such difficult questions. It is difficult, and it is something I would like to see done. I have no sympathy with the loss-leader—I mean a real loss-leader—that is designed for the purpose of enticing people into the store, and I think it would be desirable to have some legislation to meet it, but it is not a serious evil lottery, nothing like as serious as resale price maintenance.

Q. That is an idea you have expressed already.—A. Yes.

Mr. HEES: I think the great objection to resale price maintenance is—

The CHAIRMAN: These are the closing minutes of our meeting this afternoon. In our next meeting I have Mr. Fulton, Mr. Murray and Mr. Thatcher listed as desiring to question the witness. Mr. Croll wanted to ask just one question, and you know what one question leads to. He probably wanted to raise one problem.

Mr. CROLL: I thought he would say yes to my first question and that would end it!

By Mr. Thatcher:

Q. Further to Mr. Croll's remarks, Mr. McGregor, would you turn to page 9. I find it difficult to reconcile your answer to Mr. Croll and your statements on the third paragraph on page 9. You stated there, Mr. McGregor, "it would require a lot of statistics to prove the perfectly obvious truth that guaranteed margins tend to increase the number of outlets". One of the chief fears which small dealers have, is that if this legislation is passed they will be harmed by departmental and chain competition. Can we not assume from the statement in your brief, that abolition of resale price maintenance would decrease the number of outlets?—A. As I have indicated before, in many lines of business there are more dealers than the community needs. Resale price maintenance, through its guaranteed margins, assists them to continue, and also encourages others to come into that field, and when they come in the increased number of dealers means there will be a decrease in the sales of each one and, therefore, a decline in profits.

Q. Mr. McGregor, I wonder if you would be a little more specific. You said, and again I repeat, "it would require a lot of statistics to prove the perfectly obvious truth that guaranteed margins tend to increase the number of oulets." Now, surely it must follow that you believe if we had no guaranteed margins there would be fewer outlets. You have to be as positive in one conclusion as in the other. Does it not follow from your statement that there would be fewer outlets without resale price maintenance?—A. Under guaranteed margins?

Q. From your statement on page 9.

Mr. FULTON: No, without guaranteed margins.

The WITNESS: No, I say guaranteed margins would increase the number of outlets.

By Mr. Thatcher:

Q. Therefore, without guaranteed margins, does it not follow there would be fewer outlets?—A. Yes.

Q. Suppose some of these outlets were to be eliminated if the practice is prohibited, who would be most likely to be forced out of business, the departmental stores, the chain stores, or the small independent retailer, the veterans who have just started up—

The CHAIRMAN: The widows and orphans!

By Mr. Thatcher:

Q. The Chairman may be facetious but may I suggest that those who are not long in business, and who are not yet financially in a secure position, will be the ones to be eliminated.—A. If the community needs their particular service, the community will patronize them and they will stay in business.

Q. Yes, but if there are going to be fewer dealers, what kind of dealers do you think will go under, the small independent or the long established and financially secure companies?—A. The ones that are not providing the service, and I mean by service the price and everything else that the community needs.

Q. Which ones would they be?

Mr. MACINNIS: What kind of competition would there be under which everyone would survive?

Mr. THATCHER: I do not think this matter should be treated as a joke. Many small men who have just started out in business are the ones who will likely be forced to the wall by cut-throat competition. They are having enough difficulty as it is. If, as Mr. McGregor says, some companies are going to be eliminated, I submit it will be them.

By Mr. Hees:

Q. Woud you not consider it very, very desirable to try first of all—I understand the difficulty with loss-leaders is to define exactly what a loss-leader is—would you not consider it very desirable for us, before there is any attempt to put this legislation prohibiting resale price maintenance through, to, first of all, try and define what a loss leader is and, secondly, to do everything we can to formulate legislation prohibiting loss-leader practice, because in my experience, and I am sure in the experience of every member of this committee, the little man, who is the one we are trying to protect, is scared stiff of this loss-leader practice. That is the protest I have heard from the little dealers in my riding and I would think if the loss-leader practice were looked after there would not be too much objection to prohibiting resale price maintenance.—A. I do not think the problem is as serious under present conditions as you suggest. I do not think there is the same need for immediate action with respect to loss-leaders as there is for action on the practice of resale price maintenance.

Mr. STEWART: Just one question. Is there anything to interfere with a merchant at the present time using as a loss-leader a line that is not price maintained?

The WITNESS: No.

Mr. FULTON: Would it be as effective as using a price maintained item?

Mr. STEWART: I think so.

The CHAIRMAN: Let the witness answer, Mr. Stewart.

The WITNESS: It all depends on the consumers' demand for that particular line.

By Mr. Fulton:

Q. Would there not be a greater impact if an article which had been maintained for a number of years at a certain price were suddenly to be sold at a price less than that?—A. Yes, and I think what will happen if this legislation goes through is that in certain lines where most goods are price maintained it would have a pretty disturbing effect for the time being. There would be a period of adjustment. They would have to learn how to practice freedom, how to act independently.

May I ask Mr. Chairman if I am to be called for another session?

The CHAIRMAN: Mr. McGregor, we are grateful for you having come on such short notice, but I think some members would like to question you a little further, either on Monday or Tuesday afternoon, whichever is the more convenient.

The WITNESS: I am at your disposal.

Mr. CROLL: Let the steering committee decide.

The CHAIRMAN: The steering committee will meet tomorrow afternoon at 3.00.

The meeting adjourned.

HOUSE OF COMMONS

Fifth Session—Twenty-first Parliament

1951

(Second Session)

JOINT COMMITTEE OF THE SENATE AND THE HOUSE OF COMMONS

ON

COMBINES LEGISLATION

Joint Chairmen—The Honourable Senator A. L. Beaubien
Mr. James Sinclair, M.P.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 9

THURSDAY, NOVEMBER 29, 1951

WITNESSES:

Mr. J. W. Preston, Secretary-Manager, Canadian Pharmaceutical Association;

Professor H. J. Fuller, Ontario College of Pharmacy;

Mr. J. Crawford Gould, President, Drug Trading Company.

OTTAWA
EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
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CONTROLLER OF STATIONERY
1951

MINUTES OF PROCEEDINGS

THURSDAY, November 29, 1951.

The Joint Committee of the Senate and the House of Commons on Combines Legislation met at 10.30 o'clock a.m. The Joint Chairmen, the Honourable Senator A. L. Beaubien and Mr. James Sinclair, M.P., were present, Mr. Sinclair presiding,

Also present:

For the Senate: The Honourable Senators Aseltine, Burchill, Dupuis, Fogo, Golding, Horner, Vaillancourt.

For the House of Commons: Messrs. Beaudry, Boucher, Carter, Cauchon, Mrs. Fairclough, Messrs. Fleming, Fulton, Garson, Harkness, Harrison, Hees, Jutras, MacInnis, Mott, Murray (*Oxford*), McLean (*Huron-Perth*), Roberge, Shaw, Stuart (*Charlotte*), Thatcher, Welbourn.

In attendance: Mr. J .W. Preston, Secretary-Treasurer, Canadian Pharmaceutical Association Inc.; Professor H. J. Fuller, Ontario College of Pharmacy; Mr. J. C. Gould, President, Drug Trading Company.

The Chairman read a letter dated November 28, 1951, from Mr. J. W. Preston, addressed to the Clerk of the Committee, respecting the production of certain statistical information which the representatives of the Canadian Pharmaceutical Association Inc., had been requested by the Committee at an earlier meeting to produce.

Mr. Shaw tabled a copy of a circular letter, dated November 5, 1951, from the Canadian Pharmaceutical Association Inc., which had been sent to all their members throughout Canada.

It was ordered that the said circular be printed as *Appendix A* to this day's Minutes of Proceedings and Evidence.

Mr. Thatcher moved that the adoption of the second and third recommendations contained in the Third Report of the sub-committee on Agenda and Procedure, which was agreed to on Tuesday, November 27, be rescinded.

After discussion, and the question having been put on the said motion, it was negatived on the following division:

Yeas: The Honourable Senators Aseltine and Horner; Mrs. Fairclough, Messrs. Fleming, Fulton, Harkness, Hees, Murray (*Oxford*), Thatcher.

Nays: The Honourable Senators Beaubien, Burchill, Fogo, Golding; Messrs. Beaudry, Boucher, Carter, Cauchon, Croll, Garson, Harrison, Jutras, MacInnis, Mott, McLean (*Huron-Perth*), Roberge, Shaw, Stuart (*Charlotte*), Welbourn.

Mr. Preston and Professor Fuller were recalled and questioned.

Mr. Gould was called and questioned.

Mr. Croll gave notice of the following motion, which was referred to the sub-committee on Agenda and Procedure for consideration:

Be it resolved:

1. That no dealer shall sell or offer for sale directly or indirectly any commodity at a price less than 5% above cost.

96722—1½

2. That this provision shall not apply to the following sales:
   (*a*) of goods damaged or of goods which form the balance of a line which has been discontinued or is out of season
   (*b*) of sales for charitable purposes or relief agencies
   (*c*) of perisable merchandise which must be sold promptly in order to forestall deterioration and consequent loss
   (*d*) of merchandise sold in bona fide clearance sales if advertised, marked and sold as such
   (*e*) of merchandise sold upon the final liquidation of any business and is advertised, marked and sold as such
   (*f*) under the Bankruptcy or Winding-Up Act or by judicial order.
3. "Cost" means invoice cost to bona fide dealer or replacement cost, whichever is lower, less cash or quantity discounts, plus excise duties and sales taxes, if any.
4. "Directly or indirectly" is intended to include trade practices by way of evasion of the Act such as
   (*a*) combination sales of commodities
   (*b*) inflated trade-in allowances
   (*c*) concealed price reductions in premiums and discounts and other sales practices, such as "loss leaders".

5. That it be made an offence, and dealt with under the Summary Convictions Section of the Code.

The witnesses retired.

At one o'clock p.m. the Committee adjourned until Friday November 30, at 10.30 o'clock a.m.

A. L. BURGESS
Clerk of the Committee

EVIDENCE

NOVEMBER 29, 1951

10.30 a.m.

The CHAIRMAN: Please come to order, gentlemen. We are having the Canadian Pharmaceutical Association back this morning, but before calling Mr. Preston and his associates, in fairness I should read a letter I received from them, dated November 28, addressed to the clerk, Mr. Burgess:

> "At our meeting last Thursday I was requested to produce a statement of mark-ups by retail pharmacists on drug store articles on which there are no maintained resale prices.
>
> This will be impossible to supply in any reasonable period since prices on these articles vary with individual pharmacists as well as in different areas, i.e., there is by definition, no uniform price.
>
> The only manner this information could be approximated is by a questionnaire addressed to all druggists or to representative druggists in every locality and then averaging the returns.
>
> If the parliamentary committee would care to formulate such a questionnaire, the association will be pleased to circulate it and make every effort to obtain the information requested at the earliest possible date. However, it would undoubtedly require a considerable time to complete the task."

A second thing is that during the questioning of Mr. Preston the last time he was here Mr. Shaw requested a copy of the letter which has been sent out by the Canadian Pharmaceutical Association to their members.

Mr. FULTON: Should that not be tabled?

The CHAIRMAN: Mr. Shaw has asked for it.

Mr. SHAW: I think it should be made available to all the members of the committee.

The CHAIRMAN: It will be printed as an appendix to these procedings.

Mr. Preston, will you come to the chair?

Mr. FULTON: Before Mr. Preston is called I want to raise a point of order concerning the large number of telegrams which have been received, and we are advised they run into thousands. Just exactly how do you propose to deal with them?

The CHAIRMAN: I do not know about those; I reviewed my own file this morning and I think I counted perhaps fifty wires and letters. That is one point I was going to discuss with the steering committee. They have simply been acknowledged, saying they will be made available to the committee.

Mr. FULTON: What about those received by Mr. Burgess? I have heard suggested that the figure runs into thousands.

The CLERK OF THE COMMITTEE: I received no wires, but I received a number of postcards.

The CHAIRMAN: I may say that among the wires I acknowledged some were addressed to Mr. Burgess which he had turned over to me. The wires seem to come in stages. After receiving the wire from Eaton's a lot of wires came in from retailers and some retail groups who were strongly behind the stand the Canadian Retail Federation took for them. In any case all these letters, and

copies of the letters I sent in reply in which I acknowledged receipt of their communications, will be made available.

Mr. FULTON: I suggest we print one copy of the postcards if they are officially addressed to the chairman.

The CHAIRMAN: Most of the postcards I received are adressed to James Sinclair, M.P., Capilano. I think most of the members are receiving them. Most of them are from the Quebec area.

The CLERK OF THE COMMITTEE: There is a printed one addressed to the joint chairmen and I think about 100 have been received so far.

The CHAIRMAN: I certainly do not intend to acknowledge those, but whether the clerk of the committee should acknowledge receipt of them or not is another matter.

Mr. FLEMING: Are they all in the same form?

The CHAIRMAN: Yes.

Mr. FLEMING: Can you tell us the contents?

The CHAIRMAN: Just that they protest against legislation which would outlaw resale price maintenance.

The other thing to come before the committee this afternoon and tomorrow is the disposition of the briefs. Some of the people who submitted briefs are willing to have their briefs printed and let the matter stand at that and not appear before the committee. That is not along the lines of our original decisions where we would call before us people whose briefs had been submitted and on whose briefs we wanted further information.

Mr. SHAW: Are you finished with that?

The CHAIRMAN: Yes.

Mr. SHAW: What is the position with respect to national organizations representing manufacturers where apparently the national organization is not in a position to speak for individual manufacturers. Is it the intention of this committee to deal with manufacturers as such? The difficulty we are encountering here is a representative of a national body who may not be a manufacturer himself and it puts us in the unfortunate position where we are not able to question the manufacturer himself.

The CHAIRMAN: The line of inquiry we are now taking is that the people who speak for the manufacturers are people chosen by the manufacturers.

Mr. SHAW: Are we able to take individual manufacturers concerned and ask them questions?

The CHAIRMAN: If we wish to subpoena them, but as far as that is concerned no decision was taken by the steering committee or this committee as to whether we intend on our behalf to summon before us individual firms.

Mr. SHAW: It may be a matter for the steering committee.

Mr. THATCHER: I understood the steering committee had decided to call specific companies.

The CHAIRMAN: There was no decision, the only decision was on this matter of the briefs which as they came in were to be filed in one of three categories: briefs from national organizations on which members might require further elaboration and might like the representatives behind them to come before us; secondly, briefs would be circulated, and which would be printed in our record without having the organization representatives come before us, and, thirdly, I must say so far as we have received none of the briefs which we had in mind, that is, briefs merely filed. So far the members of the committee have received every brief we have received.

Mr. THATCHER: If we are going to call in specific companies we should give them notice so they can prepare their briefs. I, for one, feel very strongly we should bring in representative companies that can give us facts and figures. But you cannot call them on the spur of the moment. Therefore may I suggest to you that the steering committee should make a decision on the point one way or the other.

The CHAIRMAN: I think we are back to the key point of this inquiry for the fourth time. Once again I will turn back to our decision of Tuesday, November 27, on clauses 2 and 3, that questioning of witnesses in future be confined to arguments advanced in their briefs. After a long discussion on that day and on the previous day we decided the purpose of the committee was primarily to hear representations of those who opposed the legislation the government had announced in the Speech from the Throne. If the Canadian Manufacturers' Association or those manufacturing associations we are having before us do not choose to bring before us individual manufacturers to substantiate their case, I think the decision of the committee has been that we would rest with the representations made by those chosen to appear.

Mr. FULTON: You say the committee changed their decision four times already, so there is no reason why they should not change it again.

Mr. THATCHER: Are you saying now that we are not going to call these companies?

The CHAIRMAN: I am saying that the committee on Tuesday, the 27th of November, said that questioning of witnesses would be confined to the arguments advanced in their briefs.

Mr. THATCHER: What has that to do with calling the companies?

The CHAIRMAN: Because the companies have submitted no briefs.

Mr. FULTON: Nobody has asked them to.

The CHAIRMAN: You are quite aware of the two approaches this committee had open to it, either an all-out investigation into all companies with all sorts of facts and figures, and the second approach, an approach that could achieve in the foreseeable future some decision in the matter. There are those who regard this committee as affording an opportunity for those who are opposed to the prohibition of resale price maintenance—who made representations to the government after the Speech from the Throne to the effect that they were opposed to the proposed legislation—to make further representations to a parliamentary committee in order to make known their position.

Mr. THATCHER: Very respectfully, Mr. Chairman—you told me, both personally and at the steering committee, that we would have the opportunity, after the association briefs were through, to bring in individual manufacturers to give us more specific information. What has made you change your mind?

The CHAIRMAN: It is not a question of changing my mind, Mr. Thatcher. The whole committee is aware of the rather uncertain ground on which we started here. It was only when we got into the actual facts and the fantastic amount of figures that we would have to have—we have only to look at this letter this morning to find out how hard it is going to be to obtain, even in a restricted field like the retail drug store business—the difficulty of obtaining such figures and the questionable value of those figures when obtained, since they vary from drug store to drug store and from area to area. It was after that that the committee did decide on this point, and if after every time we meet we have to go over all this thing again we will be here a long while—a long while after you have gone home, Mr. Thatcher.

Mr. FULTON: Mr. Chairman, I would like to point out that on Tuesday, November 27, the committee reversed a decision it had taken on Monday, the 26th, and again on Friday, November 23, it reversed a decision it had taken the previous day, and each time that that reversal took place it was as a result of representations in a line of discussion initiated by yourself as chairman. It is indisputable that the committee arrived at a decision that we would direct specific questions to a number of manufacturers and retailers and get the full story of what the facts and figures were, and that twice, at your direction, or as a result of a line of reasoning initiated by you, supported by the Minister of Justice and the government majority on the committee, you had the committee change its decision. Now, if you see fit on two occasions to take time and have the committee take the time to discuss the whole matter again and reverse its previous decisions, I see no reason why Mr. Thatcher and others who feel the same way should not have the right to raise this matter again in the hope that the committee will see that we are not going to be able to reach a sensible conclusion based on all the factors in this matter unless we have an opportunity to discuss all the various factors along with them, all the facts and figures, so that we can see whether a consumer is prejudiced with respect to this price maintenance or whether he is benefited with respect to this price maintenance. That is the issue before the committee.

Mr. MACINNIS: I thought the first decision we took was that while national organizations appear before the committee, that local organizations would not be heard unless they are opposed to the views of the national organizations.

The CHAIRMAN: That is quite correct.

Mr. MACINNIS: Now, no doubt we have changed our procedure here on one or two occasions—

Mr. FULTON: Four separate occasions.

Mr. MACINNIS: —but that is no reason why we should go on discussing the procedure. Surely we must come to sometime when it is the last time we are going to make a change, and I think that time has arrived. The decision that we made last Tuesday on that should stand, and particularly should stand in view of that letter which you have read this morning. I took the position during the discussions on this that it would be quite impossible to get information such as required on non price maintained articles, and that letter now substantiates that, that if we were to try to get that information it would keep us here God knows how long. I do not know whether that is parliamentary or not, but it is the best term I can find at the moment.

Surely in the face of all that we should now decide whether we have the material before us—all the material we can get and all the material we can usefully use in coming to a decision. We should leave it at that. I suggest you put the question now to the committee as to whether this discussion should close and that we get on with the business.

Mr. BEAUDRY: Before the question is put—

The CHAIRMAN: I want to point out one thing about Mr. Fulton's observations. The principal change occurred at the meeting of the steering committee on Wednesday, to which the committee had referred the problem when we heard from the present Combines commissioner—

Mr. FULTON: That was Monday.

The CHAIRMAN: Monday—on the problem first of all of getting figures and, secondly, the value of the figures when obtained—as we heard from the previous Combines commissioner yesterday.

It was in view of that discussion with the steering committee, which after all is not an unwieldy meeting of 36 members such as this, by a vote of 7 to 2 with the chairman not voting, it was decided that this was the line of procedure which would enable us to proceed most advantageously with our work.

Mr. BEAUDRY: Does that imply that we cannot call, as I suggested I would like to call, some of the provincial dairy boards who practice resale price maintenance and have them show the reasons why they are practising—

The CHAIRMAN: None of the provincial dairy boards have filed briefs, Mr. Beaudry. None of the dairy boards have asked the government for a further review to be made of the proposed legislation.

Mr. BEAUDRY: And from that it follows we may not have them as witnesses? I would point out to you that at the very first meeting of this committee, as reported on page 24, I brought up the point and you made the following observations:

> The CHAIRMAN: We are speaking about things with respect to which we have not got definite knowledge. But if you feel that there is a wish, when we come to call witnesses, it might be proper to call the newspaper publishers.

The CHAIRMAN: "If there is a wish". Well, the steering committee on November 26, and later this committee on November 27, in view of the discussions and the line of investigation we had followed since the opening made the decision. I think, unless we are going to thresh this thing all over again, I should adopt the suggestion of Mr. MacInnis—that is to put it to a vote again as to whether we stand by this or whether we should re-open it. That would be a practical way of getting ahead with the business without stalling. Would you like to so move, Mr. MacInnis?

Mr. MACINNIS: You said "the 26th"?

The CHAIRMAN: The 27th.

Mr. BEAUDRY: Would you please re-read—

Mr. FULTON: The decision was to apply the gag.

The CHAIRMAN: The decision was that all questioning of witnesses would in future be confined to the arguments contained in their briefs. The decision in principle—

Mr. BEAUDRY: Does that exclude other witnesses? I contend that it does not.

The CHAIRMAN: The decision in principle was that this committee was not a full-dress inquiry to cover again the whole field of the MacQuarrie Commission and all other relevant things. The purpose of this committee was to afford those who were opposed to the government's intention to introduce legislation an opportunity to give this committee reasons why that legislation should not be adopted.

Mr. BEAUDRY: I suggest that is limited to questions that can be asked of people who have submitted briefs. You have interpreted it to apply to those who have not submitted briefs.

The CHAIRMAN: If they have not submitted briefs they certainly cannot be questioned.

Mr. BEAUDRY: I do think it applies to definite briefs submitted but I do not think it can be applied to those who have not submitted briefs.

Mr. FULTON: There is a great inconsistency in your argument. Mr. McGregor did not submit a brief; Mr. McGregor was asked by this committee —and I think very properly—to come before us. As a matter of fact, when he came before us he did not even have a brief, but the committee heard Mr. McGregor although we did not have that brief. Why should that be confined to Mr. McGregor? I admit that Mr. McGregor is one of the most highly qualified men to speak on the subject, but there are others whose practices are of the greatest importance on the subject.

You are utterly inconsistent when you approve the course of calling Mr. McGregor—although he did not submit any brief or indicate that he wanted to submit any brief—and then bring down the hatchet and say that you cannot call other witnesses because they have not submitted briefs.

Hon. Mr. BEAUBIEN (*Joint Chairman*): Mr. McGregor did submit a brief and it was presented to everybody.

Mr. FULTON: But we called Mr. McGregor before that. He had not submitted a brief on which we were to question him. We asked Mr. McGregor to come before this committee and all Mr. Beaudry and Mr. Thatcher are suggesting is that they be allowed the same privilege with respect to their witnesses.

Mr. CROLL: Mr. Chairman, it was not his privilege. The privilege with respect to Mr. McGregor was one which we were asking for. He was not asking us at all.

Mr. FULTON: May we not ask others then to come?

Mr. CROLL: We decided at that meeting of the 27th—and we discussed it at an earlier meeting of the agenda committee—that we would hear certain witnesses in order to bring in recommendations at this session, and we decided that we would limit discussion to the matter in the briefs. There was no attempt made to gag or to apply the hatchet.

Mr. FULTON: Then I do not know what is going on here.

Mr. CROLL: That is very obvious. It is a deliberate attempt to delay this committee. I think it is very obvious, and I think it is about time it was said.

Mr. FULTON: On two separate occasions this committee came to a decision.

The CHAIRMAN: Mr. Croll has the floor.

Mr. FULTON: There is no attempt to delay.

The CHAIRMAN: Order, order!

Mr. CROLL: I think, Mr. Chairman, that we have been very patient with people who from time to time have attempted to delay this matter before the committee, and we have waited and waited for them, perhaps, to exhaust themselves or to exhaust their tactics.

Mr. FULTON: You have not been brief, Mr. Croll.

Mr. CROLL: I have questioned at the most for only 10 or 15 minutes, and they were very pertinent questions. It is true that I have done a little nagging of my friend Mr. Fulton, at times, but that was on the side. And I now think that the time has come, in view of the constant discussion such as we had at the last meeting when we spent a great deal of time, as well as at every meeting. You will have the very same thing occur taking up hours of time discussing matters of no consequence, and matters as to which a decision has already been reached. I think it is time, Mr. Chairman, that you made a decision and brought at end to this sort of delaying tactics.

Mr. FULTON: Let the committee make its decisions, instead of having them dictated.

The CHAIRMAN: I see Mr. Hees, Mr. Shaw, Mr. Beaudry, Mr. Thatcher and Mr. Fleming. And it will soon be a quarter to one.

Mr. SHAW: Having opened this matter I think I should be allowed to give a reason. It is not that I am anxious to delay, Mr. Chairman.

Mr. CROLL: No, not you, Mr. Shaw.

Mr. SHAW: But I have not been able to establish yet from any of the national organizations that there does exist a contract as between the manufacturer and the retailer. But I think I can prove that there is, at least in one case, and the only way I can do so is to bring the individual manufacturer before this committee. That was my reason for bringing up this subject.

The CHAIRMAN: Mr. MacInnis?

Mr. HEES: Mr. Chairman, I am a little amazed, just as Mr. Fulton is, at the changing which has been done with respect to these matters. We had a meeting on Friday and one on Monday. First of all, we had the retail merchants here, and it was decided by the committee that we would get the facts and figures. I would like to quote very briefly what the Minister of Justice said.

Mr. CROLL: Mr. Chairman, on a point of order: we discussed this very problem yesterday for an hour. Now we are getting this reiteration. I think these are delaying tactics and I think that Mr. Hees is out of order.

Mr. HEES: I am only half way through.

Mr. FULTON: Mr. Chairman, on my point of order, I would point out that the initial delay was caused when the committee, at your suggestion, on Tuesday took an hour and a half to reverse a decision that had been reached previously.

The CHAIRMAN: Now, Mr. MacInnis.

Mr. MACINNIS: Will you allow me to praise a point of order?

The CHAIRMAN: A point of order.

Mr. MACINNIS: My point of order is that all this discussion is out of order unless there is a motion made to rescind what happened here last Tuesday.

Mr. BOUCHER: I suggest that Mr. MacInnis' motion be put to a vote.

The CHAIRMAN: Mr. MacInnis has very properly pointed out that in view of the decision taken at our previous meeting this present discussion is out of order.

Mr. THATCHER: I move the decision of last Tuesday be rescinded.

The CHAIRMAN: In view of the fact we have had a discussion on this point at least three times in committee and once in the steering committee, I am going to put this question to a vote immediately.

Mr. FLEMING: Just a minute.

Mr. THATCHER: I have not spoken on my motion.

The CHAIRMAN: This is exactly the point that has been raised so often at every possible opportunity on points of order, and certain members here are trying to protract the discussion. No point will be raised today that was not raised here on Monday or Tuesday or at the steering committee's meeting, or in Mr. McGregor's evidence yesterday afternoon. Is it the wish of the committee I should put the motion without discussion because this thing has been discussed ad nauseum.

Mr. FLEMING: I have not said a word on this.

The CHAIRMAN: In view of the fact this procedural point has been discussed at least three times I am going to put the motion.

Mr. FLEMING: But this is a motion to re-open it. I am asking if I may say a very brief word on it.

Hon. Mr. ASELTINE: If the whole question has been decided we may as well proceed.

Mr. HEES: If you are going to steam roller it—

Mr. FLEMING: I would like to say a brief word about this.

The CHAIRMAN: If Mr. Fleming will make it brief we will hear him.

Mr. FLEMING: There is one point on this question which it seems to me was not discussed the other day, and it is a very important point. The Minister of Justice said, after I spoke the other morning, that this committee was a forum to provide an opportunity for a hearing for those opposing legislation to prohibit resale price maintenance.

Hon. Mr. GARSON: For those who had made representations before the MacQuarrie Committee.

Mr. FLEMING: Those opposing legislation to ban resale price maintenance. I would point out that this is not the way the committee has gone about its task. It has gone out and asked organizations who were thought to represent consumers to come before us and give their views. We asked both the senior labour organizations to come here and they did not come within the category described by the Minister of Justice in his remarks the other day. We started out with a view to getting information on all sides of the question.

Mr. THATCHER: Not opinions.

Mr. FLEMING: And we sought the assistance of the commissioner of combines and we went out yesterday and sought the assistance of the former commissioner of combines and we have not at all followed the line of procedure the Minister of Justice said the other day this committee was set up to follow. It strikes me as an extraordinary thing at this stage that we are going to change completely our tack now and say the purpose of setting up the committee was not to get all the information, was not to hear all the views on it, but just to bring into the dock here those who were opposing the kind of legislation the government indicated in the Speech from the Throne. Is that not an offence against our elementary conceptions of justice and fair play?

The CHAIRMAN: Mr. Thatcher's motion is to rescind the decision made on November 27, and if that carries we have no procedure and then anybody can argue in any way he wants. If Mr. Thatcher's motion carries then you can make your observations again for the fourth time.

Mr. FLEMING: Yesterday Mr. Hees raised the question of calling Mr. Justice MacQuarrie and it was referred to the steering committee. If it is clearly understood that is the sort of thing the steering committee has power to deal with, if the steering committee has power to deal with calling witnesses—

The CHAIRMAN: Once again I say that when Mr. Thatcher's motion is either adopted or defeated we can proceed.

Mr. FLEMING: May I ask if Mr. Thatcher's motion is defeated if this committee has power to invite Mr. Justice MacQuarrie to come before us, or the T. Eaton Company representatives to come before us?

The CHAIRMAN: The steering committee will decide that in view of the motion of November 27, if that is still the desire of the committee. Whether or not it is the desire of the committee will be shown on the vote we are now going to take.

Mr. FLEMING: You are the chairman, you are going to be making a ruling on this.

Mr. CROLL: It may not arise.

Mr. FLEMING: I am asking you if Mr. Thatcher's motion is defeated if the committee retains the power to call Mr. Justice MacQuarrie?

The CHAIRMAN: Just a moment, there was no motion to call Mr. Justice MacQuarrie. Mr. Hees asked whether or not Mr. Justice MacQuarrie could be called and I referred that to the steering committee, once again for the reason that nine men can come to a decision better than thirty-eight, particularly when some of them are very anxious to thresh old straw. Now, if the motion is carried it will open up the whole problem for the fourth time. If it is adopted we are going to regard this committee as giving an opportunity for those who feel this legislation should not be proceeded with to come before us. That is the line of inquiry that will be followed. I am now putting the question. I suppose you want a recorded vote, Mr. Thatcher?

Mr. THATCHER: Yes.

Recorded vote: Motion lost.

Mr. FULTON: It is necessary for me to leave, and may I say for the record I am not walking out on the committee.

Mr. BEAUDRY: The committee has just voted not to rescind the resolution or decision of the steering committee supported by this committee that the questioning of witnesses be limited to the material supplied by them in their briefs?

The CHAIRMAN: That is right.

Mr. BEAUDRY: This vote, in my opinion, must not be considered as restricting the ability of this committee to call witnesses who have not submitted a brief. That is based on two or three precedents including one yesterday. That is why I voted no to this motion, and I would like to know from the chair whether I should have expressed a desire to bring in dairy control boards so we will have an opportunity to hear them.

The CHAIRMAN: That will be a decision of the steering committee when our agenda will be decided—subject of course, to confirmation here.

Mr. BEAUDRY: At page 249 of the record I suggested to the committee counsel that we secure some information from government departments, including the Dominion Bureau of Statistics, the Department of Justice and the Department of National Revenue—could we know now what progress has been made in that respect?

Mr. CROLL: Does my friend ask that income tax returns be tabled here?

Mr BEAUDRY: I am quoting from memory; it is at page 249.

Mr. CROLL: I am looking at it. At page 249 Mr. Beaudry makes this statement:

> If it were possible for counsel to secure these figures, either from the Bureau of Statistics or from the Income Tax Department or from other sources, it would be of great benefit to the committee.

It is a proper observation, that is all.

Mr. BEAUDRY: No observation was made by anybody in this committee suggesting this was out of order. I suggested the figures, and I think this would accelerate the proceedings considerably.

The CHAIRMAN: I see no specific request nor was there any given to this committee. You made the observation in your speech that you thought it would be helpful.

Mr. BEAUDRY: When I make an observation I qualify it as an observation. This was not exactly a qualified observation.

The CHAIRMAN: If the committee will come to order we will have Mr. Preston and his associates. Mr. Preston would first like to make certain clarifications on the evidence which he gave the last time he was before the committee, and then we will resume questioning where we left off.

J. W. Preston, Secretary-Manager, Canadian Pharmaceutical Association, recalled:

The WITNESS: Mr. Chairman and gentlemen of the committee, last Thursday when I was here Mr. Dickey asked a question, to be found on page 155 of the evidence. The reason I asked the privilege of making this statement is that I thought possibly there was some confusion in the minds of the members and I thought this would clarify it. Mr. Dickey asked the question:

> Q. Now, do you believe that if that were not the situation there would be any pressure on the manufacturer by the retailer, not only

to change his percentage of mark-up which you are allowed, but to try to reduce his price to you? That is, would the retailer say that you could still get a living wage out of it and still sell the product at a lower price to the ultimate consumer?

That is "retailer" and I think that is a typographical error; I think it means "wholesaler." The manufacturer's price is subject to competition and if he can profitably decrease the price he will do so.

Mr. CROLL: That is not the answer in the record. I understand you are correcting it.

The CHAIRMAN: You are amplifying the answer given at that time in the light of reading the record?

The WITNESS: Yes.

The CHAIRMAN: That is at page 155 in the centre of the page.

Mr. CROLL: I think when that is done the original answer should be read.

The CHAIRMAN: Read the original answer and then say what amplification you want made. This is in the middle of page 155.

The WITNESS:

Q. Now, do you believe that if that were not the situation there would be any pressure on the manufacturer by the retailer, not only to change his percentage of mark-up which you are allowed, but to try to reduce his price to you. That is, would the retailer say that you could still get a living wage out of it and still sell the product at a lower price to the ultimate consumer?—A. I cannot answer for the manufacturer. The manufacturer gets his price first.

The CHAIRMAN: I think we all agree with Mr. Preston that the word "retailer" in Mr. Dickey's question should obviously be "manufacturer".

The WITNESS: On page 163 the Hon. Mr. Garson asked this question:

Q. It is just to clear up this question that I raised it, in fairness to the witness and to the rest of us. I was quite clear, and you repeated it once or twice in reply to Mr. Thatcher, when you said that prices would rise, and therefore in the interests of the consumer, resale price maintenance should be retained. Secondly, I think you said they would all become loss-leaders. Now, you say that your second answer is the correct one?—A. Yes, I think so. I am sorry if I erred because probably what I was trying to say was yes or no to the question which was put to me and sometimes it is not quite clear. But what I certainly meant to say was that if you should illegalize price maintenance, prices on those items would certainly drop.

I certainly meant to say that in some lines prices would be less. These reductions would be at the cost of (1) increasing prices on other products to compensate, (2) diversion of retail business to larger operators and the extinction of many small businesses. To this extent monopolistic tendencies would put prices higher in the long run.

Hon. Mr. GARSON: That is not a correction of the answer, that is an addition to it.

The CHAIRMAN: Mr. Preston, we have experienced very often ourselves errors made in *Hansard* because of the difficulties the reporters are under, but normally we think of a clarification not being, as Mr. Garson has pointed out, an amplification of the answer after having seen the record. I take it that is what you are doing—enlarging on your answer.

The WITNESS: Yes.

The CHAIRMAN: Now, I take it we are adhering to the ten-minute rule. Mr. Fleming, will you proceed?

By Mr. Fleming:

Q. Just to show you I am trying to keep within the ruling that we confine ourselves to the briefs as a source of questions, I wish to refer to a couple of pages in your brief, and I am using the paging in your brief rather than the printed *Hansard*. My first point has to do with competition. On page 3 of the first appendix to your main brief you say—

The CHAIRMAN: Will you go a little slower with that?

Mr. FLEMING: It is on page 22.

Hon. Mr. GARSON: Would it not facilitate matters for all of us if my hon. friend referred to the report of the proceedings in which the brief was set out?

Mr. FLEMING: My reference is to the brief because I think that is what the witness is more familiar with, and I think it will facilitate matters if I refer to that.

By Mr. Fleming:

Q. On page 22 you have dealt with a number of articles that are handled under resale price maintenance and in the footnote you speak about a number of selected brands. The last day you dealt with the question of enlargement of outlets for pharmaceutical products during this period when resale price maintenance has been in force. What have you to say about the other aspect of competition, namely, the enlargement, if it is so, of the number of articles in competition with one another which are branded and subject to resale price maintenance; in other words, a competition between products of different manufacturers in the same class of goods?—A. We show that somewhere in the brief, Mr. Fleming. We show the number of different kinds of tooth paste, for instance, that are in competitions with others.

Q. You mention that in the footnote on page 22 to some extent, but I wonder if you have anything to add to that on the general subject of what this has done to competition.—A. Do you mean in the way of eliminating competition?

Q. I am asking about the effects of resale price maintenance as applied to the number of articles coming on the market which compete with one another. For instance, the number of competing brands of tooth brushes, the number of competing brands of tooth paste, and so on down the line.—A. I do not think it has any effect. There are increasing numbers of different brands of tooth paste coming on the market all the time.

Q. Would you say, then, that it has not had any effect, that it has not had any effect in reducing or extending competition?—A. I do not think it has had any effect either way.

Q. I would like to take up next the question of what effect the practice has had on prices. At page 39 of the same appendix to your brief, you say that the rise in prices from 1939 to 1947 on drugs and toiletries sold under fair trade contracts stands at an average of only 3·12 per cent, and I see the same statement repeated in Professor Fuller's commentary, which is exhibit 3. He deals with it at various pages, but I think in particular at page 22. Perhaps I should direct this question to Professor Fuller: are there any more recent figures available, Professor Fuller, on this subject of the percentage of price increase on these branded articles?

Mr. FULLER: I think that there is a more recent one within the last year. A brief mention is made of those on some other page of the brief. That was made by the Bureau of Education on Fair Trade and the Eli Lilly Company, of Indianapolis.

Mr. FLEMING: Well, on page 32 of your printed article, Professor Fuller, you say in the middle of the page:

> While the cost-of-living index has skyrocketed, prices of fair trade merchandise have been sticky, thus reducing net profits in the retail drug field.

Is that intended to be a statement based on the most recent information available?

Mr. FULLER: Yes, the operating costs of pharmacies all over the country are going up, wages are going up, and such like, but resale price maintained goods are not going up in price. Therefore, the margin between costs and profit is becoming less.

Mr. FLEMING: We had from Mr. McGregor yesterday a statement which I interpreted as meaning that while the margin of profit on individual articles under resale price maintenance might not be going up under the present practice, nevertheless in view of the greater volume handled by the retail outlets their gross profits were going up. Have you any comment on that, Professor Fuller?

Mr. FULLER: I think the Eli Lilly survey, which was made by the Eli Lilly Company on a voluntary basis in the United States in 1949, showed that the gross profits—I have to figure this out for a moment—in 1949 were 32·4 and in 1950, if I calculated correctly, they were 32·8, a difference of ·4 of 1 per cent.

Mr. FLEMING: I take it, Professor Fuller, in preparing your very interesting commentary on the MacQuarrie report you have gone to as many sources as are available for information as to the practice and its effects in Canada.

Mr. FULLER: I would like to qualify that in this way. On November 25 I was asked to prepare a critique of the MacQuarrie report, which I did, I believe, in seven or eight days.

Mr. FLEMING: I guess you mean October 25?

Mr. FULLER: Yes, October 25. It was after I had prepared that critique that this parliamentary committee was appointed and I was asked to prepare a second critique of a more positive nature, and that is the reason why some of the material is contained in one and contained in the other. Now, I think a great many more sources can be obtained if we spent more than seven days. I think that is one of the first items I have in my critique on page 6.

Mr. FLEMING: Are those sources available now?

Mr. FULLER: They are available in libraries, yes; the libraries are filled with dozens of titles, and articles in the journals of, say, the American Economic Association and so forth, but what is available in Canada I do not know.

Mr. FLEMING: That is the point I am getting at. Are there any Canadian sources of information available at the present time that you had regard to or that may be available to us now that have not yet been used?

Mr. FULLER: I doubt very much whether any purely Canadian material exists. I think we could get figures on comparing movement of prices of non-price maintained goods with the movement of prices of price maintained goods from the Dominion Bureau of Statistics inasmuch as they have a long list they continually kept throughout the years in order to make up their price index. It is available on that basis and I think it will clearly show that the goods under resale price maintenance have not gone up anything like the goods that are sold on what is called the free market.

Mr. FLEMING: We talked about the reduction of retail profits in the drug field on these branded article. What would you say in enlargement on that subject in reference to margins of mark-up?

Mr. FULLER: You mean that as the margins go up they might get a larger net profit?

Mr. FLEMING: Yes, I am trying to compare that question of mark-up with volume in relation to total profit.

Mr. FULLER: I know of no figures based on price maintained goods. I think we all agree that profit is made up of three elements: margin, volume, and turnover, and each retailer or wholesaler or manufacturer has to find the balance between those three factors in his own particular business. There is no magic point that can be set down on that.

Mr. CROLL: Mr. Chairman, I wonder if Mr. Fuller said that there was not any way of ascertaining the difference in margin between the price maintained goods and the non-price maintained goods.

Mr. FULLER: No, I did not say that.

Mr. CROLL: What did you say? Would you mind repeating?

Mr. FULLER: I do not know whether I can recall exactly what I did say. I do not know if we have any figures which will compare, let us say for any particular store, the amount of net profit that he gets in relationship to the margin on price maintained goods over and beside non-price maintained goods. I do not think any store keeps those figures.

The CHAIRMAN: This will be your last question, Mr. Fleming.

Mr. FLEMING: Will you sum it up with your comment on the effect of these various factors so far as resale price maintenance is concerned, in your experience, that is to say, mark-up, volume, net profit, gross profit.

Mr. FULLER: There has been no major change in the net profit of pharmacies, as far as I am able to find, in the last 20 years, either in gross profit or the percentage of operating expenses or in net profit to any large extent. The movement would perhaps be from a half to one per cent, or even 1½ per cent. The volume of business in retail drug stores in the United States is moving downward. I do not think it is moving downward in Canada, but there are many reasons for a downward movement as far as both dollar value and tonnage is concerned, inasmuch as resale price maintenance allows a pharmacist to run a more ethical, shall we say, profession, business or establishment. He does not need ice cream or a soda fountain and so on, and he can pass this on to the restaurant owner, and so on. There are a larger number of pharmacists getting rid of goods that are really not essential to pharmacy. With the increase in antibiotics and chloromycetin, there has been a complete change in the nature of the drug business. So all those factors must be brought into consideration when you talk of gross profit and costs, and so on.

The CHAIRMAN: Mr. Carter, your turn.

By Mr. Carter:

Q. If I understand Mr. Preston correctly—he was amplifying his answer to Mr. Dickey—I thought he said that if resale price maintenance were abolished prices of price maintained goods would drop for a while but there would be an increase in the price of other products. Is that correct, Mr. Preston?—A. Yes.

Q. Well, how would you account for the increase in the price of other products?—A. Well, in order to reach an over-all average of gross profit.

Q. But would not competition prevent the prices of the other products from increasing?—A. No, because competition would mostly be centered on

the advertised lines, which would be the nationally advertised lines which now enjoy price maintenance.

Q. Then competition would not prevent prices from increasing?—A. Pardon?

Q. Competition would not prevent prices from increasing, is that right?—A. No. There would not be sufficient competition on the non-profit lines. All the competition would be centered on the articles nationally advertised that are now price maintained.

Q. Thank you.

The CHAIRMAN: Mr. Hees, your turn.

By Mr. Hees:

Q. Mr. Preston, as a practical business man do you consider that the MacQuarrie report is a factual report basing its conclusions on comparative figures showing the profit margins on price maintained and on non price maintained goods, or do you consider it a purely theoretical report?—A. We think that the MacQuarrie Committee report is an academic exercise, and because of that we do not think that the findings of the MacQuarrie Committee report are substantiated at all from the evidence in the report. We also think that most reports—when I listen to government speakers, they generally finish their speech with a strong sounding note—

Mr. THATCHER: What would you call the McGregor report?

The WITNESS: "There is no evidence, in the report that a scientific study of the effects of resale price maintenance was made either on individual sectors of the economy or the national economy as a whole. There is no statistical data in the report, yet such data does exist. No comparison of the movement of prices of non price maintained goods and price maintained goods, nor their relation to the price index, appears in the report." I am reading from Professor Fuller's commentary on the interim report. And the finish of the MacQuarrie report, in our opinion, is the weakest of all, that is when they failed to deal with the loss-leader which, in our opinion, is the iniquitous part of any legislation that would ban price maintenance.

Mr. HEES: Thank you. Could I ask Professor Fuller what is your opinion on the same question?

Mr. FULLER: I think my opinion is stated very precisely in the brief which Mr. Preston has just read, on page 6, and another part on page 7 which he did not read:

> It is our opinion that this methodology is unscientific, and non-factual. The evidence against resale price maintenance is solely that of opinions of interested parties.

That is at the top of page 9.

Mr. CROLL: You said page 6.

Mr. FULLER: Page 6 of the commentary.

Mr. CROLL: What is your statement again?

Mr. FULLER: "The evidence against resale price maintenance is solely that of opinions of interested parties". That is at the top of page 7 of the printed appendix; and at the top of page 9 I said:

> The committee is also remiss in its duty in still another way. The terms of reference were: to study in the light of present day conditions, the purposes and methods of the Combines Investigation Act and related Canadian Statutes, and the legislation and procedures of other countries, in so far as the latter appear likely to afford assistance,

and I have gone on to show where they did not tap the material either from Great Britain or the United States. I would also like to come back to page 7, at which I have also stated:

> The methodology also includes the habit of lifting lines out of context,

and the next page or so shows how that was done.

Mr. HEES: Thank you, Professor Fuller. What would be the attitude you would adopt towards a student of yours who submitted a report of that kind?

Mr. FULLER: That is a rather embarrassing question. Must I answer it?

Mr. HEES: I would like to hear what you have to say on that.

Mr. CROLL: I think he should answer it. I think it is the sort of question he should answer by all means.

The CHAIRMAN: I was going to point out that a question of this sort is outside the range of the brief you submitted, and in replying you can use your own judgment as to whether you want to answer it or as to how you want to answer it.

Mr. FULLER: I do not know one from the other as far as you gentlemen are concerned. Frankly, on the basis of lack of scholarship and on a scientific basis, I would simply flunk a student who handed that in for credit, that is all.

Mr. HEES: Thank you.

Mr. THATCHER: What about the McGregor report of yesterday?

The CHAIRMAN: Just for the record, Mr. Fuller, would you tell us what kind of students you refer to?

Mr. FULLER: Students in economics.

The CHAIRMAN: Would they be graduate or under-graduate students?

Mr FULLER: Either.

The CHAIRMAN: At the school of pharmacy at which you are professor, have you graduate students as well as under-graduate students?

Mr. FULLER: At the present time, no. Where I came from, though, we had graduate students.

Mr. CROLL: That means the principal of Queens is flunked on the first chance! Do you know that Mr. Mackintosh, Principal of Queens, is a member of the MacQuarrie Committee?

Mr. FULLER: No.

Mr. CROLL: You do not know who Professor Mackintosh is?

Mr. FULLER: No.

Hon. Mr. GARSON: A very good answer.

Mr. CROLL: And, Mr. Fuller, following your answer to Mr. Hees, I presume Mr. McGregor would flunk, too?

Mr. FULLER: I would like to read the whole brief before I pass judgment there, but generally, there have been just as tremendous changes in economic theories in the last twenty years as there have been in chemistry and the anti-biotics. It all depends on when a person takes his economics and where they are going to start from—where they end.

Because of that, I rather belaboured the difficult question of competition but there is nothing which is black or white in either competition or monopoly. They shade into each other. All competition is not good; all competition is not bad; all monopoly is not good; and all monopoly is not bad. When we read Oxenfeldt, which is the basic book from which the MacQuarrie committee quoted, Oxenfeldt is very clear that there are thousands of situations where each individual thing must be taken separately in any investigation.

Mr. CROLL: I think this answer was made by Mr. Preston—he referred to the report as 'an academic exercise'. You, Mr. Fuller, in answering Mr. Hees, stated that if a student handed that report in to you you would flunk him.

Have you any idea who the people are who submitted this report?

Do you know Mr. Justice MacQuarrie of Nova Scotia?

Mr. FULLER: Well, sir—

Mr. CROLL: Just answer my question?

Mr. FULLER: No, I do not know any of them—nor do I know their names either.

Mr. CROLL: Well, Mr. Justice MacQuarrie was the chairman; W. A. Mackintosh, the principal of Queen's University was a member of the board; and G. F. Curtis, who is familiar to you—do you remember the Curtis Report—

Mr. FULLER: None of them whatsoever.

Mr. CROLL: You don't remember Mr. Curtis?

The CHAIRMAN: I think you have the wrong gentleman, he is the dean of the law school of British Columbia.

Hon. Mr. GARSON: Dean of the Law Faculty of British Columbia—another "flunkee".

Mr. CROLL: And there was Mr. Lamontagne, on the staff of Laval University? You do not know those people?

Mr. FULLER: No.

Hon. Mr. GARSON: They are all flunked then.

The CHAIRMAN: Pretty high class students at Ontario Pharmacy.

Mr. CROLL: High qualifications.

If you will turn to page 6 of this original book, volume, or whatever it is, I think you said to us that what we have heard here is evidence of opinion—and the only evidence that is available, the only data that exists had reference to the first paragraph on page 6?

Let me read what it says, and you quote it:

> It was shown from statistically valid research data that in a comparative study of the prices of 26 nationally advertised Fair-traded drug products, the American consumer is found to pay one-tenth of a cent less for these products, taken as a whole . . .

Do you support that statement?

Mr. FULLER: Yes, I do.

Mr. CROLL: Well, then, do you recall any comment made by Mr. Justice Jackson of the United States Supreme Court who was attorney-general during the time this was made—any comment on this particular matter which was then under his department?

Mr. FULLER: It says "in a recent bulletin from the Bureau of Education on fair-trade entitled 'Current Research Studies on Fair Trade' it was shown from statistically valid research data that in a comparative study of the prices of 26 nationally advertised fair-traded drug products, the American consumer is found to pay one-tenth of a cent less for those products—". Is that what you are referring to?

Mr. CROLL: Yes.

Mr. FULLER: That was only made within the last year and Jackson has not been attorney general for several years.

Mr. CROLL: Well, do you remember the comment of the United States Department of Justice on that matter? I will produce it to you?

Mr. FULLER: On this particular matter?

Mr. CROLL: Yes.

Mr. FULLER: This was not made until very recently.

Mr. CROLL: Well, I say their comment made on this recently—on this statement?

Mr. FULLER: I do not know they ever had any comments.

Mr. CROLL: Well, I saw a comment on it and I would be glad to let you see it. They said that in taking these 26 articles out of possibly 3,000 articles it was done for the purpose of propaganda, and it gave no real picture of the situation. That was the view of the United States Department of Justice.

Mr. FULLER: I would be inclined to agree with that statement but that has been used in the opposite way also by the MacQuarrie committee I believe—and the Fortune survey was too. The Fortune survey would come in exactly the same category.

Mr. CROLL: Well, I was not on the MacQuarrie committee so you cannot 'flunk' me for that, but do you agree with the statement?

Mr. FULLER: My point of view is that the number of items studied was too small.

Mr. CROLL: That is exactly what they say?

Mr. FULLER: Oxenfeldt says so too. You cannot come to any conclusion in this particular study—it may have shown—

Mr. CROLL: Very shrewdly, a friend of mine, Mr. MacInnis, say: "Why did you not put that in the brief and say to us: 'This really does not prove anything'."

Mr. FULLER: The pages from which you quote were not compiled by me.

Mr. HEES: A good answer.

Mr. FLEMING: May I ask Mr. Croll to ask the witness what the bureau of education is? Is it a government body or a private body?

Mr. FULLER: As far as I know it is a national organization in the United States made up of various organizations which are interested in resale price maintenance.

Mr. CROLL: Yes.

Mr. FULLER: There are a number of associations, and as far as I know, and I may be wrong and I would not like to give the exact characteristics of it, they include manufacturers, retailers and wholesalers.

Mr. CROLL: My time is running out, although I am sorry about that—

The CHAIRMAN: Three minutes.

Mr. CROLL: Well, they do not drop the flag on you until there is only one minute left, at Varsity Stadium.

Let me say we are having some difficulty in relating American experience, and Canadian experience, American authority and Canadian authority—and you are having trouble too?

Mr. FULLER: Yes, very much.

Mr. CROLL: I quite understand that it is a little difficult. These men on the commission were Mr. Justice MacQuarrie, Mr. Mackintosh, Mr. Curtis and Mr. Lamontagne—and, Professor Fuller, is there any greater authority in this whole of Canada on this question of resale price maintenance than Mr. McGregor?

Mr. FULLER: I would not like to offer a comment on that, sir.

Mr. CROLL: No man with any greater experience that you know of? He has had twenty-three years; he has been there, I think, from the time the branch was formed.

Mr. FULLER: I would not say yes to that question because, as I tried to say a few minutes ago, it depends upon where your thinking starts—and if you start by thinking that all competition is good all monopoly is bad—blacks and whites.

Mr. CROLL: Yes.

Mr. HEES: If he is so good, Mr. Croll, why did he not undertake the inquiry for the government?

The CHAIRMAN: Mr. Hees, no one interrupted you when you had your chance.

Mr. CROLL: I did not take any notice of what Mr. Hees said so it is all right.

Mr. FULLER: Might I add that authorities often disagree on the same subject—medical authorities, and engineering authorities—

Mr. CROLL: Yes, Professor Fuller, but my point is that today if I wanted to know something in connection with pharmacy I would go to the University of Toronto and to Professor Fuller. He is the authority. He may be wrong—that is possible, and he has been wrong today—but at least I would go to him as the authority. Now, who is the ultimate authority on this subject under investigation?

Mr. FULLER: I do not know, sir.

Mr. CROLL: Then, I will say to you: Is it not McGregor?

Mr. THATCHER: Or MacDonald?

Mr. HEES: It is supposed to be MacDonald today, he holds the position.

Mr. CROLL: Now stop this, I am asking the questions!

Mr. FULLER: I have answered the question; I do not know.

The CHAIRMAN: Mr. Garson?

Hon. Mr. GARSON: Professor Fuller, Mr. McGregor made this statement yesterday. I shall read it to you. I also read your critique of the MacQuarrie report very carefully and I rather came to the conclusion, from the long statement you made, that you agree with the statement made by Mr. McGregor which I am going to read. Instead of going all through your material I would just like to put Mr. McGregor's statement to you and ask you whether you agree. If it is necessary we will go back to other material but that would be rather lengthy.

This is what he says:

The CHAIRMAN: Page?

Hon. Mr. GARSON: Page 6.

Mr. THATCHER: Can we all question Mr. Fuller on Mr. McGregor's report?

Mr. FLEMING: This raises an interesting point about the decision that was upheld.

Hon. Mr. GARSON: The point is well taken and I will question Professor Fuller on his own brief.

The CHAIRMAN: Yes, the point is well taken; thank you, Mr. Thatcher.

Mr. FLEMING: The first offender is the Minister of Justice.

Hon. Mr. GARSON: In your brief, Professor Fuller, you say, in listing certain evidence, that resale price maintenance has kept prices from going up, this:

> We do not maintain that this additional evidence which we are presenting, is more valid than that used by Oxenfeldt and the committee. We do claim that it is equally valid.

Mr. FULLER: Yes.

Hon. Mr. GARSON: I suppose that since you are representing a responsible body that you would not present any evidence to this committee unless you thought it was valid?

Mr. FULLER: That is correct.

Hon. Mr. GARSON: Yes.

Mr. FULLER: I mean any material is always subject to the method by which it was obtained and the interested parties who sponsored it.

Hon. Mr. GARSON: Quite so, but your statement was that you were presenting material to this committee which, I presume, you would regard as valid. You were saying the Oxenfeldt comparisons were equally valid with your own.

Mr. FULLER: Right.

Hon. Mr. GARSON: One of the things he said was this—and I am quoting from your brief—"several methods may be used to obtain suggestive evidence about the influence of resale price maintenance legislation on resale prices."

Mr. FLEMING: What page?

Hon. Mr. GARSON: Page 221, and going over to page 222. "First," he says, "comparisons may be made between prices in states where resale price maintenance is legal with states where it is not."

Now, Professor, would you confirm for me what seems obvious that this comparison is only valid in the United States, because in Canada resale price maintenance is of fairly general application in all provinces?

Mr. FULLER: I am not a legal mind and I do not know how to interpret that. It merely states where it is legal and where it is not. In Canada, there is not either permissive or restrictive legislation at the present time that I know of.

Hon. Mr. GARSON: Therefore comparisons of that type cannot be made in Canada, and they must be made in the United States?

Mr. FULLER: Yes, I think so.

Hon. Mr. GARSON: "Second," and I am quoting your quotation of Oxenfeldt: ". . . the changes in prices of products under resale price maintenance can be compared with the changes in prices of products not priced under resale price maintenance."

Oxenfeldt says, and you quote him in italics, "These comparisons are risky".

Mr. FULLER: Yes, he has it right here.

Hon. Mr. GARSON: From which I will conclude, and I will get on as rapidly as possible because I want to make use of my time, that you agree with Oxenfeldt that a comparison of that type is risky?

Mr. FULLER: Right.

Hon. Mr. GARSON: Then he says: "Comparisons of prices before and after legislation are not reliable on two counts" and you quote Oxenfeldt in italics.

Mr. FULLER: That is the same as "risky".

Hon. Mr. GARSON: Well, I will not bother going into that detail. The point I want to get at is—and I cannot read what Mr. McGregor says, but just from what I have read to you here—that you are of the view that the best, or if you like to put it this way the least unreliable method of testing resale maintained prices with those not maintained, has to be a comparison of prices in states where resale price maintenance prevails with those in which it does not? And that is what Mr. McGregor said yesterday?

Mr. FULLER: That is the best method of testing?

Hon. Mr. GARSON: Of these three that are stated by Oxenfeldt.

Mr. FULLER: I would simply say it is one method.

Hon. Mr. GARSON: But you also agree because you have italicized Oxenfeldt's statement that the other two are unreliable.

Mr. FULLER: Excuse me, sir. Oxenfeldt is clearly setting out the first, second, and third, and after that he says these comparisons—

Hon. Mr. GARSON: I cannot quote Oxenfeldt, I can only quote your brief. I am just taking part of the statement made and quoted in your brief.

Mr. FULLER: I quoted all the words of Oxenfeldt from page 425 right through to the middle of page 429 which is the sum total of all he has to say about the economic effect of resale price maintenance. I think that every word is probably in one brief or the other.

Hon. Mr. GARSON: And I do suggest you dealt with these three methods. You italicized Oxenfeldt's condemnation of the two, from which I judge you approve of the other one.

Mr. FULLER: No, I have the same interpretation as Oxenfeldt—

Hon. Mr. GARSON: That is right, you agree with Oxenfeldt and Mr. McGregor agrees with both of you—although I cannot quote his brief unfortunately.

Now, you have criticized this MacQuarrie report upon the grounds that it did not go into all these facts. You say there is no statistical data in the report, but it exists. If it exists why did you not bring it forward to this committee?

Mr. FULLER: It was my opinion, sir, that it was the function of the MacQuarrie committee.

Hon. Mr. GARSON: Well, you object to the report and you have had an opportunity at the request of your organization to show that the report is wrong. Why would you not bring the material forward?

Mr. FULLER: The material can be obtained from the Dominion Bureau of Statistics.

Hon. Mr. GARSON: Is not that part of your case?

Mr. FULLER: No, I do not think so.

Hon. Mr. GARSON: Professor Fuller, if there is a single Canadian fact or a single Canadian authority quoted in your brief, would you tell me where it is?

Mr. FULLER: No, there are no Canadian authorities quoted—neither are there in the MacQuarrie report.

Hon. Mr. GARSON: Well, I am referring to yours?

Mr. FULLER: I am not criticizing the MacQuarrie committee report because they quoted no Canadian authorities; I am criticizing it because they only took a few from other sources.

Hon. Mr. GARSON: You are criticizing it because they have not taken enough American ones or British ones—

Mr. FULLER: Yes, or even French.

Hon. Mr. GARSON: I cannot refer to Mr. McGregor's brief but did you have the pleasure of hearing him yesterday?

Mr. FULLER: No, I did not.

Hon. Mr. GARSON: Then, I cannot ask you what you heard then.

Mr. CROLL: You can—

Hon. Mr. GARSON: No.

Mr. CROLL: Is there not anything in that brief that you believe he was in accord with and that you could question on?

Mr. FLEMING: May I say this?

The CHAIRMAN: The minister has only one minute left.

Mr. FLEMING: Well—

Hon. Mr. GARSON: I hope these interjections by members are not taken off my time.

Mr. FLEMING: I think it must be apparent already that it is silly not to be able to question a witness like this on Mr. McGregor's statement made yesterday. I think we are denying ourselves the benefit of observation on matters that would be of great help to the committee. Why do we stick rigidly to a rule, the full implications of which I am sure were not foreseen when the committee adopted it?

Hon. Mr. GARSON: It does not embarrass me.

Mr. FLEMING: I would like to ask the witness questions on Mr. McGregor's statement.

Hon. Mr. GARSON: I now have on the record all the material which I could have established by reading Mr. McGregor's statement to the witness.

With the remaining time I would like to refer Mr. Fuller to page 15 of his brief where he makes some comments about an example of resale price maintenance—namely aspirin. He makes a statement to this effect, and I will skip certain intervening material, "the consumer can purchase one hundred tablets—for 59 cents under resale price maintenance, and aspirins in 100's, same standard, down as low as 9 cents a hundred. He is not forced to buy—the other. If he does it is his choice. He can purchase cheaper brands in almost any drug store whether chain or independent."

Can you tell me the name of the 9 cent brand which was compared to the 59 cent brand?

Mr. FULLER: Aspirin—and I might say it is illegal to use the word aspirin in this country unless it applies to Bayer—so we are all misusing the word.

Hon. Mr. GARSON: You include yourself there?

Mr. FULLER: That includes myself, yes. The general idea, as we all know, is that aspirin, which we are talking about, is a mono-acetyl acid ester, of salicylic acid.

Hon. Mr. GARSON: Yes?

Mr. FULLER: That would come in under "no brand" and it is characterized as "no brand" either private or national, but "no brand".

Hon. Mr. GARSON: Available at 9 cents per hundred?

Mr. FULLER: Yes.

Hon. Mr. GARSON: That includes the retail mark-up, wholesale mark-up, manufacturer's profit and everything, does it?

Mr. FULLER: They are usually in cut-rate pine board stores—and whether they are using them as loss leaders I do not know but they often do use " no brands" as loss leaders.

Hon. Mr. GARSON: If they are in cut-rate pine board stores, is your statement quite correct or properly informative when you say "the customer has the choise." He has not the choice unless they are in all stores?

Mr. FULLER: But he can go to any store—

Hon. Mr. GARSON: He can go to a pine board store if he knows where it is and get them at 9 cents?

Mr. FULLER: Yes.

Hon. Mr. GARSON: What are the comparable Canadian prices in this example, you cited—of the same value but applied to Canadian conditions?

Mr. FULLER: 79 cents and 19 cents, I think.

The CHAIRMAN: Mr. Garson, this is your last question.

Hon. Mr. GARSON: Yes sir. The comparison of the 9 cent item was—

Mr. FULLER: 19 cents.

Hon. Mr. GARSON: 19 cents?

Mr. FULLER: Yes.

Hon. Mr. GARSON: And what is the name of that brand in Canada?

Mr. FULLER: As I say, "no brand". All the manufacturers have tablet machines and when they turn them out they will put your name on them if you are in business, or mine. It may be a private brand.

Hon. Mr. GARSON: One last question. In what percentage of drug stores in Canada is that 19 cent product available?

Mr. FULLER: I do not know, sir.

The WITNESS: 100 per cent.

The CHAIRMAN: Now, Mr. Thatcher, it is your turn, and in fairness I should point out that Mr. Thatcher is a graduate of Queen's University and he was probably taught economics by Mr. Mackintosh—whether he passed or not I do not know.

Mr. THATCHER: I have only two questions, Mr. Fuller. First of all I wonder if you would turn to page 9 of your brief—the large brief.

The CHAIRMAN: Would you just indicate where you are referring to?

Mr. THATCHER: "The Legislation would be Discriminatory".

The CHAIRMAN: In the center of the page.

Mr. THATCHER: Yes. The first line. "If the government makes resale price maintenance illegal it would be, in effect passing discriminatory legislation, legislation for the benefit of the larger operation to the detriment of the small." It would seem to me that one of the chief fears of some committee members is that if price maintenance is abolished small operators may be seriously harmed or actually put out of business? I would like you to express your opinion on such a danger. If possible could you buttress that opinion with concrete examples?

Mr. FULLER: I am advised to the extent, as I said last day, that I was a victim of the very situation myself twenty-four years ago. It is my opinion that if legislation outlawing resale price maintenance is put on the books it will tend toward putting the small retailer at a bargaining disadvantage with the manufacturer and putting the large chain and department stores at a tremendously greater advantage than they now have and that in the long run leads towards monopoly.

Mr. THATCHER: Can you give any specific examples of that, having happened in the past? If I remember your statement last week you said that in the drug business there was very little resale price maintenance twenty years ago.

Mr. FULLER: I do not know that I can give a specific example, I can give the general picture of what happened. The large chain stores and department stores with branches throughout the country, with sales of tremendous volume, after they had worked up the trade asked for a better discount. The manufacturers said if they are selling 40 per cent of the total factory output we will give them an extra 5 per cent. The next time they came back they wanted an extra 10 per cent, and they are cutting prices, and the small retailer is losing out to the department stores and it gets to the point where the small retailer is not selling that article. Then the article is being sold by these chain stores and department stores, and this time they come back and ask for a better price, and the manufacturer is then in the position that he cannot give them any more or he would be simply giving all his profit away. Then they say they will buy nothing from him. Then the manufacturer has to go out and build up his trade again.

The manufacturer often says, "I will buy you out," so you have a backward vertical integration there that tends towards a monopoly. It has been said that General Foods and Standard Brands were organized for that reason so they would have greater bargaining power against chain and department stores who were chiselling and trying to get better discounts. As individual firms they were not able to match it, but with the amalgamation they were able to match it.

Mr. THATCHER: You cannot lay definite facts in front of the committee, where in the past, competition from chain or department stores has put druggists out of business?

Mr. FULLER: I can give you no statistical data.

Mr. FLEMING: Some members didn't hear him tell his own experience last week. Let him tell that.

Mr. FULLER: In 1927 I was engaged in the drug business in Brantford a half a block from the main corner. Two chain stores came in about the same month and started a price war to see which one would get the business of Brantford, and six of us eventually wound up out of business. I think I was the third to go out of business, and I had lasted three months. In that block I couldn't take in a ten dollar bill except on Saturday when I might take in $25. You just put your back against the wall and wondered where your customers had gone and you were heartbroken.

Mr. THATCHER: Was there any resale price maintenance then?

Mr. FULLER: There was none at that time.

Mr. THATCHER: In your opinion if there had been the chains would not have been able to do that?

Mr. FULLER: They couldn't have done that.

Mr. THATCHER: Since 1945 have there been many veterans set up drug stores?

Mr. FULLER: Oh, yes.

Mr. THATCHER: Can you give us any idea how many?

Mr. FULLER: I couldn't give your the number in Canada, but I think the Ontario College of Pharmacy have had 50 per cent of their students who were veterans in the last three years or more, and sometimes 75 per cent, and they go out in a year or so and enter into business.

Mr. THATCHER: Mr. McGregor admitted yesterday some companies would be forced out of business.

Mr. CROLL: He said maybe some.

Mr. THATCHER: In your opinion, what companies are likely to be forced out of business, the chain and department stores or the little druggist?

Mr. FULLER: Without resale price maintenance I would say the small man and I would like to add what one authority has said, "It is not always the least efficient that is first forced out."

Mr. THATCHER: You feel your industry is particularly susceptible to the predatory price cutter?

Mr. FULLER: That is right.

Mr. THATCHER: Do you think from your experience in the drug business that the abolition of this practice might threaten the ability of drug stores to act as public health centres?

Mr. FULLER: I very definitely do, sir.

Mr. CROLL: But not handling ice cream?

Mr. THATCHER: The matter is not so facetious for some of these veterans, who may be adversely affected.

Mr. CROLL: Don't you talk to me about veterans.

Mr. THATCHER: In other words, you would say that abolition might mean that the small drug stores would not be in a position to carry on giving the same health services to the public?

Mr. FULLER: I definitely would say so because in my way of thinking the drug store is a community institution. As far as dispensing is concerned perhaps six drug stores would be able to handle the total dispensing business of Ottawa, according to the population, but it would mean if you wanted a prescription filled in the evening or on Sunday or on a holiday, you would have to go five miles away down town to get it. The drug store just has to be in the community to handle the health needs, and if you have to have streptomycin, aureomycin and penicillin when your child has a sore throat, and a couple of hours may mean a matter of life or death you have to have a drug store there.

Mr. STUART: I believe you have suggested that discounts in connection with large purchases would be very harmful to the small merchant?

Mr. FULLER: Yes.

Mr. STUART: Isn't that the practice in effect in this country?

Mr. FULLER: It is to a certain extent.

Mr. STUART: The National Drug is a large organization?

Mr. FULLER: It is a wholesale and manufacturing organization.

Mr. STUART: I believe you quote prices of National Drug and others in your brief?

Mr. FULLER: No, sir, I do not recall having mentioned the National Drug Company.

Mr. STUART: But there would be some commodities you have listed there that would be the product of National Drug and their prices would be in line with the prices in your brief?

Mr. FULLER: I have not noted any National Drug prices whatever.

Mr. STUART: It may be National Drug have branches all over Canada?

Mr. FULLER: They have wholesale branches in each province.

Mr. STUART: Would you know if in some of their advertising they have offered the drug trade a 40 to 50 per cent discount to entice them to buy their products?

Mr. FULLER: It may be correct, I don't know, sir. My opinion was I was to be questioned on the points I made in the brief and I do not think I have that in the brief.

The CHAIRMAN: That is quite correct.

Mr. STUART: I asked that question of Mr. Preston.

The CHAIRMAN: The point Mr. Stuart was raising is that we had thought those figures you gave us would be representative.

Mr. FULLER: Is National Drug in that?

The CHAIRMAN: If National Drug is in every province in Canada it might seem odd to us if their figures are not in here.

Mr. STUART: I am not reading anything, I am just asking your opinion.

Hon. Mr. GARSON: The witness said yes they would be.

Mr. STUART: Would these huge profits, profits which appear to me to be huge anyway, suggest they are for the benefit of the consumer or the retailer?

Mr. FULLER: Is that a question for me?

Mr. STUART: Yes.

Mr. FULLER: I disagree that the profits are huge. In the first I tried to point out gross profit is based on the margin of goods, plus the volume, plus the turnover, and you take all those added together and you come out with something you hope is above your cost. It is not right to simply say 40 or 50 per cent. For instance, you could buy a pound of Epsom's salts for 10 cents and put it up in 5 or 10 cent packages and your margin is great there, but you would have to sell a ton of it a day to get wealthy on it. It just doesn't mean a thing as far as paying your rent is concerned or paying your help.

Mr. STUART: Would these huge profits, as I still consider them to be, in any way entice a retailer to push a certain brand of goods?

Mr. FULLER: They might. Each individual has to make his own buying policy.

Mr. STUART: You wouldn't consider it a huge profit if a retailer is receiving a profit which is greater than the manufacturer's price?

Mr. FULLER: Greater than what?

Mr. STUART: I can show you articles costing 19 cents which are sold at 40 cents, articles costing 98 cents which are sold at $2, and that margin is certainly greater than the manufacturer's price.

Mr. FULLER: That may be so, but I qualify it with the statement I made before, that if you only sell one once a year or once a month it is not so much a profit. If you have it on your shelf for six months you may be losing money. It all depends on the time element.

Mr. STUART: You would not consider a 54 per cent mark-up a huge profit?

Mr. FULLER: No.

Mr. STUART: Do you have a mark-up of 40 to 50 per cent?

Mr. FULLER: No, I quoted figures in my brief.

Mr. STUART: Why wouldn't it be considered a huge profit?

Mr. FULLER: You only get 14 per cent on tobacco and you may get 40 per cent on something else, and it averages out to 32 or 33 per cent.

Mr. STUART: I am speaking of drug stores.

Mr. FULLER: Cigarettes are sold in drug stores to a considerable extent.

The CHAIRMAN: I understand these mark-ups are on selling price?

Mr. FULLER: Yes.

Mr. FLEMING: Is the sales and excise tax included in that manufacturer's price; is the figure he quoted inclusive or exclusive of the tax?

Mr. FULLER: I would say it would be inclusive.

Mr. STUART: In answering a question which was asked I believe you said this, "competition would not prevent prices from rising."

Mr. FULLER: Is that question addressed to me, sir?

Mr. STUART: Yes, I believe in answer to Mr. Carter, Mr. Preston stated competition would not prevent prices from rising.

The WITNESS: Someone asked me a question, if resale price maintenance was abolished would prices on non-branded lines rise and I said certainly.

Mr. STUART: Can you support that opinion of yours by some concrete evidence?

The WITNESS: Simply because of the fact that you try to average as we keep telling you 33 per cent on the gross, so if you lose on some you are

forced to get higher prices on some other articles. The profit on price-maintained goods is about 25 per cent, but if it was cut down 5 per cent or less, naturally you would have to charge more for other lines in order to make a profit or you would go out of business.

Mr. STUART: You suggest you have a certain over-all profit?

Mr. FULLER: We try to.

Mr. STUART: If price maintenance were abolished would these retail profits of 40 to 55 per cent be cut in any way or would they still continue to be the same as they are at the present time?

Mr. FULLER: You are talking about National Drug and the branded lines?

Mr. STUART: I don't know, I am not a druggist but I imagine National Drug would have many lines known across Canada.

The WITNESS: They are really what we call branded lines; every druggist wouldn't sell every line. Then again I would like to say this, if the manufacturer wishes to give a retailer a larger discount for his co-operation instead of spending money on radio and newspaper advertising, that is the manufacturer's policy. The druggist has not anything to do with the price, the price is set by the manufacturer, and it is his choice whether he spends money giving away radios and automobiles or discounts.

Mr. STUART: This is my last question, in the final analysis it would amount to this, that you are able as a druggist, if you are offered more than the average mark-up, to push a certain brand of goods; is that correct? In other words, if you had a mark-up of 54 per cent you would try to sell that product to the customer rather than sell a similar article where the mark-up was only 25 per cent?

The WITNESS: No, sir, I would far rather sell a nationally known maintained price product at 20 or 30 per cent than I would a non-branded item because you sell more and make more money and the price is maintained. The product is nationally advertised and the customer is sold on that particular product by advertising when he comes into my store and you get so much more business and so many more customers, and you do not have to worry about non-branded lines.

Mr. STUART: I would just like to ask this one question, why would National Drug offer what I consider fabulous profits to druggists who handle their products?

The WITNESS: That is the manufacturer's policy.

Mr. MURRAY: I haven't any questions to ask the witness, but I want to make an observation. I have been a retail druggist for thirty-two years and am vitally interested in this problem because, not only from the druggist's angle but also from the public angle as well. I want to say this morning it has become apparent that certain drug organizations may be precluded from giving further evidence. We have in the room here the president of the Drug Trading Company, which has 1,500 members, and Mr. Gould is a practising retail druggist, and inasmuch as we heard yesterday the theorist angle of this problem, I am wondering if I could appeal to the committee to consider hearing Mr. Crawford Gould, president of the Drug Trading Company.

The CHAIRMAN: As I pointed out, we have the Canadian Pharmaceutical Association here, and if they wish to have the Drug Trading or any other retailer with them, just as Mr. Preston has brought Professor Fuller to help him with the evidence, it will be all right. The fact that the president of this company has turned up is no reason why he should expect to be heard this morning. If that was the case we would have the committee room full of people who have sent us wires.

Mr. CROLL: If they will adopt him up here in front we will be glad to question him.

The CHAIRMAN: These people have come before us with their brief and it is entirely up to them.

Mr. MACINNIS: It is not only a question of what these witnesses want to do, it is a question what the members of the committee want to do with these witnesses. They have been asked questions by a number of members and there may be other members who wish to question them.

The CHAIRMAN: I intend to go right along with the witnesses here, Mr. Preston and his adviser. Mr. Gould may sit alongside if he wishes to.

Mr. MACINNIS: Both Mr. Preston and Mr. Fuller have in their brief put considerable stress on the fact that if resale price maintenance was made illegal then it would give rise to loss-leader selling. Will you define what a loss-leader is?

Mr. FULLER: I don't believe I ever used the word "loss-leader" in my brief. I described the different kinds of competition, predatory and discriminatory and so on, and from my point of view that kind of competition is a little more intense than anything implied by "loss-leader". I think it is difficult in a legal or technical sense to define what is meant by loss-leader.

Mr. MACINNIS: Do you agree with the answer given by Professor Fuller?

The WITNESS: He said it was difficult.

Mr. GOULD: Mr. Chairman, as a retailer actively engaged in business it is my opinion a loss-leader is anything we sell for less than invoice price plus overhead.

Mr. MACINNIS: In your business what percentage would be overhead?

Mr. GOULD: The average I think is 24 to 25 per cent.

Mr. MACINNIS: You would consider a loss-leader would be anything sold under 24 per cent?

Mr. GOULD: Anything where you are losing money at the point of sale.

Mr. MACINNIS: Mr. Fuller, you mentioned your own experience in business in 1927 in the drug business; do you know anything about the number of commercial failures in Canada in that year, was it high or low?

Mr. FULLER: I don't recall, sir, it was before the depression started in 1929 and 1930. As I said, I was getting along comfortably until that point.

Mr. MACINNIS: I think it would be interesting to have the figures for commercial failures because I think the fact that so many business firms have remained in business in the last year is not necessarily due to price maintenance. I have before me the commercial failures for the fourth quarter of the year 1950, issued by the Dominion Bureau of Statistics, also the number of commercial failures in Canada from 1923 to 1950, and I note that in the year 1927, that Mr. Fuller refers to, the commercial failures were quite high, 1,841, a little higher the next year and a little higher the year after that. It continues to go up till about 1933, I think, when it reached the peak. But if you take and compare 1927, 1,841, with 1947, 545, I think you must agree that there is something else besides price maintenance affecting failures.

Mr. FULLER: We have made no claim, sir, that resale price maintenance alone is responsible for a man's success or failure, but certainly resale price maintenance can make the difference whether he goes out of business or not in a price war.

Mr. MACINNIS: At a time when a buyer's market exists, but do you agree with what his position is at the present time, that in a seller's market he is pretty well protected? But what is the case in a buyer's market?

Mr. FULLER: I would not say that he is well protected just simply because there happened to be a seller's market and he can get along without resale price maintenance.

Mr. MACINNIS: Then, would you say that price maintenance tends to keep more people in a certain line of business than is required to meet the necessary needs of the community?

Mr. FULLER: No, sir, I would say the opposite, and I point out in my brief, and give statistical figures as far as they have been available to me, and it shows a decrease in the United States of 8,000 stores, I believe, since price maintenance was legalized.

Mr. MACINNIS: Well, then, it would not make any difference with the inefficient whether the price is maintained or not. Is that your point of view?

Mr. FULLER: No, I do not say that. I think I was efficient as a business man till the chains came in and started a war, and nobody could stand up under that. One man in town had four stores. He is at the point where he has only one now, he closed up three others.

Mr. FLEMING: It is a question of financial resources.

Mr. FULLER: It is a question of financial resources, not efficiency.

Mr. MACINNIS: Well, that is free enterprise.

Mr. FULLER: Let us put it this way, if you want to take free enterprise according to Adam Smith, let us take all of it, which means no government interference with business, free trading.

Mr. MACINNIS: The question I would like to ask, and which impressed me, is the one which said that the retailer had nothing to do with the price the manufacturers set; is that correct?

Mr. FULLER: That is correct.

Mr. MACINNIS: Well, in that instance the retailer is no longer an independent merchant; he is merely an agent for the manufacturer in retailing his price maintained articles.

Mr. FULLER: He is a distributor.

Mr. MACINNIS: He is a distributor but he has no discretion.

Mr. FULLER: He has discretion as to the articles he will sell.

Mr. MACINNIS: In other words he sells pretty much at a figure taking care of his own overhead, is that the position?

Mr. FULLER: Not necessarily.

Mr. MACINNIS: Well, what is his position?

Mr. FULLER: He is not bound to sell at maintained prices, he can sell higher if he cares to. It is a suggested maintained price.

Mr. MACINNIS: What is meant by the word "suggested" here?

Mr. FULLER: A price below which they suggest that we do not sell.

Mr. MACINNIS: Just suggest that you do not sell; if you sell below the suggested price, what is the result?

Mr. FULLER: They can, if they so desire, refuse to sell.

Mr. MACINNIS: You are referring to the retailer, but what would the manufacturer do if the retailer sells below the suggested price?

Mr. FULLER: He can refuse to sell.

Mr. MACINNIS: Yes, but if he does sell below the suggested price, what happens then?

Mr. FULLER: He can refuse to sell any more goods.

Mr. MACINNIS: In actual effect, what would happen if he refused to sell?

Mr. FULLER: In some cases he has.

Mr. MACINNIS: Then the resale price maintenance is not rigid, it depends on the manufecturer.

Mr. FULLER: It is not a law.

Mr. MACINNIS: No, no, I am not suggesting that it is a law. I want to know what amount of independence the retailer has in dealing with a price maintained product. Also, what action the manufacturer takes to enforce what you call a suggested price.

Mr. FULLER: He can refuse to sell his merchandise, his branded merchandise.

Mr. MACINNIS: But would he?

Mr. FULLER: He would if the retailer persisted, possibly because he feels that he has a right to protect his trade mark.

The CHAIRMAN: This will be your last question Mr. MacInnis.

Mr. MACINNIS: If he persisted, what would be the first action taken if he sold below the maintained price?

Mr. HEES: He would get a letter.

Mr. FULLER: He would try to convince the retailer that it was in the best interest of his product to sell it at the price that was suggested.

The CHAIRMAN: Thank you, Mr. MacInnis.

Hon. Mr. BEAUBIEN (Joint Chairman): I would like to ask the witness a few questions. Can there be such a thing as an independent drug store under price maintenance?

Mr. GOULD: There are a lot of us.

Hon. Mr. BEAUBIEN: I mean independent, so that you can do what you like in your own store.

Mr. GOULD: Yes.

Hon. Mr. BEAUBIEN: How does that conform with the answer you have just given? If the retail drug store sells price maintained goods lower than the price that is maintained, where does his independence come in?

Mr. GOULD: It is not necessary for him to handle that merchandise.

Hon. Mr. BEAUBIEN: Suppose he sells below the price that the manufacturer has set and the manufacturer sends him a letter and tries to persuade him to keep the maintained price, and he does not choose to do it and sells those goods below the maintained price continually, and the manufacturer prevents him from getting any more of those goods, then his independence is gone?

Mr. GOULD: Not necessarily.

Hon. Mr. BEAUBIEN: Because he cannot get the goods any more.

The CHAIRMAN: Senator Golding, a little while ago you indicated you wanted to ask a question.

Hon. Mr. GOLDING: I did not, Mr. Chairman, but now that you mention it I will. I would like to follow on from where you left off with your own situation in Brantford, Mr. Fuller. After these independent stores, such as yours, were put out of business, what happened to prices then?

Mr. FULLER: I cannot personally answer that, sir, because I took a position in the United States within six weeks afterwards and I did not follow the trend of prices in Canada from that time on.

Hon. Mr. GOLDING: You did not follow it on through past that time.

Mr. FULLER: No.

Hon. Mr. GOLDING: There has been considerable evidence given here which would, I think, lead the committee to believe that the drug business is really a get-rich-quick scheme, a regular gold mine. I have here the report of the Dominion Bureau of Statistics dealing with the operation results of wholesalers. I will read this to the committee. I find it on page 861 of the Canada Year Book 1950. I read:

> These statistics assists merchants by permitting a comparison of their own operations with the average for their trade and enable them to assess the efficiency of their own phases of operation or indicate areas of operation where economies might be effected. Expenses were grouped into three sections; selling, warehouse and delivery, general and administrative, with a further classification of expense items under each function. Results were presented by sales-size groups for each trade. In addition to profit and loss data, information was obtained on sales composition, sales distribution, floor space, and other factors having a bearing on operating ratios.

Now, the operating ratios for selected kinds of wholesale businesses, this was for 1947, the first column here gives the cost of goods sold, the next is the gross profit, and then you have taken out of that gross profit selling expenses, warehouse and delivery expenses, general and administrative expense, and then you come to the column for net operating profit. And if we take groceries, we find the net operating profit was 1·68 per cent; for fruits and vegetables, 1·36 per cent; tobacco and confectionery, 1·68 per cent; dry goods, 4·51 per cent; piece goods, 7·49 per cent; footwear, 2·58 per cent; automotive parts, 5·74 per cent; hardware, 6·61 per cent; heating and plumbing supplies, 8·86 per cent; and drugs, 2·15 per cent. Now, that is a table that is in the report of the Dominion Bureau of Statistics and indicates the net profit in those particular lines of business. To me, it would indicate that in the drug business the people were not taken for a very extravagant ride by the people who are in that business.

The CHAIRMAN: What is your question, Senator?

Hon. Mr. GOLDING: I leave it there. I was making a statement.

Mr. FLEMING: Would Mr. Fuller like to comment on that?

Hon. Mr. GOLDING: I would ask Mr. Fuller if he agrees with that?

Mr. FULLER: I think you are quite right when you say we are not taking them for a ride.

The CHAIRMAN: Mr. Jutras.

Mr. JUTRAS: Mr. Fuller, I just want to refer for one moment to your reference to Adam Smith. I think you left an inference there that you did not intend to, or at least that was my impression, that there was today a great deal of interference from the state in business. Is that the view you hold?

Mr. FULLER: Yes, and I believe in it.

Mr. JUTRAS: Would you say that there is more interference in Canada than there is in the United States?

Mr. FULLER: I would want to study that longer.

Mr. JUTRAS: In your brief, on page 16, where you quote the conclusions of your authority, Oxenfeldt, you say—and this is contained in conclusion eight:

> One might say that prices are subject to an enormous amount of government regulation, but only to a trifling amount of government interference.

I would hold that that would be very much the same thing in Canada?

Mr. FULLER: I would not like to pass judgment. I will tell you why I put the 12 conclusions of Oxenfeldt in the brief. I would like to have put the whole book in the brief. My contention at the beginning was that the MacQuarrie Committee did not take all the material that was available, that they took Oxenfeldt and lifted things out of the context. Immediately following the statement taken from Oxenfeldt, which was copied from the Federal Trade Commission Report, the MacQuarrie Committee came to a conclusion—and this is the basis on which I would flunk the student again for drawing a false conclusion from the statistics—and therefore I put the 12 conclusions in the brief to show that Oxenfeldt came to no such conclusion as the MacQuarrie Committee came to.

Mr. JUTRAS: On that very point, I am not referring to the MacQuarrie Committee, but Oxenfeldt did come to the conclusion that there was very little interference from government sources in business. You say there is a great deal in Canada?

The CHAIRMAN: I do not think he said that.

Mr. FULLER: I did not mean government interference.

Mr. JUTRAS: I am just trying to find out. The inference I got is that there is a great deal of government interference in business.

Mr. FULLER: Let us say government aid, help or assistance. I did not personally use the word "interference" in the sense that Adam Smith used it. He said that if the government had anything to do with business it was interference with the businessman's rights. I do not hold that view. The government helps the business man in many, many instances.

Mr. JUTRAS: Would you agree that they enjoy a lot more in the way of protection from the government than they do in the way of interference?

Mr. FULLER: Yes, I do.

Hon. Mr. HORNER: I have not attended all the committee meetings, and perhaps this angle has been gone over. The fact that the manufacturer is interested in maintaining a price, that is on branded goods, would it not be due to some of the experiences that he has had in the past, cases in which he would have failed to collect on orders sold, perhaps, to a person without the experience and understanding required to conduct business? Their experiences in the past might have been that they failed to collect, and with this system of price maintained goods they are not only sure of keeping their customer's business but they are sure to be paid for them.

Mr. FULLER: I think there is a great deal of truth in your statement. Historically, pharmacists have been professional people and not business people; they have not been trained in business, and the printing of a retail price on proprietary medicines dates back 150 years to a practice that was current in Philadelphia. Perhaps it is not germane to the subject at all, but business training of pharmacists in colleges has been lax in the past, except in perhaps about half a dozen different cases, and it is only recently in Canada that we are endeavouring to train them in order to make better business men out of pharmacists.

Hon. Mr. HORNER: Was that one of the reasons that manufacturers instituted price maintenance?

Mr. FULLER: Yes, they are a bad credit risk.

The CHAIRMAN: We have now come to the point where we may have a second round of questions, or a summing up by the committee counsel.

Hon. Mr. FOGO: I would like to ask Mr. Gould what sort of arrangement enters into this suggested price. How is that suggested price made? How is that imposed on you?

Mr. GOULD: Well, to the best of my knowledge, when a manufacturer brings out a product he has certain costs, and his selling price is based on that cost, if he is a wholesaler distributor, or if he distributes through the wholesaler, he sets a certain margin for the wholesaler, and on that he bases his resale price.

Hon. Mr. FOGO: As a retailer, now, how is the arrangement made with you?

Mr. GOULD: How is the arrangement made with me?

Hon. Mr. FOGO: How are you told? What are the mechanics of it?

Mr. GOULD: They simply suggest to us that this be sold at a certain price.

Hon. Mr. FOGO: Now, what form does that suggestion take?

Mr. GOULD: Simply a notification of the price either by word of mouth or through the mail.

Hon. Mr. FOGO: Is there any contract?

Mr. GOULD: There might be the odd contract around in the drug business, but they are very odd. As far as the independents are concerned, I think I am quite safe in saying that we are as independent as the gentleman who belongs to a union and is told what price he must demand for his services.

Hon. Mr. FOGO: But in your experience, have you been proffered a contract to sign?

Mr. GOULD: I think I have a contract of many years standing. I do not know whether I can find it today or not.

Hon. Mr. FOGO: Is it still in force?

Mr. GOULD: Still in force.

Hon. Mr. FOGO: Does it set out the penalty that you will incur if you do not maintain the minimum price?

Mr. GOULD: I cannot answer that. I have not seen it in years. I do not even know if I still have it.

Hon. Mr. FOGO: But you have not infringed it, or you have not had any necessity to become familiar with it?

Mr. GOULD: No.

Hon. Mr. FOGO: Well, generally speaking, Mr. Gould, I would take it from what you say that the suggested price is not the subject of a formal document but it is a communication from the manufacturer, or the distributor, to you—that this is the accepted price. That may come from the salesman, commercial traveller, or through a notice, or price list, or the like?

Mr. GOULD: That is true.

Hon. Mr. FOGO: It does not ordinarily mean that you sign anything that you will maintain this price?

Mr. GOULD: No.

Hon. Mr. FOGO: But it is understood that you will?

Mr. Gould, perhaps you can answer this, although it may have been covered. There is such a thing as a one-cent sale. I am not very familiar with the drugtrade but I see from time to time that certain drug stores hold one-cent sales where they sell two articles for the price of one plus one cent. Is that a loss leader?

Mr. GOULD: To answer that, I have never held a one-cent sale.

Hon. Mr. FOGO: That is limited to certain stores?

Mr. GOULD: I am not an agent for that company but it is what we call a business promotion, a sales promotion, to acquaint the public with their merchandise—rather than using national advertising as so many do.

Hon. Mr. FOGO: In the terms of your definition of the sale of an article at less than overhead, it would qualify, would it not, as a loss leader?

Mr. GOULD: I cannot truthfully answer that because I do not know at what price they sell to their dealers.

Hon. Mr. FOGO: You do not know the arrangement between the particular retailers who carry that sort of thing and their suppliers?

Mr. GOULD: No.

Hon. Mr. FOGO: Well, that answers my question.

The CHAIRMAN: Senator Burchill?

Hon. Mr. BURCHILL: Mr. Gould, how many years have you been in the retail drug business?

Mr. GOULD: As a retailer? You mean how long is it since I started in business?

Hon. Mr. BURCHILL: Yes.

Mr. GOULD: I am in my thirty-second year.

Hon. Mr. BURCHILL: Speaking from your experience, your knowledge of practical merchandising and all that sort of thing, you feel that you, as a retailer, would feel the impact of legislation—if legislation was introduced forbidding the practice of maintaining prices?

Mr. GOULD: We do.

Hon. Mr. BURCHILL: You would feel the impact of that as a retail druggist. You see, and the chairman will stop me if I digress too much, we as retailers are concerned with this report and any ensuing legislation; because, in that report, they submit that what is commonly termed the loss leader practice is not to the benefit of the public at large. Yet, they submit no way of controlling that.

Now, price maintenance, or maybe a better name would be "fair trade", has been a method of correcting that evil—which is admitted to be an evil. We feel the government would not want to establish something or to help establish something which can prove to be an evil. I have practiced under both systems.

Certain questions have been asked—for example: What can we do if we are faced with this loss leader menace or cut prices, watever you want to call it?

Now, if I sell in my store a brand of merchandise which sells from the Atlantic to the Pacific at 59 cents and if it is cut, shall we say for a sale, to 49 cents—that is all very well. However, that profit must be made up in order to cover our overhead. Our overhead is fixed and we have very little control over it today. Labour is high—for which we are very happy, because when labour is high all of us are prosperous. Our labour is very high, the highest it has ever been, but with that we have no argument.

However, I will price the article in the other days of the week at 59 cents, or 69 cents. I say that because it was the practice many years ago.

The CHAIRMAN: Have you any further questions, Senator?

Mr. CROLL: Mr. Chairman, I have a resolution which I think is pertinent at this time, in view of what Mr. Gould has said. I feel that the picture would not be complete before this committee without dealing with what he terms a loss leader. So, I move, seconded by Mr. Jutras—

The CHAIRMAN: Just a moment.

Mr. CROLL: I just want to introduce a resolution. I do not expect any immediate action but I feel this is the time to put it before you in order to give the committee—

The CHAIRMAN: In all fairness, we have not come to the point where we are dealing with resolutions on the subject matter of the inquiry. We are still dealing with the witnesses. I think it is a matter which should be dealt with by the steering committee.

Mr. CROLL: No, no, Mr. Chairman. I am placing it before you so that you can place it before the steering committee and do whatever you like with it. I could have waited until such time as you closed the evidence but then the cry would have gone up "We did not have an opportunity to discuss this matter."

I will leave it with you to do with it as you see fit.

The CHAIRMAN: You regard this as a matter for notice of motion?

Mr. CROLL: Yes.

The CHAIRMAN: And not debatable?

Mr. CROLL: Yes.

The CHAIRMAN: The steering committee will decide when it will be dealt with by the main committee.

Mr. CROLL: Exactly.

I move, seconded by Mr. Jutras:

1. That no dealer shall sell or offer for sale directly or indirectly any commodity at a price less than 5 per cent above cost.
2. That this provision shall not apply to the following sales:
   (*a*) of goods damaged or of goods which form the balance of a line which has been discontinued or is out of season
   (*b*) of sales for charitable purposes or relief agencies
   (*c*) of perishable merchandise which must be sold promptly in order to forestall deterioration and consequent loss
   (*d*) of merchandise sold in bona fide clearance sales if advertised, marked and sold as such
   (*e*) of merchandise sold upon the final liquidation of any business and is advertised, marked and sold as such
   (*f*) under the Bankruptcy or Winding-Up Acts or by judical order.
3. "Cost" means invoice cost to bona fide dealer or replacement cost, whichever is lower, less cash or quantity discounts, plus excise duties and sales taxes, if any.
4. "Directly or indirectly" is intended to include trade practices by way of evasion of the Act such as
   (*a*) combination sales of commodities
   (*b*) inflated trade-in allowances
   (*c*) concealed price reductions in premiums and discounts and other sales practices, such as "loss leaders".
5. That is be made an offence, and dealt with under the Summary Convictions Section of the Code.

I am not going to say anymore about the matter at the moment except that I submit it for consideration in the usual way at a later time, and I do so in order to give the committee notice so that it may have some views on this matter. And after, in the light of all that, if it is contemplated that action should be taken, it will give counsel and the minister an opportunity to prepare whatever is necessary.

The CHAIRMAN: This will be regarded only as a notice of motion, Mr. Croll, and it will be up to the steering committee to decide when it should be put forward.

Mr. FLEMING: In view of the decision made, I must ask if this comes within the scope of the reference to the committee?

The CHAIRMAN: Would you care to read the reference to the committee, Mr. Fleming?

Mr. FLEMING: We were told to study the report.

Mr. JUTRAS: Yes, and to suggest legislation.

Mr. FLEMING: This I take it deals with loss-leaders, and the MacQuarrie Commission refrained from making a proposal about loss-leaders.

Mr. THATCHER: If the motion carried, it could throw a new light on the proposal to abolish price maintenance.

Mr. FLEMING: It seems to me that those who have appeared before us should have an opportunity to comment on it.

The CHAIRMAN: I think that the steering committee is the best place to discuss this matter.

Mr. CROLL: Yes, Mr. Chairman, but not today.

The CHAIRMAN: But in any case, since we regard this as a notice of motion, it should not be discussed today, but rather at the next meeting of the steering committee.

Mr. CROLL: That is fine. Give it time to jell.

The CHAIRMAN: Mr. Preston, Professor Fuller, and Mr. Gould, I want to thank you very much for the time and trouble you have gone to in appearing before this committee and in answering our questions.

Mr. PRESTON: And we thank you too, Mr. Chairman.

The committee adjourned.

APPENDIX

THE CANADIAN PHARMACEUTICAL ASSOCIATION, INC.

J. W. Preston, Secretary-Manager

221 Victoria Street, Toronto 1, Ontario

Telephone Empire 3-2627

November 5, 1951.

NEWS FROM THE FRONT

in

THE WAR OVER PRICE MAINTENANCE

Dear Buddy:

In every battle, team play helps to win. While your C. Ph. A. has gone into battle in the war over price maintenance (see C. Ph. A. Journal, November 1), we need your help and we need it now if we are to win.

HERE'S SOMETHING BIG YOU CAN DO

First—As one of the leading business men in your city or town, you can encourage and arrange a meeting of the local business men.

In the fight to preserve price maintenance, business men everywhere have a common interest. Working together you become a power to reckon with. Arrange a meeting, then go ahead and discuss this problem of price maintenance. Draw up a resolution or a petition embodying your views, have it signed by all present, and through the executive offices of your local political organizations, including Liberal, Conservative, C.C.F., Social Credit, or others, demand that your wishes be officially conveyed to your Member of Parliament.

We suggest that few Members of Parliament can afford to ignore the wishes of so many representative groups of electors, providing you display organized opposition. This request for co-operation is being sent to all members of our Association throughout Canada, so where there are two or more members in any community you should work together on this job.

Second—If, as requested, you have not already written to your Member of Parliament, or to other M.P.'s of your acquaintance, why not take time to do so now.

When writing, please express your personal opinions in your own words, rather than use statements made by others. You know the problem and all its implications quite well. You know how the consumer can be exploited, because you too are a consumer as well as a business man. You know only too well where this proposed legislation, if it passes, will first be felt and who will be the innocent victims.

Third—Please remember your M.P. will likely be coming home for the Christmas parliamentary recess which, we understand, extends from December 15 to the latter part of January. This Christmas recess will be a good time to

personally contact your member or to have your business men's group invite your member to a meeting so he may hear your views.

No Member of Parliament should be allowed to return to Ottawa without being made to realize how you and other business men feel about price maintenance.

And finally, may we offer a word of caution. When making statements in defence of price maintenance, if you have occasion to quote statistics, percentages, or other information of a like nature, be sure you have authority for such statements, and always quote your authority. Always remember, if it can be shown that you are wrong in any one statement you make, all your presentation is discredited.

May we advise you that Professor Fuller of the Ontario College of Pharmacy staff is now analysing the MacQuarrie Commission report and all authoritative statements contained therein. He is also compiling statistics regarding our operations in drug stores as a basis for a further brief which your C. Ph. A. propose to present to government officials.

Submitted on behalf of the committee,

V. E. HESSELL, *Chairman.*

Flash—We have just this moment received a telephone call from Ottawa and have been informed that the Hon. Mr. Garson has announced in the House that a Parliamentary Committee of members of the Commons and the Senate is to be set up for the purpose of further investigating the question of price maintenance.

This means that opportunity will be given for further representations to the committee and if the usual procedure is followed, it would indicate that the proposed Bill will not likely be brought down at as early a date as was first anticipated.

HOUSE OF COMMONS

Fifth Session—Twenty-first Parliament
1951

(Second Session)

JOINT COMMITTEE OF THE SENATE
AND THE HOUSE OF COMMONS

ON

COMBINES LEGISLATION

Joint Chairmen—The Honourable Senator A. L. Beaubien
Mr. James Sinclair, M.P.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 10

FRIDAY, NOVEMBER 30, 1951

WITNESS:

Mr. R. A. Harris, Managing Director, C. H. Smith Company, Limited, Windsor, Ont., representing the Canadian Retail Federation.

OTTAWA
EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY
1951

MINUTES OF PROCEEDINGS

FRIDAY, NOVEMBER 30, 1951.

The Joint Committee of the Senate and the House of Commons on Combines Legislation met at 10.30 o'clock a.m. The Joint Chairmen, The Honourable Senator A. L. Beaubien and Mr. James Sinclair, M.P., were present, Mr. Sinclair presiding.

Also present:

For the Senate: The Honourable Senators Aseltine, Burchill, Fogo, Golding, Horner, Lambert, Vaillancourt.

For the House of Commons: Messrs. Beaudry, Blair, Boucher, Carter, Mrs. Fairclough, Messrs. Garson, Harrison, Hees, Jutras, MacInnis, McLean, (*Huron-Perth*), Shaw, Sinclair, Stuart (*Charlotte*), Thatcher, Welbourn.

In attendance: Mr. Guy Favreau, Counsel for the Committee; Mr. R. A. Harris, Managing Director, C. H. Smith Company, Limited, Windsor, Ontario, representing the Canadian Retail Federation.

The Chairman presented the Fourth Report of the Sub-Committee on Agenda and Procedure which reads as follows:

FOURTH REPORT

THURSDAY, NOVEMBER 29, 1951.

Your Sub-Committee on Agenda and Procedure met on Thursday, November 29th and agreed to recommend:

1. That on Tuesday, December 4th, the Committee sit at 10:30 o'clock a.m., and at 3:30 o'clock p.m., and that it call representatives of the Canadian Manufacturers Association for the morning sitting, and recall Mr. F. A. MacGregor for the afternoon sitting; that on Wednesday, December 5th, the Canadian Jewellers Association be heard at 3:30 o'clock p.m., and on Thursday, December 6th, the Ontario Retail Hardware Association be heard at 10:30 o'clock a.m.
2. That your Sub-Committee meet on Tuesday, December 4th, or Wednesday, December 5th, to consider Mr. Croll's motion of which notice was given at the meeting of November 29th, and such other notices of motion or proposals as may in the meantime be referred to it.
3. That on Friday, December 7th, the Committee sit at 10:30 o'clock a.m, to consider the proposed draft bill before it, and such other motions or recommendations reported by your Sub-Committee.
4. That the briefs of all organizations which have been invited to make representations to the Committee be printed as appendices to the daily proceedings; and that in addition the briefs voluntarily submitted by the T. Eaton Company Limited, and the Western Garment Manufacturing Company Limited be also printed.
5. That the Resolution passed by the 27th Annual Meeting of Delegates of the Saskatchewan Wheat Pool, held in Regina, November 6-16, 1951, and the letters addressed to the Committee dated November 16, 1951, by the Canadian Chamber of Commerce, and the Dominion

96795—1½

Joint Legislative Committee Railway Transportation Brotherhoods, dated November 27, 1951 be printed as appendices to the Committee's Minutes of Proceedings.

6. That Mr. Thomas N. Phelan, K.C., be employed as Committee Counsel at a fee of three hundred ($300.00) dollars for each day of attendance at Ottawa, and Mr. Guy Favreau as Assistant Counsel at a fee of One hundred and Fifty ($150.00) dollars for each day of attendance at Ottawa; and that, in addition, each of them be granted an expense allowance of fifteen ($15.00) dollars per diem while in Ottawa on the Committee's business, as well as being reimbursed for actual transportation expenses to and from Ottawa; both appointments to be effective as of Tuesday, November 13th, 1951.

CHAIRMAN.

Mr. Jutras moved that the Fourth Report of the Sub-Committee on Agenda and Procedure be concurred in.

Mrs. Fairclough moved in amendment thereto that the third recommendation contained in the said report be deleted and the following substituted therefor:

That the sittings of the Committee be extended beyond Thursday, December 6, and that the T. Eaton Company be called, and such other witnesses as other members of the Committee may deem desirable.

And the question having been put on the said amendment, it was negatived on the following division:

Yeas: The Honourable Senator Horner. Mr. Blair, Mrs. Fairclough, Messrs. Hees, MacInnis, Shaw, Thatcher,—7.

Nays: The Honourable Senators Beaubien, Burchill, Golding. Messrs. Boucher, Carter, Garson, Harrison, Jutras, Roberge, Welbourn,—10.

And the question having been put on the motion of Mr. Jutras, it was resolved in the affirmative.

Mr. Harris was recalled and questioned.

Mr. Harris tabled a statement relating to certain articles of merchandise on which resale prices are maintained, and certain articles on which resale prices are not maintained, which is printed as *Appendix A* to this day's Minutes of Proceedings and Evidence.

Mr. Stuart tabled price lists of L. H. Packard & Co. Limited, Montreal, Quebec, and the Savage Shoe Company Limited, Preston, Ontario, which are printed as *Appendices B* and *C* to this day's Minutes of Proceedings and Evidence.

The witnesses retired.

At one o'clock p.m. the Committee adjourned until Monday, December 3, at 10.30 o'clock a.m.

A. L. BURGESS,
Clerk of the Committee.

EVIDENCE

NOVEMBER 30, 1951

10.30 a.m.

The CHAIRMAN: Will the committee come to order. The first order of business is submission of the fourth report of the subcommittee on agenda and procedure which met yesterday. The report reads as follows:

(See Minutes of Proceedings)

Mr. JUTRAS: I move adoption of the report.

The CHAIRMAN: Mr. Jutras moves adoption of the report.

Mrs. FAIRCLOUGH: With reference to the last date on which witnesses will be heard: as was stated yesterday by one member of the subcommittee we felt very strongly that The T. Eaton Company should be heard, so I would like to move that the sittings of this committee be extended beyond Thursday and that The T. Eaton Company be called, and such other witnesses as other members of the committee may deem desirable.

The CHAIRMAN: You have heard the amendment of Mrs. Fairclough. It was discussed yesterday by the steering committee. The reason, again, that the steering committee turned it down was because of the line or objective that we have been following, that the principal reason for the appointment of this committee was to give to those who have protested against the proposed legislation an opportunity to present briefs and, if the committee so decided, to call them before us.

Mr. MACINNIS: Could I have a word, Mr. Chairman. I am inclined to support Mrs. Fairclough's amendment, for this reason. On various occasions during the sittings of the committee there was some comment made on The T. Eaton Company, and the suggestion made of the advantageous position that the company would be in, as well as other large companies, if price maintenance was made illegal, and for that reason I think we should have The T. Eaton Company here and let the members question their representative. It should not take very long. Besides, I think we agreed at the beginning to hear those who in any line of manufacturing or retailing dissented from the main brief. I understand that The T. Eaton Company takes a dissenting stand, and for that reason—I do not feel too strongly on it— I think there is a good ground for calling them.

The CHAIRMAN: I will put Mrs. Fairclough's amendment to the committee.

Hon. Mr. GARSON: Would you just outline what the amendment is.

The CHAIRMAN: Mrs. Fairclough has suggested that as well as groups that have been called—this was also before the steering committee yesterday—that The T. Eaton Company be called.

All in favour of Mrs. Fairclough's amendment?

Hon. Mr. BURCHILL: Has The T. Eaton Company asked to be called?

The CHAIRMAN: No.

Mr. THATCHER: What did they put the brief in for?

The CHAIRMAN: They submitted a brief.

This is a decision which is now being made, properly, by the committee. Those in favour of Mrs. Fairclough's amendment? Opposed?

The amendment is defeated 8 to 7.

Mrs. FAIRCLOUGH: Because of the narrow margin, Mr. Chairman, I think we better have a recorded vote.

The CHAIRMAN: Those in favour of Mrs. Fairclough's amendment will answer yes and those against, no.

(A recorded vote was then taken and the amendment was negatived).

Mr. Jutras' motion is that the fourth report of the steering committee be adopted. All in favour? Contrary?

Carried.

We will resume questioning of the Canadian Retail Federation and we will begin by having a summary of questions from the committee counsel, Mr. Favreau.

Mr. R. A. Harris, Managing Director, The C. H. Smith Company, Windsor, Ontario, called:

By Mr. Favreau:

Q. Mr. Harris, as you know, this committee has decided not to ask for any specific figures from your group, but you have been allowed, should you desire to do so, to offer any figures concerning prices, or otherwise, that you wish. Have you taken any decision in that respect?—A. Yes, we have.

Q. Will you state to the committee what you have decided to reveal to this committee?—A. Mr. Chairman, in our brief it was stated, while their cannot be conclusive evidence on this point, it should be pointed out that there is sufficient data available to indicate that retail margins on resale price maintained lines are, if anything, lower than on those lines which are not price maintained—quite contrary to the conclusion in the report, referring to the MacQuarrie report. Now last week—

Hon. Mr. GARSON: Could I interject there, Mr. Harris? Would you identify the conclusion that you are referring to by reciting it? You say "quite contrary to the conclusion in the report". Would you identify it as you go along so we will know what you are talking about?

The WITNESS: I am not sure it was given directly in the brief. Could we look at it and refer to it at a later time?

Hon. Mr. GARSON: Yes.

The WITNESS: Last week in making our submission we pointed out that we considered it a rather scandalous thing that conclusions should be reached without actual evidence, and we offered to produce what little material could be gathered together in the course of four or five days to indicate that a disparity does exist between the mark-up on price maintained items and non-price maintained items. We are pleased to table it this morning. They are not conclusive, gentlemen, as you will realize, but we think they are indicative and we might suggest as we suggested last week that a conclusion as important to the economy of this country as that which is proposed by the legislation in mind should not go into effect without some facts and figures behind it and without much more profound and thorough investigation than we were able to give this in the very short time at our disposal.

Mr. THATCHER: I wonder if Mr. Harris has those figures prepared so each member can have a copy?

The WITNESS: I am sorry, Mr. Chairman, but this was completed at about 8 o'clock last night and I think we were able to get off one set of typed copies. You might like to distribute them at your discretion.

The CHAIRMAN: We appreciate your difficulty. These figures, of course, will be part of the record.

The WITNESS: If you will refer to the figures we have produced you will note first we have a column describing the item, next we have a column headed price maintained percentage mark-up of selling price, and the next column is headed not price maintained mark-up of selling price. What we attempted to do was find the equivalent products price maintained and not price maintained so we could get a comparison on that basis. There were, I think, five companies which contributed figures to us and we tried to pick out appropriate departments and departments which were not presenting a brief of their own. This tends towards the soft goods lines since I believe the Electrical Appliances Association will be presenting a brief of their own and also the hardware dealers.

We first of all took men's cardigan sweater coats and the price maintained item shows a mark-up of 36·1 per cent, non-price maintained 39·2 per cent. Top coats shows a mark-up of 33·8 on price maintained, and 36·6 per cent on non-price maintained coats. The next classification is one of hosiery and there I see no point in going into detail.

By Mr. Thatcher:

Q. Are you in a position at the present time to tell us in each case the manufacturer or brand?—A. The stores gave these figures on condition their names would not be revealed. I would be very glad to show it to anyone off the record.

Q. Without indicating the store or stores can you give approximately the locality and city in which this store is established, which would not compromise anybody?—A. I do not think that is possible.

By Hon. Mr. Garson:

Q. You know it but you won't disclose it?—A. That is right.

Q. While we can accept your story we have no way of checking as to whether it is accurate.—A. I would be very glad to submit it privately.

Q. Have you the prices on these articles as well?—A. Yes.

Q. Prices for each one of these articles?—A. For each one of these articles, cost and selling price. In the case of women's hosiery I see no point in going into each particular line listed. It becomes quite clear that the price maintained items as opposed to the non-price maintained items, which are privately branded items, are in most if not every case a lower mark-up.

The next classification is ladies' slips and you will find there is one slip which is not price maintained which has a lower mark-up than the price maintained articles. As I say this is not consistent throughout. We have tried to be fair in the selection of our items. It shows ladies' slips have mark-ups 36·2 per cent, 36·6 per cent, 37·9 per cent, and one non-price maintained slip has a mark-up of 35·1 per cent and another 38·3 per cent. Ladies' panties 37·1 per cent on price maintained articles, 38·2 per cent on non-price maintained articles.

The next is junior girls' vests and briefs, and the price maintained item is 35 per cent. Now, in this case a different procedure was followed by the store involved, and they took the over-all mark-up for all items in the department for the year to date and showed a comparison of 35 per cent for price maintained articles against an average mark-up for items in the department of 35·5 per cent.

The next group has to do with infants' wear and we have a diaper item which shows a mark-up of 24 per cent, infants' vests 35 per cent, infants' briefs 35 per cent, and the average mark-up for the department is 38·6 per cent.

Q. That is on identical merchandise?—A. On all infants' lines.

Q. Including the ones you specify and all others besides?—A. Yes.

Q. And you say that is a comparison?—A. Yes, sir, because these were the only price maintained items in that department.

By Mrs. Fairclough:

Q. Would you repeat those prices again because they are much lower than the average?—A. The average is 24 per cent; infants' vests 35 per cent, infants' briefs 35 per cent, and the average for the department is 38·6 per cent.

Q. Those are the only three in the department price maintained?—A. In that particular store.

By Mr. Jutras:

Q. On diapers or on all infants' wear?—A. All infants' wear.

By Mr. Hees:

Q. These were the only price maintained items in the infants' department?—A. Yes.

By Hon. Mr. Horner:

Q. What was the percentage on the price maintained article?—A. In the case of diapers 24 per cent, vests and briefs 35 per cent, and those were the three price maintained articles.

By Hon. Mr. Garson:

Q. Did you have any non-price maintained diapers in the department?—A. No.

Q. Did you have any non-price maintained articles among the articles you have named?—A. Yes.

Q. How do they compare?—A. They would be higher.

Q. Have you the figures?—A. No.

Q. That would be a fair comparison?—A. I do not think so, sir, I think the most conclusive comparison is the average mark-up for the department versus the mark-up for non-price maintained lines.

By Mr. Thatcher:

Q. Did you make an effort to pick figures which would bolster your case?

Mr. MacINNIS: That is an unfair question besides being very foolish. You are asking if he is trying to give us evidence that supports his case.

Mr. THATCHER: I would like to ask it, nevertheless.

Mr. MacINNIS: I have no objection.

The CHAIRMAN: I think it is an unfair question. Obviously these gentlemen are here to put their best case forward for their side, and we understand that.

Mr. MacINNIS: It doesn't mean, Mr. Chairman, that they are not perfectly fair in the evidence they are bringing forward.

Mr. THATCHER: When Mr. Harris started he said these figures weren't conclusive and he used the word "indicative." Of course if a few were picked here and there to bolster the case they would not be indicative.

The WITNESS: Mr. Chairman, may I answer Mr. Thatcher in this way, that in this particular case that happens to refer to our own store, I simply asked the department manager to give me a list of price maintained articles and give me the over-all mark-up for the year to the end of October, and this is the result.

By Mr. Thatcher:

Q. Are we to assume in your particular store the general rule is the mark-up on price maintained goods is lower than the mark-up on non-price maintained goods?—A. That is true; that is the very substance of our brief.

Hon. Mr. BEAUBIEN (*Joint Chairman*): That is the same category of goods?

The WITNESS: Yes, the same category. The next group is bedspreads. Here we were unable to find a direct comparison, we had to take homespun and chenille, and homespun showed a 33 per cent mark-up on price maintained articles, 41 per cent on non-price maintained articles. There were two other bedspreads with a 34 per cent mark-up on price maintained goods and 39 percent on non-price maintained goods. We have a note that these bedspreads are not exactly comparable articles but may indicate mark-ups for this particular type of merchandise.

Now, gentlemen, we reach an item which is one of the exceptions. We found men's rubber boots price maintained had a 33·2 per cent mark-up and the nearest non-price maintained article was knee-length rubber boots with a mark-up of 29·9 per cent. Men's scampers show a 34·2 per cent maintained mark-up, compared with the non-price maintained mark-up of 36·5 per cent. With children's shoes we again have an exception in the case of this particular store where price maintained shoes give a slightly higher mark-up than non-price maintained, which they are selling under a private brand. We have a group of women's rubber footwear showing mark-ups of 29 per cent, 36 per cent, 32 per cent, 37 per cent and again 36 per cent on price maintained items. The average for the women's shoes department is 41·5 per cent. In that particular store it was impossible to find a comparison with non-price maintained items because there were not any in that classification. We have an item of shaving cream showing 34 per cent mark-up, and a private brand 45·5 per cent. Tooth paste was 34·1 per cent mark-up and the private brand was 41·7 per cent. Men's shirts, which is a very important classification, showed mark-ups on price maintained shirts of 34·3, 33·3, 34·3 and 36·7 per cent as opposed to non-price maintained lines showing mark-ups of 37·5, 36·1 and 39·7. In men's hosiery on price maintained lines we show a mark-up of 32 per cent on non-price maintained goods and one item of 35 per cent. We show spun nylon hose 38·3 per cent, and sheer nylon 36·4 per cent, and the two non-price maintained items were 39·7 and 39·1 per cent. Finally on that page there is sleeveless jersey men's underwear, and price maintained articles were 41 per cent and non-price maintained 40·3 per cent. That is another case where non-price maintained articles are slightly lower. We have a group of blankets price maintained which show mark-ups of 32·1 per cent, 34·1 per cent, 33·8, 34 and 30 per cent, and the average mark-up in the bedding department is 35·3 per cent, all of those blankets being under the average for the department. There was one non-price maintained blanket with a mark-up of 37·3 per cent.

Now we get to the next to last group of toys and there we have a 24-inch tricycle price maintained showing a mark-up of 27·3 per cent, wagons 25·3 per cent, kiddy cars 27·4 per cent, toy train transformers 30·6 per cent, toy trains 37·2 per cent, mechano sets 32·7, record players 30·5 per cent, bicycles 36·6 per cent, and the average mark-up for the toy department is 37 per cent.

Lastly in the sporting goods department there are outboard motors 30 per cent, bowling balls 20·7 per cent, golf balls 33·3 per cent, bicycles 30·2 per cent, skates 32·6 per cent. All these are price maintained and the average mark-up for the sports department is 34·3 per cent.

We suggest, Mr. Chairman, that those figures are indicative of the fact that price maintained items show a lower mark-up than non-price maintained items and they warrant further factual consideration.

By Mrs. Fairclough:

Q. Would you say at this point, for the record, whether these percentages are figured on the selling price?—A. On the selling price.

By Mr. Jutras:

Q. Would it follow from that that the selling price is higher?—A. Have you any specific example in mind?

Q. You refer to mark-up on the selling price, is the selling price to the consumer necessarily higher in these cases?—A. We try to pick them as closely to each other in price as we can.

By Mr. Favreau:

Q. Do you not think it would have been more illuminating for the purpose of the committee to set up respective consumer prices next to the items?—A. I think it would. I am sorry we did not do it. We would be very glad to give it to you now on any item that you choose.

Q. Does the fact not remain that if these mark-ups are higher with each of the smaller retailers, the client in the case of the non-price maintained article may, if he can succeed, obtain from the retailer a reduction in price—which he could not do on the price maintained articles? Can he obtain a reduction in price?—A. The customer?

Q. Yes.—A. Well, I am assuming, Mr. Favreau, that merchants have a firm price and that they do not barter. Some may, I do not know.

Q. In the light of the general contention that resale price maintenance has, as one of its objects, the securing of a certain assured margin of profit for the retailer, do I take it, on these price maintained articles that if the price were no longer price maintained the mark-ups would become reduced?—A. I think the manufacturer could answer that better than I can, Mr. Favreau. I do not think there is any question but that those which are best known will be used as footballs—and the price will be reduced to the public; and therefore the mark-up to the retailer will be less.

Q. In your experience can you attribute to these higher mark-ups, at least on the list which you have supplied there, on the part of the non price maintained articles any particular reason—.—A. Why the mark-up is higher?

Q. Yes?—A. Yes, the item has to show a higher mark-up to become attractive to the retailer—so that he will stock it. The mark-downs, generally speaking, are higher on non price maintained items than on price maintained items—because the risk is greater.

Q. Do I take it in most cases the manufacturer's price is a little bit lower than in the case of the resale price maintained articles?—A. No, I did not say that.

Q. But would that not be a fact, though?—A. That the manufacturer's price is lower?

Q. In most of those cases? For the very articles which are listed on those three pages?—A. Yes, that would follow—if they are selling at the same price.

Q. Referring to the infants' department, is it not a fact that especially in that department non price maintained articles to a great extent consist of home-made articles which are sold to the retailer by individuals and not by large manufacturers? That is especially true in those departments?—A. That would not be my opinion.

Q. I am just asking.—A. I would say the great majority would be manufactured items.

Q. Are there not many home-made articles in the infants' departments?—A. Very few in the total of the country.

Q. But those are usually sold at a higher price?—A. The ones made at home?

Q. Yes?—A. I have no experience with it.

Q. I now refer to your brief, Mr. Harris and I will refer particularly to page 2, point number 5. I will read from point number 5 the following sentence:

> A survey of retailers' margins for price maintained goods shows they are by no means excessive in terms of the traditional cost of merchandising particular products.

Would you explain to this committee what your association or group means by "traditional cost of merchandising"?—A. Mr. Chairman, "traditional cost" means this. With some items there is a high element of service or a high element of risk so, traditionally, a higher mark-up is required in those departments than in departments where a lower element of risk or service is involved.

Q. And on page 4, in the third paragraph referring to a similar subject, covering both levels of distribution apparently, we read:

> Retail margins for comparable price maintained goods offered by different manufacturers do not vary to any marked degree because there is a knowledge at the manufacturing level of the established cost of distributing that class of goods.

Would it be fair to say there is such a thing in marketing as the approximate cost upon which one can fix in advance the margin which will really benefit all of the distributors of a particular category of goods?—A. I do not understand the question, Mr. Favreau.

Q. Can we say in advance, or decide in advance, that there is a real average cost of distribution which we can take into consideration in fixing the margin which will be profitable to all distributors of a particular article?—A. Well, I think that is determined largely by competition.

Q. What do you mean when you say the manufacturer is the one who knows in advance the tradition cost of merchandising. I presume that must be average cost to his distributors—so that he can fix the price himself which will give all of the distributors a fair margin of profit?—A. I do not think we referred to traditional cost of distribution.

Q. That is what I take from those statements on pages 2 and 4, when you state that manufacturers have to take into account or they have to have knowledge at the manfacturing level of the established cost of distributing that class of goods? I may not have read your brief correctly but I gathered that was one of the elements that was taken into consideration by the manufacturer in advance in setting his price so as to ensure or guarantee the retailer or wholesaler a fair margin of profit?—A. Yes.

Q. Now, is it not a fact that the cost of merchandising and distributing, even in trade of the same category of goods, varies widely with different wholesalers or retailers—with each individual?—A. There is a difference in cost of operation, undoubtedly.

Q. Which would reflect on the respective margins of profit of each of the dealers in one particular brand of article?—A. Yes.

Q. Would you say that these figures from the Dominion Bureau of Statistics, for instance, would reflect quite accurately the ranges between cost of merchandising in certain categories—for instance in the wholesale dry goods business? I see that for the middle range—that is not taking the extreme low or the extreme high but the middle range, the expense of distributing dry goods would be from 10·1 per cent of the gross sales price to 16·7 per cent—

being a margin of 6·1 per cent. That is just in the middle range. Would that be approximately right?—A. I would have no knowledge of those figures. I have never seen them.

Q. In the hardware business I see that the two figures, the lower and higher in the middle range, would be 11·1 per cent for those having the lower cost of merchandising and 19·0 per cent for those having the higher cost—in the middle ranges?

If that is true could that not be one factor which should enable a particular distributor to make his purchaser profit by that difference in cost of merchandising, in the form of lower prices?—A. Well I would like to take specific cases if it were possible—because I think broad generalizations of that nature are very dangerous. Take the wholesaler in the dry goods business. What does he carry? How wide a range does he carry? Is he carrying dresses? If so, then he needs a much wider margin than if he is simply carrying flannelette. Is he carrying silverware? I think the character of the merchandise they carry determines to a great extent the margin that they require.

Q. Even as between dealers or retailers carrying on exactly the same line of merchandising, is it not a fact that there is sometimes in the same city, as between two stores, a tremendous difference in the cost of merchandising?—A. In the cost of merchandising?

Q. Well, if you include upkeep of the business, of the store, employees, services rendered, and all those items which enter into cost?—A. There is certainly a spread in the cost of operation. One store might be more difficult to heat than another. How important that would be in the final operation of the business I would not know.

Q. On page 3 of the brief—and this has been and is one of the arguments advanced by many groups in favour of resale price maintenance—you state: "Where the buyer has no brand assurance and production is only to meet a price, there may be a corresponding decline in quality—but the consumer has no simple method of knowing, which means that the so-called advantage that is obtained is merely illusory."

Would you be prepared to enlarge on that principle and state in what manner and to what extent it is your opinion, and the opinion of your association, that resale price maintenance in branded goods is intimately linked with the maintenance of quality or the assurance of quality?—A. It is very intimate and linked very closely because it is connected with brand. I think I said all of this last week, but brand is the protection of the public over a period of time in those items where wear and use are important factors. If you will remember, I gave the illustration of a man's shirt. Where a particular brand of shirt is found satisfactory year after year after year, the manufacturer is going to take great pains to see that the quality of that shirt is maintained. So, if I remember the phrase correctly, "the most priceless ingredient in a product is the integrity of its maker."

Hon. Mr. HORNER: We all understand that—even if you are hiring counsel the cheapest one is not the cheapest in the long run.

Mr. HEES: Hear, hear—especially if you go to jail.

The WITNESS: So, brand is the protection of the public.

Let me still stay with these shirts. Another shirt that is offered to the public, unbranded and on the counter, may look exactly the same as the branded shirt. However, those of you who know textiles know that there is filler used in cloth and, by the use of filler, two fabrics can be made to look very much the same but they are very different in quality—wearing quality. So the one that is heavily soaked with filler, as soon as it goes through the wash it goes open and slazy, whereas the other one, which is a genuine piece of cloth, stands up and gives the wear.

By Mr. Shaw:

Q. How do you account, Mr. Harris, for the fact that, integrity being so important in connection with a brand name, that so frequently the manufacturer of branded goods will authorize the sale of seconds or soiled commodities at a lower price?—A. How do I explain that?

Q. Yes. Would it not be far better, and basic to your argument, for him to withdraw those articles from the market entirely?—A. Well, I think it is fine evidence of the integrity of the manufacturer that he does have seconds, and when they are sold as seconds he is declaring them as seconds and not as firsts. He must market them and he is marketing them honestly by marking them as seconds.

Hon. Mr. HORNER: He does not want to injure the reputation of his first quality goods, and his good name as a manufacturer. Oftentimes, too, seconds turn out very well in wearing qualities.

Mr. SHAW: I agree that if he declares they are seconds it is an honest practice, but I was wondering what effect that might have, let us say, on the integrity—it is not the best word—of him as a manufacturer, because when an individual buys that shirt with a brand name, he knew when he bought it that it was a second, but it does not give the service.

Mr. BEAUDRY: Nor does he pay the price.

Mr. HEES: It was advertised as a second; he knew what he was buying.

Mr. SHAW: That is right. I am just trying to find the effect on the brand name of that product.

The WITNESS: It is a great protection and guarantee for the public in their buying, and in fact, from experience, when products of manufacturers of high repute are put on sale, when they are seconds, there is a very great public demand for them.

By Mr. Jutras:

Q. Is it not a fact that in these cases the brand name is not on the product? —A. It may or may not be.

Q. In many cases it is taken off.—A. It all depends when it became a second, before or after the name was put on.

By Mr. Favreau:

Q. The last question. On page 5 I read the following suggestion on the part of your group:

> Since the retailer will undoubtedly be selling other goods which are not price maintained, it is perfectly in order for him to reduce the prices on those articles or accept higher trade-in allowances on resale price maintained goods where this is feasible.

Now, is that not a contradiction of a denial of the principle of resale price maintenance, the assumption that if price maintenance cannot be departed from directly it could be in an indirect manner by way of larger trade-in allowances? —A. Mr. Chairman, I answered this last week. Do you wish me to answer it again?

Mr. FAVREAU: That is all, then.

The CHAIRMAN: The first person on the list today is Mr. Jutras.

By Mr. Justras:

Q. To begin with, on your comparison of prices, you did intend to indicate that the mark-up was higher, if I understand you right, on the non-price maintained articles than it was on the price maintained atricles.—A. Generally speaking.

Q. Would you say that this higher mark-up is due to the fact that the mark-up is not quite high enough on the price maintained goods and that the others have to carry them?—A. We would like to see a higher mark-up on price maintained items, yes.

Q. I am not trying to embarrass you.—A. I am not feeling embarrassed.

Q. The only point is, do you feel that you need a higher mark-up on the non-price maintained goods to carry the others?—A. Yes.

Q. In comparing the two practices, is it not a fact that when you handle price maintained goods you must give preference to those goods over the others?—A. One must give preference to them in what way?

Q. I mean, if you handle price maintained lines, although you are expected to have those particular lines out in front, that many of the others are liable to be put under the counter?—A. Every retailer is going to promote most the things that sell best, things that people want most, and if that is a price maintained branded item, then I would answer your question in the affirmative, that he will give it first place in display and in his selling effort.

Q. But is not the retailer under a certain obligation, for instance—let me put it the other way: would he not get into trouble with his supplier if, for instance, he pushed any other lines that are not price maintained as against the price maintained lines I think the Frosst case, for instance—.—A. No, I would not think so. It is a free world, we hope, still.

Q. Is that not what happened in the Frosst case?—A. I am not familiar with the Frosst case.

Mr. BEAUDRY: By the way, Mr. Chairman, have we had the declaration and answer to the declaration and the judgment in the Frosst case included in the record?

Mr. FAVREAU: I received it and it is being translated, and the first time that it is asked for it will be distributed, so if you are asking for it—

The CHAIRMAN: We will table it and print it as an appendix.

Mr. BEAUDRY: I think, then, we should not refer to it till we have all the facts before us.

Mr. JUTRAS: I was not referring to the judgment in the Frosst case; I was referring to what brought the question into court.

The CHAIRMAN: Mr. Harris, in any event, said he had no knowledge of it.

By Mr. Jutras:

Q. I was under the impression that a man who was handling a price maintained line had to give it a certain preference over others, that that was his understanding with the supplier. Suppose, now, that this price maintenance practice is done away with. I assume, then, that the other non-price maintained articles that are now on the market will have a freer access to the public than they now have, and since they have a larger mark-up now than the mark-up on the price maintained articles, and if they come down to same mark-up as the price maintained articles then that would mean a cheaper article to the public because the cost to the dealer now is lower and since it has a larger mark-up at the present time.

The CHAIRMAN: I wonder if you could break that question down, Mr. Jutras. I am having difficulty in following you.

Mr. JUTRAS: I think the witness has got the point.

The WITNESS: Mr. Chairman, I think I have the point, and I think Mr. Jutras has stated the problem with about the confusion that is in everyone's mind. I tried to put it in writing today. I tried to state it this way:

> "Government states it believes in free enterprise. Free enterprise has developed price maintenance. Government is against price maintenance. Abolition of price maintenance means cut prices. Government

says bring in legislation to prevent price cutting or loss-leaders. Government believes in free enterprise."

and I just made a little note at the end here, "ha-ha."

By Mr. Jutras:

Q. My point was simply this, and I do not think it is at all involved. If the manufacturer who is to compete with the price maintained goods now has to offer larger margins to get his product on the counter, and even then has difficulty in doing it—as there are certainly indications to that effect—then if there is no price maintenance I assume he could keep the mark-up down to the same level as the others, and from that will inevitably flow a lower price to the consumer.—A. Well, Mr. Jutras, if a retailer finds that a price maintained item does not pay him, he drops it. Likewise, if he finds a non price maintained item does not pay, he drops it, and his test in both cases is, primarily, what is the demand for it from the public, what is the rate of turnover, what is his margin. All those factors go to determine the profitability in the sale of any item, but you are suggesting, I think, that the manufacturer, once he is dictating whether or not how much he will sell, the manufacturer may do that but the retailer has the right to put the line out just as the manufacturer has a right to take the line out.

Mr. BEAUDRY: May I make an observation, Mr. Jutras?

Mr. JUTRAS: My time is running out.

By Mr. Jutras:

Q. I realize the retailer is free to a certain degree to drop the line but, on account of the aura of great respectability, of quality, that has been created around those price maintained articles, he is not quite free because people have been driven to that particular product on account of the practice, and if he wants to bring them into the store he must almost of necessity handle that product. Now, I know you are going to tell me there is quality there and everything else connected with it that is advertised, but I still say, in some cases at least, that this is not quite the case. For instance, we were given the case—referred to by the Minister of Justice—by Professor Fuller on the item of aspirin. Now, there are aspirins that are price maintained that sell at—I just forget the price, I think they are 18 cents in Canada—and then there is a long list of aspirins selling right down to 9 cents a hundred that can be had by the public, but I know, as a consumer, largely because of this advertising and this price maintenance, I always went into the drug store with the idea that I had to buy the best and I paid the highest price for aspirin on the assumption that it was the best aspirin and that I was getting more value for my money. Now, thanks to Professor Fuller, I am told that they are all exactly the same product, there can be no difference because their content is fixed by law. Actually, I have wasted my money all these years by sticking to this particular brand name.—A. Perhaps your headache was cured more quickly on account of the price you paid.

Q. No. It is exactly the same product, and I had a bigger headache in paying for the dearest product.

The CHAIRMAN: This is your last question, Mr. Jutras.

By Mr. Jutras:

Q. I have one last question. This is entirely along a different line. I want to refer to your paragraph 6 on page 2. Now, I know you did not write the brief yourself, but I think upon reading that paragraph you will realize that these three lines are entirely unjustified, if I may say so, and are certainly uncharitable to the primary producers of this country. I think there is a very big misunderstanding on the part of your organization on this question of

orderly marketing. Now, just briefly and in two words: if I may refer to Professor Fuller, in his brief he pointed out that the wheat market in the United States was the only pure competition that existed, and that it was the only pure competition on the farmer's side, but as soon as it got to the elevator, then if there was only the one elevator it became a monopoly, so the farmer was in a position where he had to face what we call pure competition, or at least the purest competition that we could arrive at, in everything he had to buy, articles that were to a large degree protected by tariff, excise taxes, embargo and what not, and so he had to do something about it; but, and here is the point, he did not resort to private practice in his own hands, as this infers by calling it discriminatory. What he did was to go to the government and marketing boards were instituted, and the important thing to remember there is that the marketing board is not the instrument of the primary producer, it is an instrument of government. He has representation on the board, it is true, but so has the consumer, so has labour, in most cases, and his voice is only one among all the others. So, by no stretch of the imagination is he in control.

The CHAIRMAN: Are you going to get your question pretty quickly, Mr. Jutras?

Mr. JUTRAS: Yes.

By Mr. Jutras:

Q. In no way is he himself in control of the situation, as this infers, so that, frankly, there are no grounds whatsoever for this word "discriminatory" there, and I submit, respectfully, there is no parallel whatsoever between the two practices, and if I may say, furthermore I doubt very much if that represents the views of thousands of small retailers in rural Canada, those who know the situation well and who are familiar with it, because I think they realize they are the ones, or at least the first after the farmer, to benefit the most if that practice—

The CHAIRMAN: You are three minutes over now, Mr. Jutras. If that was your major question you should have asked it first instead of last.

Mr. BEAUDRY: On a point of order. I read it like this: "It is discriminatory to assume."

Mr. JUTRAS: On a point of order I want to submit here it is discriminatory and this same thing appeared in a great many of the briefs presented to us and I think it is about time it should be cleared up.

The WITNESS: I would like to clarify our attitude there. We are not critical in any way of any marketing procedure which the farmer or any other group in Canada may have set up. All we say is this, if that has served in his best interest for orderly marketing, then surely the devices that have been set up in the retail trade for orderly marketing should not be interfered with.

By Mr. Shaw:

Q. I would like to quote one sentence in the MacQuarrie Committee report, at page 17:

> We have not centered our attention upon individual cases of maintained prices and their possible isolated consequences, because if the application of resale price maintenance were restricted to a limited number of goods, the problem thus involved would not deserve the government's consideration.

Would you like to comment on that?—A. May I look that up, Mr. Shaw?

Q. Yes, it is on page 17, paragraph 2, starting with the second sentence.—A. Yes, I would like to comment on that. I think that in effect what they say is

true that price maintenance is restricted to a limited number of goods and as I think I pointed out last week, of all the goods sold in the country the price maintained ones are not great, but it is of considerable importance in certain classifications of retailing.

Q. Would you agree that probably what the MacQuarrie Committee had in mind was if they were going to deal with the price maintained goods that the only way to be fair would be to take a broad field rather than a certain isolated case? Do you think it would be fair to take only a limited number of cases, or would you go over the whole field?—A. I would want to give that considerable thought. I would not start an investigation or make a report without having good sound factual evidence and how that would be found would take a great deal of thought.

Q. Would you agree probably the limited number of figures you brought before us today would not contribute too much towards the formation of opinion on price maintenance generally? You wouldn't ask me to make a decision on those?—A. Very decidedly not; it is merely indicative.

Q. My second question is, in the field of price maintained goods would you agree that retailers generally hold to that fixed price set down by the manufacturer?—A. Yes.

Q. In the field of non-price maintained goods would you say that the retailer holds fairly closely to the prices which he sets?—A. Well, he will hold exactly to the price he sets, but what price does he set?

Q. I would like to point out to you that all of us have had experience in dealing with merchants in our community. This is a very frequent happening, I go in the store and the merchant will say, "I will give you a dollar off that," or if I buy a $50 order he will give me a pair of gloves.

The CHAIRMAN: That is not our experience.

Mr. SHAW: Maybe some of us are better customers than others.

By Mr. Shaw:

Q. Would you not agree since that is the general practice among small retailers in our smaller towns, that the statistical information you have given can hardly be accepted as factual in its application? It is true Eaton's won't give me anything, nor will any of the big stores. Therefore, would it be fair for me to take the figures you have given on non-price maintained and price maintained goods and say that is a fair basis of comparison?—A. I won't agree with you that we are still in the period of barter.

Q. Obviously you are not familiar with the practice of the small retailer because I think all members who have dealt with small retailers will agree that is exactly what occurs.

Mr. HEES: You are just trying to beat the poor fellow down.

Mr. SHAW: It is not beating anybody down. In spite of what the chairman has said, I would agree there is more truth than fiction in what you read a few minutes ago about private enterprise and the government. On the 23rd of November you asserted in effect if not actually that branded goods command a preferred position on the market; would that be fair?

The WITNESS: In certain classifications.

By Mr. Shaw:

Q. We will take those classifications. Would you agree this results from the brand name plus price?—A. I would agree.

Q. Which of those two would you put first?—A. The two together, they are inseparable. If the price is subject to wide fluctuation the consumer loses confidence in that item.

Q. You have used the expression "wide fluctuation," would the same apply in your view to a very narrow fluctuation in price?—A. Price maintained items generally do not fluctuate narrowly. By that I mean they tend to be more stable, there isn't day-to-day fluctuation in them.

Q. If the practice of resale price maintenance were prohibited and there resulted narrow fluctuation in prices, would you say the preferred position which branded goods now occupy would be adversely affected?—A. Yes, over the course of time.

Q. The effect you conclude would be the same as if the field of variation was narrow? If the price of the branded article, for instance sugar, goes down from 10 cents to 25 cents selling price, would you say its preferred position on the market had been adversely affected?—A. If it goes down throughout the whole country by that amount. Had there been any change in the cost of raw material or labour or are you stating the retailer has to reduce his margin or the manufacturer has to reduce his margin?

Q. The manufacturer maintains the quality of his product but the resale price has been reduced. Do you think that would affect the preferred position of that commodity on the market?—A. I do not think the retailer could continue to sell it because his margins are not that wide.

Q. Let us say the manufacturer reduces his price to the retailer.—A. Without any reduction in the quality of the item?

Q. Without any reduction in the quality would you say that the preferred position of that commodity on the market had been adversely affected?—A. No, I would not say so, but I doubt if he could keep up the quality of the product under those circumstances.

Q. Would you agree with me it would depend on the over-all profit recorded by the industry?—A. Yes, or by the particular firm.

Q. Is it a fact that even today you will occasionally find a retailer offering three shirts of a branded quality for a special price lower than what has been the prevailing price for the individual shirt?—A. Of a price maintained item?

Q. That is right.—A. That may happen, it depends on the manufacturer's policy. For instance, in shirts I believe there is a margin of 5 cents in which the price fluctuates, and it is traditional that some sell on the 95-cent, 98-cent or $1 mark-up.

Q. Within the past few days it has come to my attention the manufacturer of a certain brand of shirt has authorized, and I am using the word advisedly, a special in which three shirts may be obtained for 50 cents less than the price of those shirts. Would you agree that has damaged the position of that commodity in relation to the preferred position which it previously occupied on the market?—A. No, not with that change in price.

Q. You are quite fearful of the effect that might result from reducing the price of a shirt, but actually it is being done today?—A. Yes, with the approval of the manufacturer, and I may say he probably has a very good reason.

Q. When you gave evidence on November 23 you indicated that purchases in many cases have to be made by the retailer well in advance and you quoted as an example summer clothing has to be purchased in February or March, and you said in effect the commodity was to be sold at a fixed price in the summer time to guarantee stability to the retailer. Would you say he has absolute assurance from the manufacturer that the price will not be changed? —A. No, I don't think anyone could make that guarantee.

Q. Then he is running a risk?—A. He is running a risk.

Q. Isn't it a fact today in the field of non-resale price maintained goods the retailer has to buy in advance?—A. Yes, but his risk is much greater and generally he will not buy as far ahead.

Q. You asserted there is not a wide fluctuation in the prices of non-maintained commodities, and using your own percentages of mark-up on non-

price maintained goods you indicated that there would not likely be a fluctuation in retail prices over a six-month period in these commodities?—A. It all depends on what six months you refer to. If you take the present six months there may be a surprising fluctuation.

By Mrs. Fairclough:

Q. First of all I would like to carry on along the line of Mr. Shaw's remarks and ask you if it is not true that in the retail trade, and I believe my authority for this is one of the executives of the R. H. Macy Company, that a reduction in price is not generally attractive to the purchasing public if it is less than about 20 per cent?—A. It again varies with the item, it would have to be 20 per cent or it is not attractive.

Q. It would have to be 20 per cent?—A. It takes a big reduction to pull them in.

Q. The other day when we heard Mr. Rands, in speaking at page 262 on a query from Mr. Thatcher, Mr. Rands made this statement that in food lines possibly 15 per cent of those lines were price maintained. I submit that Mr. Rands was away off the track there, and I think surely he must have made a mistake. The information which I have been able to gather would suggest that the actual price maintained lines are only about ·066 and there are some suggested minimum resale prices which may possibly run as high as 10 per cent, but included even in this ·066 are such items as tissues, cigarettes, chocolate bars and gum. Chocolate bars may possibly be construed as food, but certainly none of the rest.

The CHAIRMAN: Can you indicate where the figures came from?

Mrs. FAIRCLOUGH: I do not wish to name the store but it came from a big chain store.

By Mrs. Fairclough:

Q. Would say say that is correct, Mr. Harris?—A. Well, my knowledge of the food trade is not sufficiently great to make statements but I would say chain store figures are generally very reliable.

Q. Now, would you say in small food stores, what is known in the food trade as mom and pop stores they carry about 1,250 lines?—A. They carry a great multiplicity of lines.

Q. In the super markets they carry 2,700 lines. In all of these, even in the large stores, there are not many more than 50 lines that would be price maintained, and 15 per cent would run about 400 lines, so it looks as if there is a wide variation.

Would you not say that Mr. Rand was thinking of something else when he made the statement and making a wild guess?—A. I would be very glad to verify it with Mr. Rands.

Q. I am sorry he is not here because I am of the opinion he was not correct.

The CHAIRMAN: Are either of your associates in the food business, Mr. Harris?

The WITNESS: Neither of them are in the food business.

By Mrs. Fairclough:

Q. Inasmuch as we are not going to have an opportunity to ask questions apparently of the one dissenting member of your trade, I wonder if you would care to make some remarks on the brief which has been presented by the T. Eaton Company and which I believe you have seen?—A. I saw it in the daily press and I suppose it was the brief of the T. Eaton Company, and one

hesitates to comment or assume what the thinking of another retailer is. The T. Eaton Company is really the colossus of the retail trade in Canada and does many times the volume of business of any other retailer, I suppose.

Hon. Mr. GOLDING: Haven't you adopted a resolution here that people coming before us can only be questioned on their brief?

The CHAIRMAN: That is quite true; I stopped the Minister of Justice yesterday when he raised the same point.

Mrs. FAIRCLOUGH: That is true, but here is an entirely opposite view and we are not going to have an opportunity of going into it. They are a member of the Retail Federation and I would think on that score their brief may be considered supplementary to the one submitted to this committee by the Retail Federation.

The CHAIRMAN: I agree. After all, when Mr. Harris was here the last time I did read the wire saying they were dissenting from the brief. In other words, there were other opinions in the Retail Trade Federation and I do not know what knowledge Mr. Harris may have of the other brief.

Hon. Mr. GARSON: May I suggest that there is a device to which I could have resorted myself yesterday, but I thought I had better not set an example in that respect. Can you not put to the witness as your own proposition whatever extract from that brief you wish, and ask if he agrees with that?

Mrs. FAIRCLOUGH: I am not prepared to do that in the ten minutes, because I have other things I want to ask him.

The CHAIRMAN: The witness will understand he does not have to comment. Go ahead, as a matter of fact you have only three minutes left.

By Mrs. Fairclough:

Q. Mr. Harris, would you agree that in the retail trade as a whole there are wide variations in profit margins and that, for instance, you can scarcely compare the profit mark-up on cigarettes with that on refrigerators?—A. That is right.

Q. You cannot compare the mark-up on food with that on jewellery?—A. No.

Q. Therefore, would you say that one rule could scarcely be applied to all?—A. That is right.

Q. Well, then, in view of what has been said in the report of the MacQuarrie Commission, which has already been referred to, we have not centered our attention upon individual cases of maintained prices and very possibly isolated consequences—and this is the important part—because if the application of resale price maintenance were restricted to a limited number of goods the problem thus involved would not deserve the government's consideration?

Now, it would seem to me that is exactly opposite to what has been done. The number is not large. Therefore, along the line of your comments and taking the words of the report, it would scarcely merit the government's consideration?—A. Well, Mr. Chairman, as I have stated before, I think it is a disgraceful thing that a committee should bring in a report which generalizes so greatly and without any factual basis to support it, which might very conceivably put thousands of people out of business.

Q. And the very ones who are likely to be hurt most are the ones who are operating on the narrowest possible margin?—A. Yes.

Q. You would support that statement?—A. Yes.

Q. The high margin people are in the minority. They are fewer stores, fewer dealers, and they are not nearly as likely to be hurt as the great bulk of small retailers handling narrow margin goods. Is that correct?—A. Well, I agree if you confine that to fields where price maintenance is practised.

Hon. Mr. GARSON: Which is an important qualification.

The CHAIRMAN: This is your last question.

Mrs. FAIRCLOUGH: Well, I am willing to give my last question to the Senator so that he can follow on with the Eaton brief if he wishes to do so.

Hon. Mr. LAMBERT: I just want to refer to a question I asked the witness when he was here the last time. It is with respect to his figures that some 82 per cent of the volume of business done by members of his association represented those stores outside of chain stores and departmental stores. I think you said that departmental stores handled about 17 per cent?

The WITNESS: Senator, I was not referring to our membership. They were figures for the country as a whole. That 72 per cent is being done by independent stores.

The CHAIRMAN: 72 per cent?

The WITNESS: Yes.

By Hon. Mr. Lambert:

Q. Would you be willing to suggest that 72 per cent of the volume is done by firms or institutions or shops or stores entirely outside the range of departmental store and chain store?—A. Well, I think all business today is competitive—and classifications cannot be marked off that way.

Q. Let me put it another way. I think you said your membership represents about 40,000 dealers in this country?

Mr. BEAUDRY: One hundred—

By Hon. Mr. Lambert:

Q. Apparently a small percentage would be departmental stores and chain stores. Now, in connection with the price maintenance system am I at all right in assuming that it has developed as a form of voluntary co-operation between the manufacturer and the bulk or vast majority of those 40,000 people, the 40,000 institutions who are members of your association? Could it possibly be so described? I know you have said that the initiative has rested with the manufacturer, but there must have been very willing co-operation on the part of the retailers to develop this system as far as it has been developed now? —A. Mr. Chairman, I think the answer is that the overwhelming proportion of retailers are in favour of price maintenance. Therefore, they must like it—and therefore it is willing co-operation with the manufacturers.

The CHAIRMAN: Senator Lambert, just one point occurs to me. I have a list of speakers and I thought you were making one comment on a question. I fill the speakers list as soon as a quorum is established and I think that is an incentive for people to be here at 10.30. We have been remarkably successful in starting on time.

Hon. Mr. LAMBERT: I wanted to bring out the point on Eaton's and the department stores.

The CHAIRMAN: I will put your name down and you may take your turn if other people finish their questioning.

Hon. Mr. LAMBERT: It is all right.

The CHAIRMAN: Mr. Garson is next.

By Hon. Mr. Garson:

Q. Mr. Harris, you have repeated two or three times that your present submission is not conclusive but it is indicative—indicative of what?—A. Indicative of the fact that price maintained goods offer to the retailer generally a lower mark-up than non-price maintained goods.

Q. But not necessarily that the price of one article compares unfavourably or otherwise with the other?—A. You mean taking a shirt and a shirt? No.

Q. Yes?—A. I am talking purely about mark-up.

Q. I gathered from your remarks that in making this comparison, as between one price maintained article and one non-price maintained article, you tried to get them at the same price?—A. As close as possible.

Q. I put it to you, to get to this concrete case you have been speaking about, if you have two shirts that are worth $2 and one is price maintained and the other is not price maintained, on the non-price maintained one there is a retail profit of 70 cents. That leads back to the manufacturer's cost to the retailer of $1.30?—A. That is right.

Q. And in the other case if it is 60 cents it leads to $1.40. The conclusion I am coming to, and I think it is implicit in your statement, is that even if the mark-up is higher in one case than the other it results in the same price to the consumer in the end—because you started off with the same price?—A. In your illustration you have started off at the same price.

Q. No, no.—A. You started at $2 and worked back.

Q. But you told us in making this comparison in order to make sure you had shirts that were fairly comparable, you tried to get them at the same price?—A. Right.

Q. Is that not quite in accord with common sense, because one of the reasons the wholesaler has for charging more for the price maintained article is that it includes a lot of advertising?—A. It may or may not.

Q. Are those shirts you speak of not famous and well known goods that are advertised?—A. Yes, generally speaking but just take the advertising content of any item. Take the two shirts at $2. One has no brand and it is not known to the public. The other is a famous brand which is well known to the public and is found acceptable. In order to sell those two shirts the advertising content or the advertising effort has to be put behind the non brand, the non-price maintained one, by the individual retailer—

Q. Oh, yes— —A. —becomes uneconomical compared to the other.

Q. I concede that, but would you not agree the reason the retailer has to put a lot of effort behind the non-brand article is because the manufacturer has not done so?—A. Obviously.

Q. But where the manufacturer has done so the retailer does not have to do so?—A. Yes.

Q. So you are submitting this morning to us a lot of truisms that we might have known before you started. Is that not right?—A. Well, I would not say that.

Q. Well, I want to deal with the example of your proposition that a brand is a mark of quality. Let me state one case that came up before us yesterday, the case of aspirin. We were told that in Canada for a product which was in every respect identical the non-resale price maintained article would sell to the public at 19 cents, but Bayer aspirin would sell in the same quantity at 79 cents.

Would you maintain that is an example of the integrity of the maker—that he would charge the public 79 cents for an article which they can obtain in exactly the same quality and quantity for 19 cents?—A. I am not familiar with the circumstances surrounding the marketing of Bayer's aspirin.

Q. You would not express an opinion on that?—A. I would prefer not to.

Q. Let us take another fairly well-known case. Do you sell soap in your store, by any chance?—A. Not soap of the laundry variety.

Q. I see that you anticipate my question.—A. Toilet soap.

Q. Well Proctor and Gamble manufacture a number of brands of soap do they not—Ivory soap for example?—A. Yes.

Q. Would you agree that is not price maintained?—A. Proctor and Gamble soap?

Q. Yes?—A. I do not know.

Q. Well, I will make the assertion and I am sure you will not contradict it? It is not price maintained.—A. It is not?

Q. No. Would you say that in the minds of the public at large Ivory soap is regarded with less respect we will say than—

The CHAIRMAN: Lifebuoy.

By Hon. Mr. Garson:

Q. No, another laundry soap like Sunlight?—A. Again I would not know. I think the housewives could answer better than I.

Q. I thought you came here as an expert in these matters you are testifying about?—A. I think it is too much to ask anyone to be an expert in all the classifications of the retailer.

Hon. Mr. HORNER: It is a slippery subject.

By Hon. Mr. Garson:

Q. All right. In that connection, Mr. Harris, is it not true that your statement requires just a slight modification to be completely accurate—you say that a brand, in the minds of the public, is a guarantee of quality? I think we can all agree with you in that; but I suggest it does not necessarily have to be associated with resale price maintenance?—A. A brand is an implied assurance of quality.

Q. All right, but you would agree that it does not necessarily have to be associated with resale price maintenance?—A. No, sir. I gave, if you will remember, instances last week of branded items which are not price maintained and I told what damaging experience they had gone through in the retail trade and how unsatisfatcory they had proven to the retailer. I gave the instance of underwear, if you will remember.

Q. Well, I suppose you cannot comment on the instance of Proctor and Gamble's soap very well?—A. I cannot.

Q. They have, however, managed to obtain a large distribution on a satisfactory basis to the consumer over a long period of time have they not?—A. I presume so.

Q. That is all.

The CHAIRMAN: Mr. Hees?

Mr. HEES: I will give over my questioning time to let Mr. Harris continue answering the question that Mrs. Fairclough asked. It seems that there has not been time for an answer yet—I refer to Eaton's brief.

The CHAIRMAN: Repeat the question.

Mr. HEES: Well, Mr. Harris was halfway through.

The CHAIRMAN: Did you have any further comment?

The WITNESS: I have forgotten what the question was.

The CHAIRMAN: I have too. That is why I asked Mr. Hees whether he would repeat Mrs. Fairclough's question.

Mr. HEES: I think she asked him if he would like to comment on the Eaton brief with which I think we are all unfamiliar. Seeing that Eaton's are a member of his federation I thought it would be interesting for him to comment on that brief?

The WITNESS: Well, Mr. Chairman, perhaps it is not quite fair to the T. Eaton Company. It seems to me, and I would hope if it were possible, that the

T. Eaton Company should be called. It would be most interesting to find out why the largest company in Canada associates itself with the government in advocating the abolition of price maintenance.

The CHAIRMAN: I do not think the association is necessarily with the government, Mr. Harris. They have come out and submitted a brief voluntarily to this committee. The brief has been circulated and it is going to be printed. It is their considered opinion, for whatever value it may be for members of the committee in making up their minds. However, I think perhaps you are right in saying that you do not care to comment on another brief. That is your choice. We expect you, of course, to comment on your brief but you are quite within your rights with respect to the Eaton brief.

Mr. HEES: Well, that was all.

The CHAIRMAN: Mr. Harrison?

By Mr. Harrison:

Q. Mr. Harris, I would like to commence with the underlying principle of price maintenance, and following that line I would just like to suggest to you that of all the associations in Canada possibly you subscribe to a stronger degree to the principle of free enterprise? Am I right in saying that?—A. We certainly subscribe to the principle of free enterprise.

Q. Well, to follow that up, would you agree with me if I said the best possible freedom for the individual would be that where he has the greatest degree of freedom without treading on the toes of his neighbour. That is what we all desire in a free enterprise system—where the individual has the greatest latitude in his freedom without infringing the rights of other individuals?—A. Good for all—I would say.

Q. Well, in that case, would you say that price maintenance ran along that line—owing to the fact that a manufacturer suggest a retail price to a retailer? In other words, they agree amongst themselves that this price shall be maintained—without consultation with the buying public who are by far the majority. The buying public has no voice in that agreement and, in effect, their freedom is infringed upon?—A. I would definitely not agree with you, Mr. Harrison. The public is putting their voice into it every hour of the day. They have the all-powerful voice. They can accept or reject the product by buying it or not buying it.

Q. They have no voice in the original agreement that the price shall be maintained at such a figure?—A. I have never heard of any device that would make it possible to call in 13 million people to make a decision on price.

Q. My second line of questioning is this. As a former retail merchant I have a little insight into the workings of this matter and I was interested in some of the remarks you made earlier in your brief. You made the point, I think, in the figures you quoted, that goods of like quality were sold at the same price under price maintenance and under non price maintenance, and yet the profit mark-up on the non price maintenance articles was greater. Would that not suggest that the trend to lower mark-up on the price maintained goods shows, by the figures you indicated, that in the case of the price maintained lines the retailer is being squeezed? What would you have to say on that? Is he not being squeezed a little on the price maintained list if he sells them both at the same price and if they are comparable in quality?—A. The retailer is the man you are interested in.

Q. I am interested in the retailer in this instance.—A. I am speaking from the retailer's point of view. The retailer is interested in the over-all result of handling that product. He may have far lower mark-downs on it. He may have much more rapid rate of turnover. He may have, if you like, less soilage because it is packed in cellophane rather than in bulk. All those

factors go to decide which is the more profitable item to him. The price maintained article, generally speaking, is the faster selling, involves fewer mark-downs, and that tends to equalize.

Q. I am glad to have that explanation because without it your figures would go to prove my original idea that the retailer was being squeezed on the price maintained lines. Your figures by themselves indicate that?—A. Yes.

Q. I have a few questions here which were left for me by a member who was not able to attend this meeting. They concern the brief submitted by The T. Eaton Company, and some of them you may not wish to answer unless you care to do so. He wishes to know how many members are in the retail association. I think you said there were 40,000—A. I said that as closely as we could estimate, we have between 40,000 and 50,000 in the way of affiliates.

Q. And the second question is: how many members support the minority opinion expressed in The T. Eaton Company telegram?—A. We have never ascertained that; but in our questionnaire, the proportion was overwhelmingly in favour of price maintenance.

Q. And the third question is one which I do not suppose you would care to answer. It follows very much along the line of Mr. Hees and Mrs. Fairclough, and I wonder if you would care to elaborate on the opinion expressed by The T. Eaton Company. But I would assume that you would not care to answer it.—A. I would love to, but I won't.

Mrs. FAIRCLOUGH: Remarkable restraint!

By Mr. Harrison:

Q. Do you think that if the practice of resale price maintenance was abolished that The T. Eaton Company and others would reduce their mark-ups on those items?—A. You cannot attach it to any particular company, Mr. Chairman.

The CHAIRMAN: That would be a fair way.

The WITNESS: Let us assume that there is a big and powerful company, and then let us narrow it down to one community, and let us again take the example of shirts; let us stick to shirts. It will take shirts and mark them at half price and bring a tremendous number of people flowing into its store. Now it is probably developing its own private brand as well, and it is in its interests to destroy the other brand in favour of its own brand.

By Mr. Harrison:

Q. It may be the same thing.—A. So, by price cutting it can destroy the other brand and destroy its distribution in that particular community.

Q. Is it not a fact that T. Eatons put out their own brand in many instances? No doubt they are exactly the same thing as those which are put out under the well known name brands which are advertised on a country-wide basis. —A. I could not answer that.

Mr. HARRISON: Thank you.

The CHAIRMAN: Now, Mr. Thatcher.

By Mr. Thatcher:

Q. I wonder if Mr. Harris could say if he knows the names of any other retailers in his association who are opposed to that principle as well as The T. Eaton Company?—A. I do not.

Q. You think every retailer in your organization goes along with your brief?—A. No. I do not think I said that. I think I said very clearly last week that there are a number who are not in favour of price maintenance, but that the overwhelming majority is.

Q. You cannot name any others specifically this morning?—A. You mean, who are not?

Q. Yes; and if you have not got the information readily available, it is all right.—A. We have it readily available, yes. Mr. Chairman, these retailers have agreed that their names might be used in opposition to the principle.

Q. Yes. You mean in opposition to your brief?—A. No, I mean in opposition to the principle of resale price maintenance; and in order to make it entirely clear, this is the wire which was set out:

> Federation representatives to appear again this Friday before joint committee on combines legislation. We wish to advise committee at that time names of member-companies who oppose resale price maintenance practice. May we have your authorization to include name of your organization. Immediate reply requested.

And these are the people who replied: Mr. N. A. Gowdy of Kitchener, Ontario; The Henry Morgan and Co. Limited, Montreal; Murphy-Gamble Limited, Ottawa; Calp's of Saint John, N.B.; Johnstone Walker Limited, Edmonton; and C. J. Eames and Son, Limited, Hamilton, Ontario.

Q. I expect there would be a number of them which are departmental stores. What is the nature of Gowdy's business?—A. It is a general department store?

Q. And what about Calp's?

Mr. STUART: Calp's is a clothing store in Saint John, gentlemen's and ladies' wear.

Mr. THATCHER: And what about Johnstone Walker Limited?

The WITNESS: They are in Edmonton. Perhaps Mr. Shaw would know about them.

Mr. SHAW: I have no idea, Mr. Chairman.

The WITNESS: It is a small department store.

Mr. THATCHER: So the majority of your protests have come from department stores?

The WITNESS: Yes.

Mr. THATCHER: And large ones too, in most cases?

The WITNESS: Yes.

Hon. Mr. BEAUBIEN (*Co-chairman*): Did you send that request to all the retail merchants in your association?

The WITNESS: No. We sent it to those who had said that they were against price maintenance; and these are the ones who replied, saying that we might use their names.

Hon. Mr. BEAUBIEN (*Co-chairman*): And were there others who did not reply?

Mr. THATCHER: I have only got 10 minutes, Mr. Chairman.

The CHAIRMAN: I will give you a minute on this, Mr. Thatcher. Perhaps Mr. Harris would clarify the method by which they got in touch with these people, and state as well whether there are people who are opposed to the principle of resale price maintenance but who did not want their names to be used.

The WITNESS: Yes, there are, and they are two in number.

Mr. HARRISON: How many telegrams did Mr. Harris send out altogether?

Mr. THATCHER: This is time out, I take it, Mr. Chairman?

The CHAIRMAN: Yes, this is time out.

The WITNESS: Eight.

The CHAIRMAN: You say that eight wires were sent out?

The WITNESS: Yes.

The CHAIRMAN: And the names of those who said that their names might be used were read out, and besides them there were two others opposed, who did not want their names to be used.

Hon. Mr. BEAUBIEN (*Co-chairman*): I would like to have that clarified in my own mind. Did you send that telegram to every retailer affiliated with your association?

The WITNESS: No sir, we could not send telegrams to everyone across Canada. The best we could do with this was to send it to those who in reply to the questionnaire already sent out, had said that they were opposed. We asked our affiliates: "Is your membership opposed or in favour of it?"

The CHAIRMAN: You have two minutes added on your time, Mr. Thatcher.

By Mr. Thatcher:

Q. I think the names of the companies which Mr. Harris has just given us are significant because they indicate to us that as far as the retail trade is concerned the companies which are most anxious to have this practice abolished are the very large department stores throughout the country. That is not always the case, but it is indicated. I think that is the wording which Mr. Harris used earlier. So I think we are indebted to Mr. Harris for putting before us this morning the first hard figure which has been put before this committee in regard to the practice of resale price maintenance and I very respectfully suggest to the minister that one of the duties of the combines department should be, if they have got figures that are contrary to these, is to lay that information before the committee so that we can have it. I think Mr. Harris has stated quite freely that they are not necessarily all important figures, but that they do show that in respect to these particular items the mark-ups on price maintained goods are actually lower than in the case of non-price maintained goods in those various departments. Now, the first thing I would like to ask Mr. Harris, and I would like to get these actual figures: If the government brings in this bill and it passes, what do you think will happen to the prices on the price maintained goods that you have listed here. Do you think they will go down from heavy competition or, on the other hand, would they be likely to go up where the mark-ups were roughly similar to the mark-ups on non price maintained goods?—A. Mr. Chairman, there is an economic mark-up below which no particular store can go or it goes out of business. It can afford to cut those prices, to cut below that mark-up for a limited period of time in order to draw traffic, to swell its traffic, but it cannot do that over an extended period of time. Now, if price maintenance is removed, what I believe will happen is this, that certain retailers will take the most popular, best known, price maintained articles, and they will slash the prices of them and they will try and keep them slashed until the small retailer no longer finds it profitable to carry them. But they cannot keep that up forever. After the distribution has been spoiled in a centre, and if—I have no doubt—people have been damaged and damaged badly, then the price has to go up again.

Q. So you say there might be temporary price decreases and then probably mark-ups would go up higher again?—A. As I pointed out last Friday, the average retailer profit runs around 2·9 per cent, and there is not just that much in there to be squeezed out over an extended period of time.

Q. Could you tell me today are these price maintained goods rigidly kept at those prices, or is there a certain fluctuation allowed. For instance, it occurs to me that before the war in the automobile industry when a certain model was out of date the dealers were allowed to cut prices, or at the end of

the radio season prices could be cut on radios. Is that still the practice?—A. Yes, that is still the practice. It applies in soft goods as well. Generally speaking, twice a year it is an open game to cut your prices and clear your stocks.

Q. Merchants are not in all cases precluded from cutting even price maintained goods?—A. No.

Q. One of the main arguments against this practice has been that it does stifle competition. Can you take any of these lines that you have taken today, for instance, men's shirts. Would you say that resale price maintenance has done away with competition on shirts?—A. Quite the reverse. I think the competition on shirts is keener than it ever was. There are three or four particularly well known brands of shirts, and they are fighting it out with each other the whole time.

Q. Would you not agree with Mr. MacQuarrie when he says that the practice restricts competition?—A. No, I would not agree with him.

Hon. Mr. GARSON: What he said was that it restricted competition in prices, which is a very different thing from restricting competition.

Mr. THATCHER: I accept the correction. Would you care to change your answer, Mr. Harris?

The WITNESS: No, and if I may answer the minister on that point, there is nothing to restrict those four manufacturers competing with each other in price, and they do.

By Mr. Thatcher:

Q. Is there any particular line here, Mr. Harris, that you have listed where there is no violent competition?—A. There is strong competition in every line.

Q. Then you would say the observation Mr. MacQuarrie made was more academic than practical?—A. I would say it was extremely academic.

The CHAIRMAN: Are you through, Mr. Thatcher? Thank you. Mr. Beaudry.

Mr. BEAUDRY: I have a slight case of conscience. In questioning Mr. Harris, the Minister of Justice, discussing a theoretical case of two shirts up for resale at a theoretical cost of $2, costing, in the case of the non price maintained shirt, $1.30 to the retailer, and costing the retailer $1.40 in the case of the price maintained shirt. The minister made the statement that one of these two shirts, to wit, the one costing the retailer $1.40 included in its cost to the manufacturer what he termed a lot of advertising. I submit there has been no evidence introduced on the subject of advertising, and as a member of that profession I am embarrassed a bit that the question is brought up. I would like the minister to tell me, if I may, what he meant by a lot of advertising, because we have brought in no expert witnesses on that subject, and whereas I would hate to qualify as an expert on the subject, but I would certainly like to bring in some facts, so I wonder if Mr. Garson would determine more closely what he meant by a lot of advertising—a lot of advertising in total volume or a lot of advertising in that specific case?

Hon. Mr. GARSON: Mr. Chairman, it is a long while since I have had such a delicate compliment paid to me as to have an eminent advertising man like Mr. Beaudry ask me for expert advice on publicity.

Mr. BEAUDRY: I did not, sir.

Hon. Mr. GARSON: But I had understood from the evidence given by the witness today, and on previous occasions, that brand is the guarantee of quality, and that the selling of branded merchandise involves the putting of the quality into the merchandise and then bringing the quality to the attention of the public by advertising, and that that advertising would be done by the manufacturer. That was the basis of my reply.

Mr. BEAUDRY: Yes, but you said a lot of advertising. For the sake of the record, may I state from my own practical experience what I know about what is called a lot of advertising. I have been in the business a good number of years and I would state very generally that advertising appropriations constitute in the main from ½ of 1 per cent to 2 per cent of the sales volume of a manufacturer and I do not know whether that can be termed as a lot of advertising. It may be in volume, but it is hardly a factor in the retailer's margin or the price to the consumer.

Hon. Mr. GARSON: If on the basis of these observations I might ask a question of the witness, I would like to know why the wholesaler charges more money to the retailer on that branded line if he hasn't had to pay out more money to promote it.

The WITNESS: I cannot answer that for every manufacturer in the country. I would say the value is there.

Hon. Mr. GARSON: Then perhaps Mr. Beaudry can tell us why?

Mr. BEAUDRY: I assumed the practice of questioning members was to be frowned upon.

The CHAIRMAN: Mr. Beaudry, you are the one who started questioning another committee member.

Mr. BEAUDRY: I had a very special case there I was personally interested.

Hon. Mr. GARSON: I waive my question.

By Mr. Beaudry:

Q. In answer to one question I think you stated that you could not determine the acceptance of one brand of soap on which prices are not maintained as against another brand on which prices are maintained because you qualified yourself as not being an expert in that field. Addressing you as a householder, are you familiar with the practice of soap manufacturers where there is no resale price maintenance distributing coupons to the householders valued at up to 10 or 12 cents a coupon, and also distributing premiums?—A. Yes, and may I say this, that I have heard it said in the retail circle that some soap manufacturers are failing to maintain the price, and by using these devices to which you refer, have given the retailer practically nothing whatsoever, and he is finding it a loss item to sell because of the manufacturers not maintaining the price.

Q. May I conclude from that this becomes a device for inflicting one's goods upon the consumer?—A. I won't answer that question.

Q. Mr. Shaw in questioning you brought out the fact, and I think he gave a specific example of shirts, that in his experience at times three shirts of a price maintained nature were resold as a group of three at I think a figure of 50 cents less.

Mr. SHAW: I did not give it as a specific figure.

By Mr. Beaudry:

Q. It was an example and I use it as such. I think you said yes that it had happened. Is it not true then that the granting of a reduction in price against a greater volume of business is still a feature of price maintenance, and therefore price maintenance does not work exclusively against price reductions by assent between manufacturers and retailers?—A. Yes.

The CHAIRMAN: Mr. Harris reminds me he was asked last time by Mr. Shaw to produce a letter they sent out to their members and he would like to read that into the record now.

The WITNESS: It was suggested at that time perhaps undue pressure had been brought on our members to make representations to their members of parliament that they were in favour of resale price maintenance. With your permission I would like to read the bulletin that went out under date of 19th of October, which is headed, "Summary of Interim Report on Re-sale Price Maintenance."

A recent Federation bulletin (Vol. 11: No. 46, dated Oct. 11th) commented on the fact that the Government intends to bring before Parliament, during this session, legislation designed to prohibit the maintenance of re-sale prices by manufacturers.

The proposed legislation is not yet available but the interim report made to the Minister of Justice by the MacQuarrie Committee has now been made public. It is upon the recommendations contained in that report that the Government has been asked to consider legislation. The chief points of the Committee's report are summarized here for the information of Federation members.

The Committee defines re-sale price maintenance as "the practice designed to ensure that a particular article shall not be resold by retailers, wholesalers or other distributors at less than the price prescribed by the suppliers—that is, in most cases, the manufacturers." Measures to enforce the prescribed price may take different forms, such as warnings, fines, the denial of supplies, and withdrawal of discounts.

In commenting on the extent of re-sale price maintenance the Committee, while indicating no estimates, were satisfied that the practice of fixing re-sale prices is widespread and that it covers whole classes of goods. It added that it was of significant and growing proportions. (The Federation stated in their submission to the MacQuarrie Committee that, in the absence of an exhaustive statistical investigation, it would be their opinion that the percentage of retail business done in Canada under suggested re-sale prices is not a factor in the cost-of-living index.)

The Committee received a great many submissions which revealed divergent opinions on the subject. In general the associations representing manufacturers, wholesalers and retailers were in favour of price maintenance, while labour unions, co-operatives, farmers' and consumers' associations were opposed to the practice. The arguments in favour of and against price maintenance were given in the report.

The general conclusion and recommendations of the Committee were summed up in these words:

> The Committee has studied re-sale price maintenance in the light of the two standards of judgement originally set up, namely the desirability of a free economy and the need for economic efficiency. This study has led the Committee to the general conclusion that re-sale price maintenance, on the growing scale now practiced, is not justified by either of these standards. It represents a real and undesirable restriction on competition by private agreement or 'law' and its general tendency is to discourage economic efficiency. That is why, in our opinion, the prescription and the enforcement of minimum re-sale prices must be viewed as manifestations of a restrictive or monopolistic practice which does not promote general welfare.
>
> The Committee, therefore, recommends that it should be made an offence for a manufacturer or other supplier:
>
> 1. To recommend or prescribe minimum re-sale prices for his products;
> 2. To refuse to sell, to withdraw a franchise or to take any other form of action as a means of enforcing minimum re-sale prices.
>
> It is to be noted that the Committee does not recommend that it be made an offence to prescribe and enforce re-sale prices which

are not minimum. It follows that suppliers would be free to suggest and enforce maximum re-sale prices. It should not be overlooked that the fixing of a specific re-sale price unavoidably involves the fixing of a minimum price.

It has been observed in the press that there has been a suggestion that the Bill, when announced, should be referred to a committee of the House, where retailers and others could make representations. It would, therefore, be quite possible that, should there be strong pressure on Government Members concerning the legislation, the Bill might go to a special committee. In this even, the question of its passage not taking place this session is raised.

Until copies of the Bill are available for study, intelligent comment on the proposed legislation cannot be made. We would urge, however, that those members who strongly oppose the proposed legislation write to their Members of Parliament indicating that the Bill be referred to a special committee of the House, where retailers and other organizations would have the opportunity of expressing their views. I submit, Mr. Chairman, that this is a very dignified and very fair presentation.

The CHAIRMAN: I think the whole committee will agree with that.

Mr. SHAW: As one who requested that information I am grateful and I would agree with Mr. Harris. It is too bad that all others did not send such dignified letters.

The CHAIRMAN: Mr. Stuart?

By Mr. Stuart:

Q. Mr. Harris, during Mr. Beaudry's questioning he mentioned the fact that there were on many lines, because they were not price maintained, coupons and the like handed out as inducements for people to purchase a certain article. Would you know of any manufacturers of price maintained articles who advertise over the radio to a great extent in quiz programs and the like, offering thousands of dollars to the people who buy their articles?—A. I am not trying to be facetious—

Q. Yes?—A. I look at television now. I cannot say I have heard the radio for some years.

Q. I think I would like to put this on the record from my own experience. —A. Yes.

Q. There are many manufacturers of price maintained articles in this country who have fabulous programs that go from east to west on the North American continent—not only in Canada but in the United States. They offer fabulous sums and I have seen them built up to two or three or four thousand dollars with 75 different articles—pianos and so on all down the line—as prizes. Would that not be pretty much the same as the offering of coupons in a store by a manufacturer who did not have the protection of price maintenance?—A. Well, Mr. Beaudry can answer that in a much more expert fashion than I can.

Mr. BEAUDRY: I would like to say that there are also many others who do not sell price maintained goods who use the same practice.

Mr. STUART: There has been evidence, and it has been suggested by many in this committee, I think in all sincerity, that legislation such as this if put into effect might put out of business veterans who have established businesses since the war. That has been said and it has a certain effect with all of us because we do not want to see that. However, in looking over the matter I find that Mrs. Fairclough put on the record today this figure—only $\frac{2}{3}$ of 1 per cent of the commodities that are distributed in food stores, in grocery stores, are price maintained.

Mrs. FAIRCLOUGH: ·066.

Mr. STUART: That would be ⅔ of 1 per cent.

Hon. Mr. GARSON: No, much less than that.

Mr. STUART: Well that makes it so much the better.

Mr. BEAUDRY: In a chain store.

By Mr. Stuart:

Q. I have only a few minutes left and I would like to ask the witness questions. I do not know whether you can answer or not but do you have any idea of the number of retailers in Canada, that is in percentage, who would be in the grocery trade? Would you or any of your associates have any idea?—A. I do not know.

Q. Well it seems to me there must be thousands of them in Canada. I think the greater part of the retail trade would be in groceries. There is less than 1 per cent of what they are selling that is price maintained.

Mr. BEAUDRY: I object to that statement.

Mr. STUART: Just a moment.

Mr. BEAUDRY: On a point of order, Mr. Thatcher.

Mr. STUART: These are my figures.

Mr. BEAUDRY: But you are quoting Mrs. Fairclough whose figures came out of one chain store.

Mr. STUART: If it will assist Mr. Beaudry I will put it this way. A very small percentage of the articles they sell are price maintained and, with all of these thousands of stores across the country, I do not hear of many failures—and there is the maximum of competition in that business. That would indicate that competition is not putting the little businessman out of business?

Mr. BEAUDRY: With all due respect I insist on raising this point of order. We have on the record a figure given by a gentleman—I forget his name—Mr. Rands—stating that in his opinion, and as far as he is concerned, the proportion of price maintained goods sold in grocery stores is 15 per cent. We have had one of the members of the committee submit figures from one source which has not been disclosed—it was qualified as being one chain store.

Therefore, I do not think it is fair to preclude from the witness the original set of figures, and allow a member of the committee to ask the witness to answer on figures from one chain store—one particular set of figures.

The CHAIRMAN: I must say you are unduly sensitive, Mr. Beaudry, in view of the questions you have asked and in view of some of the statistics you have brought forward.

Mr. BEAUDRY: I am asking for a ruling on the point of order.

The CHAIRMAN: Mrs. Fairclough brought forward two points—that the figure was ·066 for chain stores, and if you listened to her, she said in other stores it might be a little more, but it was a very small percentage. That is the point which Mr. Stuart is making.

Mrs. FAIRCLOUGH: I drew a comparison between strictly maintained and enforced prices and suggested resale prices.

By Mr. Stuart:

Q. I will leave that as it is. But I was downtown this morning on Sparks Street and I noticed in a clothing store that B.V.D. shirts, which are highly advertised across Canada—first quality price was $4.95—today, pre-Korean prices, $3.95. Would that be a loss leader or just how can you describe the action of that retailer?—A. My colleague, who is in the men's wear trade, says that B.V.D. have reduced their prices.

Q. Well, would that be generally?—A. Right across the country.

Q. Each and every retailer who sells B.V.D. shirts can advertise at that price?—A. May I just say that you asked a question which I have not had the opportunity of answering. Your question was how many failures did I think there were in the grocery trade. The answer to that is: "I do not know, but a lot. I think it is one of the most prolific sources of failure in any classification of retailing.

By Hon. Mr. Garson:

Q. What is "a lot"? We can get the figures?—A. The figures are available.

Q. Yes, they are available, and, in view of the fact that they are available, would you not want to slightly modify the term "a lot"?—A. I modified it by saying "greater than any other classification of retailing."

By Mr. Stuart:

Q. On page 2 of your brief, point number 3, you have a group of items that are listed there. You say: "Minimum resale prices also tend to become maximum prices."

Would you elaborate on that, because I guess I am a little dense and I just do not understand it?—A. Yes. Again, I will go back to the shirt instance that Mr. Garson brought forward—the $2 shirt.

Q. Yes?—A. The retailer is told that he may not sell that for less than $2. This statement says that tends to become the maximum price—that quite irrespective of mark-up the retailer does not try to sell it for $2.25 or $2.50—but with a non-price maintained shirt he will try to get as much as he can because there is no basis of comparison with the other at all.

Mr. SHAW: Just on a point of order, where can I buy one of those $2 shirts?

The WITNESS: May I suggest you get it from your friend that you were telling me about.

Some Hon. MEMBERS: Hear, hear.

The CHAIRMAN: A pair of gloves too.

This will be your last question.

By Mr. Stuart:

Q. In the list you have presented here today—I want to thank you for it because it has been helpful to the committee—I notice that under "shoes" you quote nine items on which your percentage of mark-up is about 36 per cent.

I have here a price list of the L. H. Packard Company of Montreal, and this is called "Fall 1951 List". Just looking at nine items on that list I find that each and every one is over 40 per cent. Then I pick up a list here of the Savage Shoe Company of Preston, Ontario, and the first five of them—I just took the first five—are a little over 41 per cent.—A. Are you taking it on selling or cost?

Q. I am taking it on selling price?—A. Is tax included in that?

Q. Yes, it gives you the prices—here they are?—A. Sales tax would be extra, f.o.b. Preston; so you must add 10 per cent for sales tax on that, and also add the transportation charge in order to get a proper mark-up figure.

Q. The tax would not be included in those figures?—A. No, and neither is the transportation.

The CHAIRMAN: On your figures tax and transportation were not included. Our heading is "laid down price". Thank you, Mr. Harris.

Mrs. FAIRCLOUGH: Could I make just one statement, Mr. Chairman, for the record?

The CHAIRMAN: Yes, certainly, Mrs. Fairclough.

Mrs. FAIRCLOUGH: In the question and the statement which has just been made it was said that the large stores are opposed. I think it should be placed on the record that all large stores are not opposed, because there are a good many, I know, which believe in resale price maintenance.

The CHAIRMAN: And equally all the stores which are opposed are not large stores.

Mrs. FAIRCLOUGH: No.

The CHAIRMAN: Thank you.

The meeting adjourned.

APPENDIX "A"

Item	Price Maintained % Mark-Up on Selling Price	Non Price Maintained % Mark-Up on Selling Price
Men's Cardigan Sweater Coat	36·1	
" " " "		39·2
" Topcoat	33·8	
" "		36·6
Women's Hosiery Nylon 60 Gauge 15 Denier	37·5	
" " " 51 " 15 "	37·1	
" " " 51 " 30 "	39·9	
" " " 45 " 30 "	37·8	
" " " 42 " 30 "	38·6	
" " " 60 " 15 "		42·3
" " " 51 " 15 "		47·1
" " " 51 " 30 "		44·2
" " " 45 " 30 "		43·5
" " " 42 " 30 "		40·5
" " " 60 " 15 "	38·6	
" " " 60 " 15 "		40·6
" " " 51 " 15 "	37·1	
" " " 51 " 15 "		41·8
" " " 51 " 30 "	39·9	
" " " 51 " 30 "		43·5
" " " 45 " 30 "	36·6	
" " " 45 " 30 "		40·4
" " " 45 " 30 "	38·8	
" " " 45 " 30 "		41·7
" " " 45 " 40 "	38·7	
" " " 45 " 40 "		41·7
" " " 42 " 40 "	38·6	
" " " 42 " 40 "		40·9
Ladies Slips	36·2	
" "	36·6	
" "	37·9	
" "	37·9	
" "		35·1
" "		38·3
Ladies Panties	37·1	
" "		28·2
Junior Girls Vests	35·0 Average	
" " Brief	35·0 for Dept.	
	35·5	
	Average	
Curity Diapers	24·0 mark-up	
Infants Vest	35·0 for Dept.	
Infants brief	35·0 38·6	
Bedspreads (Homespun)	33·0	
" (Chenille)		41·0
" (Homespun)	34·0	
" (Chenille)		39·0

NOTE.—These bedspreads are not exactly comparable items, but may indicate camparison of mark-ups for this type of merchandise.

Item	Price Maintained % Mark-Up on Selling Price	Non Price Maintained % Mark-Up on Selling Price
Men's Rubber Commuter Boot	33·2	
Knee-length Rubber Boot		29·9
Men's Scamper Shoe	34·2	
" " "		36·5
Childrens Shoes	36·7	
" "	36·0	
" "	36·5	
" "	36·3	
" "	36·8	
" "	36·5	
" "	36·8	
" "		34·6
" "		35·6
" "		35·6
Women's Winterboot	29·0	
Wisp de Luxe Boot	36·0 Average	
Velvet Zipper	32·0 for Dept.	
Tartan Rubber	37·0 41·5	
Foothold "	36·0	
Shaving Cream	34·0	
" "		45·5
Tooth Paste	34·1	
" "		41·7
Men's Shirts	34·3	
" "	33·3	
" "	34·3	
" "		37·5
" "	36·7	
" "		36·1
" "		39·7
Mens Hosiery	33·0	
" "		35·0
" "	33·0	
" "		33·0
" "	33·0	
" "		33·0
Spun Nylon Half Hose	38·3	
Sheer Nylon	36·4	
Model Hosiery		39·7
Circle Bar (Wool Sole)		39·1
Sleeveless Jersey-Men's Underwear	41·0	
" " " "		40·3
Blankets	32·1 Average	
"	34·1 Mark-Up	
"	33·8 in bedding	
" (Baby)	34·0 dept.	
"	30·0 35·3	
"		37·5
Motor Rugs		36·0

Item	Price Maintained % Mark-Up on Selling Price		Non Price Maintained % Mark-Up on Selling Price
24" Tricycles	27·3		
Wagons	25·3		
Kiddie Cars	27·4	Average	
Toy Train Transformers	30·6	Mark-Up	
Toy Trains	37·2	for Toy	
Meccano Sets	32·7	Dept.	
" Dinky Toys, Trucks etc	32·5	37·0	
Record Player (Childs)	30·0		
Bicycle	31·6		
Outboard Motors	30·0	Average	
Bowling Balls	20·7	Mark-Up	
Golf Balls	33·3	for	
Bicycles	30·2	sporting	
Skates	32·6	goods	
Coats	30·7	Dept.	
Golf Balls	33·3	34·3	

APPENDIX "B"

STOCK LINES INFANTS, CHILDS AND MISSES GOODYEAR WELT BOOTS AND SHOES AND CEMENT STRAPS

Sample	Color	Style	Description	Size	Width	Last	Price	Suggested Resale
							$ cts.	$ cts.
			BABIES RANGE					
1110 1111	Brown White	PACKWELT	Elk Boot, Retan Sole, Spring Heel	2–5	D	260	2.95	4.95
			INFANTS RANGE					
2110 2111	Brown White	PACKWELT	Elk Boot, Plain Toe, Retan Sole, Spring Heel	5½–8	BCE	260	3.35	5.75
2143	Brown	PLAYMATE	Elk Boot, Plain Toe, Oak Sole, Club Heel	"	"	260	3.80	6.50
2410 2436	Brown White	PACKWELT	Elk Oxford, Retan Sole, Spring Heel	"	"	260	3.20	5.50
2209 2220 2220	Patent White	FLEXPACK	Buckle Centre Strap, Cemented Leather Sole, Spring Heel (Colors made to order)	5–8	BCD	42	3.20	5.50
			CHILDS RANGE					
3143	Brown	PLAYMATE	Elk Boot, Plain Toe, Oak Sole, Semi Thomas Rubber Heel	8½–12	ABCD	360	4.25	7.25
3144	Brown	PLATMATE	Elk Boot, Wing Tip, Oak Sole, Semi Thomas Rubber Heel	"	"	360	4.40	7.50
3146	White	PLAYMATE	Elk Boot, Plain Toe, Oak Sole and Semi Thomas Heel	"	"	360	4.25	7.25
3163	Brown	PLAYMATE	Elk Boot, Plain Toe, NEOLITE Sole, Semi Thomas. Rubber Heel	"	"	360	4.10	6.95
3164	Brown Black	PLAYMATE PLAYMATE	Elk Boot, Wing Tip, NEOLITE Sole, Semi Thomas. Rubber Heel (Boots are made to order only).	"	"	360	4.25	7.25
3209 3220 3220	Patent White	FLEXPACK	Centre Strap Buckle, Cemented Leather Sole, Club Heel (Colors made to order).	"	"	42	3.60	5.95
			CHILDS RANGE					
3443	Brown	PLAYMATE	Elk Oxford, Plain Toe, Oak Sole, Semi Thomas Rubber Heel	8½–12	ABCD	360	3.90	6.75
3444	Brown	PLAYMATE	Elk Oxford, Wing Tip, Oak Sole, Semi Thomas Rubber Heel	"	"	360	4.05	6.95
3463	Brown	PLAYMATE	Elk Oxford, Plain Toe, NEOLITE Sole, Semi Thomas Rubber Heel	"	"	360	3.75	6.50
3464	Brown	PLAYMATE	Elk Oxford, Wing Tip, NEOLITE Sole, Semi Thomas Rubber Heel	"	"	360	3.90	6.75
3474	White	PLAYMATE	Elk Oxford, Plain Toe, Oak Sole and Semi Thomas Heel	"	"	360	3.90	6.75
3488	Black	PLAYMATE	Elk Oxford, Wing Tip, Oak Sole and Semi Thomas Heel	"	"	360	4.05	6.95
3489	Black	PLAYMATE	Elk Oxford, Plain Toe, Oak Sole and Semi Thomas Heel	"	"	360	3.90	6.75

			Misses Range					
4209	Patent	FLEXPACK	Centre Strap Buckle, Cemented Leather Sole, Club Heel.....	12½–3	ABCD	42	4.15	6.95
4220	White							
4220			(Colors made to order).					
4443	Brown	PLAYMATE	Elk Oxford, Imit. St. Tip, Oak Sole, Semi Thomas Rubber Heel.....	"	"	460	4.50	7.75
4444	Brown	PLAYMATE	Elk Oxford, Wing Tip, Oak Sole, Semi Thomas Rubber Heel.....	"	"	460	4.65	7.95
4463	Brown	PLAYMATE	Elk Oxford, Imit. St. Tip, Neolite Sole, Semi Thomas Rubber Heel....	"	"	460	4.35	7.50
4464	Brown	PLAYMATE	Elk Oxford, Wing Tip, Neolite Sole, Semi Thomas Rubber Heel.....	"	"	460	4.50	7.75
4488	Black	PLAYMATE	Elk Oxford, Wing Tip, Oak Sole and Semi Thomas Heel.....	"	"	460	4.65	7.95
4489	Black	PLAYMATE	Elk Oxford, Imit. St. Tip, Oak Sole and Semi Thomas Heel.....	"	"	460	4.50	7.75

PRICE LIST

Prices Subject to Change Witout Notice

In Stock:—SHOES and SLIPPERS

Fall — 1951

L. H. PACKARD & CO. LIMITED
4320 Boyce Street, Montreal 4, P.Q.
Terms: Net 30 Days

IN STOCK LINES OF MEN'S AND WOMEN'S SOFT SOLES AND MEN'S HARD SOLE SLIPPERS

Sample	Description	Width	Size Range	Price	Suggested Resale
	WOMEN'S SOFT SOLES			$ cts.	$ cts.
34	Womens Kip Dorsay, Wood heel Black, Wine and Blue	Nar. Med.	4–11 3–11	2.50	4.25
3023	Womens Kip Wedge Black, Wine and Blue	Nar. Med.	4–11 3–11	2.95	4.95
3359	Womens Kip Boudoir, Rubber heel, Felt lining, Black only	Med.	3–10	2.35	3.95
3381	Womens Kip Boudoir, Wood heel, Felt lining, Black and Patent only	Med.	3–10	2.65	4.50
3386	Womens Kip Bridge, Wood heel Black, Wine, Blue and Patent	Nar. Med.	4–11	2.80	4.75
3005	Womens Black Quilted Satin Boudoir, Padded heel, Pink, Wine and Blue Satin to order	Med.	3–10	2.10	3.50
1103	Childs Black Gym Slipper	—	5½–10	1.50	
2202	Misses Black Gym Slipper	—	11–2	1.65	
3397	Growing Girls Black Gym Slipper White Gym Slippers made to order only.	—	3–9	1.85	
	MEN'S SOFT SOLES				
411	Youths Kip Opera, Felt Lining Padded heel	D	11–13	2.20	3.75
411	Boys Kip Opera, Felt Lining, Padded heel These two lines in Wine and Brown, full sizes only.	D	1–5	2.40	3.95
532	Men's Felt Lined Opera, Padded Heel. Colours: Brown, Wine, Blue and Black	E	5½–14	2.90	4.95
5309	Men's Kip Opera, Satin Lining, padded heel. Colours: Brown, Wine, Blue and Black "E" Width in this style is made to order.	D	5½–14	3.10	5.25
5547	Men's Kip Zipper Romeo, Felt lining, Padded Heel, Brown and Wine	E	5½–14	4.05	6.95
	MEN'S HARD SOLES				
6270	Men's Velour Opera, Brown, Wine and Black	BCDE	5½–14	4.65	7.95
6283	Men's Velour Romeo, Brown, Wine and Black "B" and "C" widths made to order.	DE	5½–14	5.10	8.75

APPENDIX "C"

CHUMS PRICE LIST

MARCH 1st, 1951

Sample No.	DESCRIPTION	Style	Widths	Sizes	In Stock	Make Up	Dealers Price	Suggested Resale
C-2210	INFANTS' Patent	Strap	B C E	5 to 8	x		$3.35	$5.75
C-2215	" White	"	"	"	x		3.35	5.75
C-2807	" Brown	Oxford	"	"	x		3.35	5.75
C-2805	" White	"	"	"	x		3.35	5.75
C-2803	" Black	"	"	"	x		3.35	5.75
C-2817	" Brown Retan Sole	"	"	"	x		3.50	5.95
C-2707	" Brown	Boot	"	"	x		3.35	5.75
C-2705	" White	"	"	"	x		3.35	5.75
C-2703	" Black	"	"	"	x		3.35	5.75
C-2717	" Brown Retan Sole	"	"	"	x		3.50	5.95
C-2715	" White Retan Sole	"	"	"	x		3.50	5.95
C-3210	CHILD'S Patent	Strap	B C D E	8½ to 12	x		3.75	6.45
C-3230	" Patent Centre Buckle	"	"	"	x		3.75	6.45
C-3215	" White	"	"	"	x		3.75	6.45
C-3235	" White Centre Buckle	"	"	"	x		3.75	6.45
C-3807	" Brown	Oxford	"	"	x		3.75	6.45
C-3803	" Black	"	"	"	x		3.75	6.45
C-3805	" White	"	"	"	x		3.75	6.45
C-3607	" Brown	Monk Strap	"	"	x		3.75	6.45
C-3867	" Brown	Ghillie Tie	"	"	x		3.75	6.45
C-3833	" Black Scuff-Proof Tip	Oxford	"	"	x		3.75	6.45
C-3837	" Brown Scuff-Proof Tip	"	"	"	x		3.75	6.45
C-3817	" Brown Retan Sole	"	"	"	x		4.05	6.95
C-3857	" Brown Scuff-Proof Tip Retan Sole	"	"	"	x		4.05	6.95
C-3707	" Brown	Boot	"	"	x		3.75	6.45
C-3705	" White	"	"	"	x		3.75	6.45
C-3703	" Black	"	"	"	x		3.75	6.45
C-3737	" Brown Scuff-Proof Tip	"	"	"	x		4.05	6.95
C-3717	" Brown Retan Sole	"	"	"	x		4.05	6.95

CHUMS PRICE LIST—*Continued*

Sample No.	DESCRIPTION	Style	Widths	Sizes	In Stock	Make Up	Dealers Price	Suggested Resale
C-4210	MISSES' Patent	Strap	A B C D E	12½ to 3	x		4.05	6.95
C-4230	" Patent Centre Buckle	"	"	"	x		4.05	6.95
C-4215	" White	"	"	"	x		4.05	6.95
C-4235	" White Centre Buckle	"	"	"	x		4.05	6.95
C-4807	" Brown	Oxford	"	"	x		4.05	6.95
C-4805	" White	"	"	"	x		4.05	6.95
C-4803	" Black	"	"	"	x		4.05	6.95
C-4607	" Brown	Monk Strap	B C D E	"	x		4.05	6.95
C-4867	" Brown	Ghillie Tie	"	"	x		4.05	6.95
C-4833	" Balck Scuff-Proof Tip	Oxford	A B C D E	"	x		4.05	6.95
C-4837	" Brown Scuff-Proof Tip	"	"	"	x		4.05	6.95
C-4857	" Brown Scuff-Proof Tip Retan Sole	"	"	"	x		4.35	7.45
C-4817	" Brown Retan Sole	"	"	"	x		4.35	7.45
C-5807	YOUTHS' Brown	Oxford	B C D E	11 to 3	x		$4.65	$7.95
C-5803	" Black	"	"	"	x		4.65	7.95
C-5827	" Brown Moccasin	"	"	"	x		5.20	8.95
C-5817	" Brown	Brogue	"	"	x		5.20	8.95
C-5707	" Brown	Boot	"	"	x		5.20	8.95
C-5703	" Black	"	"	"	x		5.20	8.95
C-6807	SR. MISSES' Brown	Oxford	AAA AA A B C D	3½ to 9	x		5.80	9.95
C-6803	" Black	"	"	"	x		5.80	9.95
C-6827	" Brown Moccasin	"	"	"	x		5.80	9.95
C-6835	" White Moccasin	"	"	"	x		5.80	9.95
C-6417	" Brown	Brogue	AAA AA A B C D	"	x		5.80	9.95
C-6413	" Black	"	AAA AA A B C	"	x		5.80	9.95
C-6505	" Brown and White	Saddle Oxford	"	4 to 10	x		5.80	9.95
C-6503	" Black and White	" "	"	"		x	5.80	9.95
C-6506	" Blue and White	" "	"	"		x	5.80	9.95

Terms: Net 30 days from date of invoice—Sales Tax Extra—F.O.B. Preston.
Package Charge: On all orders less than four pairs, a charge of 25 cents per package (not per pair) is made.
Telephone and Telegraph orders PLEASE prepay.
Senior Misses—Sizes 9½ and 10, 50 cents per pair extra.

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THE SAVAGE SHOE COMPANY LIMITED, PRESTON, ONTARIO

HOUSE OF COMMONS

Fifth Session—Twenty-first Parliament

1951

(Second Session)

JOINT COMMITTEE OF THE SENATE AND THE HOUSE OF COMMONS

ON

COMBINES LEGISLATION

Joint Chairmen—The Honourable Senator A. L. Beaubien
Mr. James Sinclair, M.P.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 11

MONDAY, DECEMBER 3, 1951

WITNESSES:

Mr. F. R. Hume, Counsel, and Mr. B. Napier Simpson, General Manager, Canadian Electrical Manufacturers Association.

Mr. W. C. Kennedy, Frigidaire Products; Mr. L. E. Butters, Canadian General Electric; Mr. C. H. MacBain, Canadian Westinghouse Co., Ltd.; Mr. C. L. Gulley, Superior Electrics Ltd., all representing Canadian Electrical Manufacturers Association.

OTTAWA
EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY
1951

MINUTES OF PROCEEDINGS

MONDAY, December 3, 1951

The Joint Committee of the Senate and the House of Commons on Combines Legislation met at 10.30 o'clock a.m. The Joint Chairmen, the Honourable Senator A. L. Beaubien and Mr. James Sinclair, M.P., were present, Mr. Sinclair presiding.

Also present:

For the Senate: The Honourable Senators Aseltine, Burchill, Fogo, Golding, Horner.

For the House of Commons: Messrs. Blair, Boucher, Carter, Cauchon, Croll, Dickey, Mrs. Fairclough, Messrs. Garson, Harrison, Hees, Jutras, MacInnis, Mott, Murray (*Oxford*), McLean (*Huron-Perth*), Shaw, Stuart (*Charlotte*), Thatcher, Welbourn.

In attendance: Mr. F. R. Hume, Counsel, and Mr. B. Napier Simpson, General Manager, Canadian Electrical Manufacturers Association. Mr. W. C. Kennedy, Frigidaire Products; Mr. L. E. Butters, Canadian General Electric; Mr. C. H. MacBain, Canadian Westinghouse Co., Ltd.; Mr. C. L. Gulley, Superior Electrics Ltd.; all representing Canadian Electrical Manufacturers Association.

The presiding Chairman tabled data submitted by the Canadian Electrical Manufacturers Association relating to costs to the manufacturer, the distributor, the retailer and the consumer of certain household appliances which are printed as *Appendix G* to this day's Minutes of Proceedings and Evidence.

Mr. Simpson was recalled, read a statement amplifying certain evidence given by him on Monday, November 26, and was questioned.

Messrs. Butters, Kennedy and MacBain were recalled and questioned.

The witnesses retired.

In accordance with the recommendation contained in the Fourth Report of the Sub-Committee on Agenda and Procedure, concurred in on November 30, the following documents are printed as appendices to this day's Minutes of Proceedings and Evidence:

Appendix A: Brief submitted to the Committee by the Radio-Television Manufacturers Association.

Appendix B: Brief submitted to the Committee by the Drug Trading Company.

Appendix C: Brief submitted to the Committee by the Canadian and Catholic Confederation of Labour.

Appendix D: Letter dated November 16, 1951, addressed to the Chairmen of the Joint Committee, by The Canadian Chamber of Commerce.

Appendix E: Letter dated November 27, 1951, addressed to the Clerk of the Committee, by the Dominion Joint Legislative Committee Railway Transportation Brotherhoods.

Appendix F: Resolution passed by the 27 Annual Meeting of Delegates of the Saskatchewan Wheat Pool, held in Regina, November 6-16, 1951.

At one o'clock p.m. the Committee adjourned until Tuesday, December 4, at 10.30 o'clock a.m.

A. L. BURGESS,
Clerk of the Committee.

96870—1½

EVIDENCE

DECEMBER 3, 1951
10.30 a.m.

The CHAIRMAN: The meeting will come to order, gentlemen. We have with us this morning the Canadian Electrical Manufacturers Association. Mr. Simpson would like to make a comment or two before speaking on some further figures which he was asked for at the last meeting. Then Mr. Favreau will commence the questioning, and then the questioning will be continued by the committee.

Mr. F. R. HUME (*Counsel*): If I have your permission, Mr. Chairman, just before Mr. Simpson speaks I would like to refer to a matter by saying that at page 326 of the Minutes of Proceedings of a week ago today, in answer to a question, there was some misunderstanding between Mr. Favreau and Mr. Simpson. This is a matter to which Mr. Simpson wishes to speak in order to correct the reference, if that is satisfactory.

The CHAIRMAN: Certainly.

Mr. B. Napier Simpson, General Manager, Canadian Electrical Manufacturers Association, called:

The WITNESS: Before we proceed with the order of business for today's session, I would like you to grant me the privilege of clearing up a misunderstanding which resulted from a question asked by Mr. Favreau, and which is covered on page 326 of Minutes of Proceedings and Evidence No. 6, dated Monday, November 26, 1951. In his question Mr. Favreau referred to the various comparisons of indexes made in our brief; the questions and answers relevant thereto being as follows:

By Mr. Favreau:

Q. Do I take it there is no present enforcement of retail price maintenance?—A. I, as general manager, cannot answer that question because it is an individual company problem.

Q. In your brief you refer to different indexes—indexes of man hours, indexes for iron and non-ferrous metals, and so on. As far as your particular industry is concerned would you not think that the electrical equipment and fixtures index would reflect quite accurately the trend of the economy of your industry?—A. I do not know whether there is such an index published.

Q. I find it in the price index of the Dominion Bureau of Statistics for September, 1951, at page 12—electrical equipment and fixtures, the index being presently 220·2?—A. Against which period?

Q. Against 1935-39 equals 100—A. I cannot answer that without knowing on what it was based.

Q. I am just referring it to you, you might just check up on it. It is given in the September 1951 Dominion Bureau of Statistics Prices and Prices Indexes at page 12?—A. I would be very glad to, because the prices which we have discussed, in so far as we know them, do not bear out anything like that by comparison as you will note.

The CHAIRMAN: On that point, Mr. Simpson, where did you get the basis for these comparisons on food, clothing, labour, and non-ferrous metals?

The WITNESS: From the Dominion Bureau of Statistics index.

The CHAIRMAN: You accept their figures on these items but you are doubtful about the ones in your field.

The WITNESS: I do not know in what form they are published. I do not know what is included in there. It might be in the apparatus field, or it might be a conglomerate index of both. I do not know.

At the time Mr. Favreau raised the point I did not have in my possession the September 1951 "prices and price indexes", which is a publication of the Dominion Bureau of Statistics. The index which he quoted however, "220·2" was taken from the Electrical Equipment and Fixtures Index, which refers solely to residential building materials, e.g. copper wire, outlet boxes and other wiring devices.

Since this had no relation to the consumer durable goods with which we were concerned, I have talked to the Dominion Bureau of Statistics meanwhile by telephone, and find that they have in their possession a sub-index which includes only refrigerators, washing machines and radios.

For September, the figure given me by the Dominion Bureau of Statistics for this index was 183·9. You will note, however, that this index includes the special excise tax carried by radios since September 1950 and by refrigerators and washing machines since April 1951. Comparing this index previous to the tax, it is apparent, so that a comparison might be made with those things to which excise tax does not apply—e.g. food, clothing, etc., at least a minimum correction of 15% should be made.

On this basis the index of consumer goods for the comparisons made in our brief would be 160.

Putting this more plainly in answer to Mr. Favreau's questions, the items under discussion had an approximate increase of 60% in price from 1939 to 1951, which you will note is a much lower figure than food, clothing, labour and materials for which the indexes were given in the brief.

In other words, making our original point again, those price maintained items had increased less in price than had the others to which they were compared—(See pages 306 and 341, Minutes of Proceedings and Evidence No. 6).

I trust this will clarify the point which I was unable to answer satisfactorily the other day, since the material was not at hand.

Mr. HUME: Again, Mr. Chairman, may I express the appreciation of the Canadian Electrical Manufacturers Association in having the privilege of being back again. During the intervening week we have attempted to gather figures showing manufacturers' costs, distributors' costs, retailers' costs, all of which will be presented to the committee, and, I hope, will be beneficial. I should like again, sir, to re-introduce Mr. Simpson, who appeared here a week ago and remind the committee that these gentlemen are here in their capacities as members of the Canadian Electrical Manufacturers Association, and are not here in their capacities as representing their individual companies. The information which we will discuss with you in a moment with regard to prices has been set up along the lines suggested a week ago, under Company A, Company B, Company C, etc. Mr. Simpson and I are not chartered accountants, but we have attempted to understand the figures and will attempt to answer them between us as best as possible. There may be some questions we cannot

answer in these tables, but in such a case we will try and get them and send them in at a later date. Before the figures are referred to by Mr. Simpson, I should like to point out—I believe the information has been distributed—the reason some of the manufacturers have shown two sets of figures is to illustrate the point made in the brief that the demand for these kinds of products fluctuates violently, and production is attempted to be established on a basis to take care of these changes in an orderly fashion. Recently the demand for these durable products manufactured by the members of this association has fallen off drastically, with the result that manufacturing volume has decreased, and you will see the effect that that has had on the decreased volume on some of the cost figures, the manufacturers' cost. I understand, sir, that this is the first time that costs have ever been presented. Under usual conditions, the manufacturer attempts to forecast market conditions by calling on his experience over the years, and is able to estimate fairly reasonably. In the past they have had good success at that, but the imposition of excise taxes and severe credit restrictions, however, as you will see, have thrown them completely off balance in a great many places, with the result they have large inventories, commitments to suppliers, tools and machinery and so on. The large losses which you will see reflected in these statements are the result of the unpredictable action of the government in imposing these taxes as an anti-inflationary measure, and you will see these cost figures are intended to be presented only as a comparative basis as to manufacturer's cost before the imposition of taxes and manufacturer's cost at the present date, in 1951.

I should like to call on the general manager of the Canadian Electrical Manufacturers' Association, Mr. Simpson.

By Mr. Favreau:

Q. Referring to the refrigerator index, I am in the same position as you are, I do not know about yours and you do not know about mine. Do you have an index with you and can you tell us in points to what extent it increased after April, 1951?—A. I cannot do it on that sub-index because as I say I telephoned to the Dominion Bureau of Statistics and it is a sub-index which they do not publish regularly but which they keep on consumer goods, and it was given to me over the telephone.

Q. You will agree that while the index would be 175, for instance, an increase of 15 per cent of excise tax would not reflect itself to the extent of 15 per cent, it would be 8 per cent?—A. No, if you take 183 and there is a reduction of 15 per cent you will get 160 or less. I only applied 15 per cent whereas since April excise taxes on radios have been 25 per cent, so I have not given it the full impact.

Q. That 25 per cent on radios and 15 per cent on washing machines and refrigerators is on manufacturer's price?—A. Yes, that is correct.

Q. It would be much lower on retail price?—A. What I am doing is merely pointing out the index which you quoted to me did not refer to the matter under discussion. I have attempted to clarify it for you as well as I can.

Q. That is why I pointed it out to you and gave you the reference. I will now refer to the list of price maintained appliances which has been filed by your association in, as you have said, a rather short period, and I will first ask you to give to this committee some explanation as to that matter of losses on which you have just touched. Referring to company B, for instance, I note that there is at the bottom of the page in the right corner a percentage of 27·3 in a red circle. Will that correspond to a loss to the manufacturer?—A. Yes, I thought before you got into this I would have a chance to explain that we have no way on a Gestetner machine of showing red or black and it was necessary to circle it with a red pencil. These circled items are loss percentages and not profits.

Q. I notice in the case of company B that the sales and excise tax has increased from $16.27 to $44.75, which will be a difference of about $28 in increased tax. How do you account for the manufacturer's cost in the same period of time being increased by $120?—A. It is very easy to answer. Previous to the budget, as you know, we had a very good market and most manufacturers were on a full production basis. I gave you figures last week which showed that employment in the industry was less than 50 per cent, and production was in the neighbourhood of 40 per cent on an over-all average. As you know, it is only on mass production that the manufacturer can get the price on his products down to a reasonable level. Immediately after the impact of the budget with the sales tax and 15 per cent excise tax, and very strict consumer credit regulations, the bottom just dropped out of it until the manufacturers today are on a 40 per cent production basis and that is why costs per unit have increased. You will note also that many of these manufacturers were in the middle of expansion programs which they had originally started under some government encouragement in order to increase Canadian content and save United States dollars. Even before taxes the percentage of mark-up was 1 per cent, and he is now operating at a loss of 27·3 per cent.

Q. That is if he has kept up the same staff and the same production and manufacturing expenses?—A. No, he has not kept up the same staff. How could he? I have already said employment in the industry is only 50 per cent of what it was prior to taxes.

Q. Under such circumstances with increased costs and reduced production did you think it wise on the very day the tax was increased to increase the retailer's margin on the same items by $16 and give him a margin of $135 instead of $119?—A. I do not think I can answer that question. Are you speaking now of the dealer mark-up?

Q. I am speaking of the margin, not the mark-up, the margin in dollars and cents.—A. I can only say this, that during the war, I believe, and this is only hearsay on my part, I know the retailers or dealers made representations to the Wartime Prices and Trade Board and some basis was arrived at as to their mark-up.

Q. I note that in all cases where the tax was increased the distributor's cost was increased by the amount of the tax plus an additional margin, and that the dealer's cost was also increased in each case by an additional margin which was over and above the amount of the additional taxes; is that right?—A. I am told that is correct.

Q. What would be the reason for this additional increase in the margin of profit which was forced upon the retailer?

Mr. THATCHER: The margin is the same, the percentage on the dealer's investment is the same.

Mr. FAVREAU: Most probably that is the answer.

The WITNESS: I think Mr. Thatcher's answer is correct.

Mr. FAVREAU: I will leave it to the members to ask for any further particulars on that list.

By Mr. Favreau:

Q. According to your contention the refrigerator sub-index of 183·9 per cent over and above 1939 would in reality be an increase by 60 instead of 80 per cent?—A. That is approximately correct.

Q. Will you agree that between 1939 and 1951 the production of most of these electrical appliances, and speaking essentially of home electrical appliances, has increased in proportion between four and seven times what it was in 1939?—A. Are you referring to the total output of the electrical manufacturing industry?

Q. I am referring to the total output of electrical ranges and rangettes between 1939 and 1950, and also washing machines and individual household refrigerators. These are figures from the Dominion Bureau of Statistics.—A. Well, if they have so stated I presume they have facts to back it up. Admittedly the output increased vastly but I could not tell you if it was three and a half or five times or ten times.

Q. I will tell you very frankly that this is information I received by telephone so I will just put the figures to you and you can tell me whether in accordance with your experience they may be exact. For instance, electrical ranges may have increased by five times between 1939 and 1950 comparing the 1950 total production with 1939?—A. You are speaking of units of output?

Q. Yes, would that be correct?—A. Does that figure you have given me include ranges and rangettes also?

Q. Just ranges. I understand rangettes would have increased three times, but that is just approximately. Would you prefer I obtain the figures and table them?—A. I think that would be better. These gentlemen seem to think from their own knowledge of the industry it is somewhere in the neighbourhood of three times.

Q. I propose to table some figures but in order for you to check up may I put it to you that refrigerators may have increased by six times if you compare 1950 production with 1939.—A. We would say that is approximately correct.

Q. And ironing machines, which is something relatively new as far as common household use is concerned, have increased by eleven times?—A. As you say, ironing machines were not in common use before the war, and it could be twenty-five times and it wouldn't mean very much.

Q. That is why I said they were not in common use. I gather from your testimony that it is against the policy of your association of manufacturers as such to discuss maintained prices at your meetings.—A. It was the policy laid down by the board of directors of this association, when it first was incorporated. Any discussion of price, discounts or anything relative thereto is strictly forbidden in any association meeting or any section or committee thereof.

Q. In accordance with your experience, however, is it the custom in dealers' meetings to have groups of manufacturers appearing before the committee and discuss prices with them?—A. No, it is not. I may go further than that and say I have had requests during the past four years from both dealers and retailers for discussion between ourselves and these have been consistently refused and we have never met and discussed these things.

Q. Do you sometimes receive recommendations from groups of dealers to establish certain schedules of prices?—A. We do not.

Q. Do you know about the Hardware and Metal trade magazine?—A. I know there is such a magazine, but I do not know who publishes it.

Q. Do you know what the Canadian Electrical Distributors' Association is?—A. I know that is the name of an association.

Q. I have here a report of a meeting of the Canadian Electrical Distributors' Association in the presence of a number of manufacturers where it is said the meeting approved a revision of schedules on lighting fixtures and directed two recommendations to manufacturers along this line.—A. I would not have any word on that personally. I believe certain manufacturers are members of the Distributors' Association because they perform two functions, they are both manufacturers and distributors.

By Mr. Carter:

Q. I think at the last meeting I cited the case of electrical appliances which sell in the United States at one price and the corresponding model

sells in Canada at double that price and sometimes more than double, and I wonder if you are prepared to give some explanation of that?—A. I do not believe anybody here is in a position to give you what you ask for in that matter. I do not know with the limited information which I have been able to obtain personally whether or not the same model you speak of in the United States is sold in Canada. The member companies of this association as such do not import American goods. There may be the odd exception, but there would be very few for sale in Canada, since we manufacture them here.

Q. That is what I have in mind, when the corresponding model is manufactured in Canada it has all the features of the American model. It is manufactured in Canada and sells for double the price its counterpart sells for in the United States. I would like to know why that is so. Why does the model of the manufacturer in Canada have to sell at double the price at which the corresponding model sells in the United States?—A. I think I can only answer that question in part. In the first place, the Canadian Standards Association requirements on consumer goods and other electrical products, in accordance with the Canadian electrical code, are much more strict here than on the other side. In the second place, as I say, we were encouraged by the government to make these all-Canadian products in order to save dollars. Great expenditures have been made on capital equipment in factories and so on, to expand production to take care of the Canadian market. Tooling costs are the same here as in the United States. However, they are amortized over a production, which as a guess, I would say is one-tenth of what it is in the United States. Our labour rates and material costs are approximately the same and, if you build the whole picture up, you will find that these prices are not gauged at all because of a price in the United States and trying to get just under it or just over it—as somebody has stated once before the House. The prices are based on costs and on reasonable profit for the manufacturer.

If you will examine these sheets and the examples you have there, you will find that the products are shown to have, for the manufacturer, a profit which is in many cases less than reasonable, and mark-ups to the distributor and dealers which are apparently reasonable, in view of what they have to do with the appliances on the way through to the consumer.

I suppose that our high prices are one of the penalties we pay for Canadian citizenship. Personally, I am prepared to pay it. I do not want to see us, as Canadians, become merely hewers of wood and drawers of water. If we tear down these tariffs which you bring up, and you raise the question really, sir, of tariff—and that is all it is—but if we knock those down then we are just going to close all the industrial plants and depend for employment on something else. I do not know where that something else is going to come from. It is something we have to pay for our Canadian citizenship and we should be glad to pay it. I do not know any way out of it.

Q. I wonder if Canadian citizenship accounts for the tremendous difference in prices? I had in mind a model of clock radio that sells in the United States at a retail price of under $30—$29.95.

Mr. CROLL: Call it $30.

By Mr. Carter:

Q. Yes, call it $30. It is made by the same company in Canada and it sells on Bank street for over $60—$62.50. I presume the American company would have its distributors' mark-up and retailers' mark-up, the same as we have here in Canada, but I find it hard to understand and I cannot see how

the manufacturers' costs and even the tariff would account for that tremendous difference in the price when the article is made by the same company?—A. May I have Mr. Butters answer that question, he is more familiar with merchandising than I am?

Mr. BUTTERS: I would like to answer that question very briefly. I talked briefly on it a week ago today.

There are always exceptions to a rule and, if there is a radio that is an exact and comparable model selling in Canada for twice the list price in the United States, I do not know of it. I would go further and say it is probably not made by a very reputable manufacturer.

Mr. CARTER: Should I state the model and company here?

Mr. CROLL: Surely.

Mr. CARTER: The manufacturer I had in mind is Canadian General Electric.

Mr. BUTTERS: I do not think that is true then, I would question the information. I do not think it would be the same radio.

I did give you a comparison on a refrigerator and I can give you numerous comparisons. You state, however, that these things sell at twice what they sell for in the United States. The figures I gave you last week on a refrigerator indicate that it sells in the United States for $374.95. Twice that is $749.90. If we, as a company, brought that refrigerator over—and I gave you the figures you will recall—we would take off the excise tax of 10 per cent in the United States; we would add the exchange; we would add the value for duty; we would add the sales tax; the excise tax; and our own profit plus the dealer's profit; and with all that the refrigerator would sell for $580 list in Canada—not $750. We make the same identical thing in Canada—in fact a better product in that our refrigerator has door shelves and the American model has not—and it sells for $499.

As a matter of interest, I am sorry to hear this radio was a General Electric model and I will look into it further. I can hardly believe it.

As some of you know, we manufacture electric blankets in Canada and we do not protect ourselves under the tariff. We actually sell electric blankets in Canada from 10 per cent to 20 per cent lower in price than those available in the United States. The answer to that is, of course, that people on the other side have to come to Canada for wool. We have the advantage in Canada of a better wool price and, as manufacturers, we pass that advantage along to the consumer in a list price 10 per cent to 20 per cent lower than American list prices.

I would like to look into that radio matter further. Could you give me the model number and tell me where it is for sale? It may not be shown in the window at the right price. There may be an error there.

Mr. CARTER: I phoned up the General Electric people and they listed a lot of dealers who sold that model. I forget what the model is but one model is 516—whether it is the American or Canadian model I do not know. I think it is 505, Canadian, and 516, American.

Mr. BUTTERS: Could we just clarify that a little further. I certainly stuck my neck out when I asked about it because I happen to be with General Electric. However, we do not manufacture in Canada a comparable model clock radio, comparable in every respect to the American model.

Mr. Simpson has already mentioned that the standards under which we work in Canada are higher. The average radio as produced by the manufacturer in the United States will not pass the Canadian standards. That goes for the clock as well but, when you refer to a clock radio the clock may be the same and the radio may be a lot different. We do not follow the numbers

which they manufacture in the United States—there is not a comparable number. All our clock radios are made in our plant at Toronto. They are distinct models in themselves and they are designed by us. I do not think you could make a comparison between them.

Mr. CARTER: It does the same job and has all the same features—and I think that is all that is required?

Mr. BUTTERS: It might not be as good a radio. You can have two clock radios which look very much alike but one may have a three-tube radio set and one may have a five-tube set—it may be altogether different.

By Mr. Carter:

Q. I will let that go but there is one other question I would like to ask the witness. Do they export these electrical appliances to other countries? Do you export these radios and refrigerators out of Canada?

Mr. SIMPSON: There is some export on refrigerators and ranges mostly—and there would undoubtedly be some export on several other different lines. It is something that I cannot answer without looking it up directly.

As a matter of fact I think if the records are consulted they will show that our exports were considerably greater before the dollar shortage, and before import controls by various other countries around the globe, which do not permit the entry into their countries of our goods.

By Mr. Carter:

Q. When you get these orders for export do you get them direct from the people ordering or do you ever get export orders through the parent company in the United States?—A. That is a question I cannot answer.

Q. Can any of your associates answer?—A. The answer is no.

Q. All orders are direct from the country which imports the article? You never have to fill a part order for the parent company in the United States? Supposing that the General Electric Company in the United States had an order for 1,000 refrigerators, 1,000 radios, or 1,000 ranges, would they at any time pass part of that on to their Canadian company?—A. That is something I cannot answer.

The CHAIRMAN: I think in the days before these restrictions, when countries wanted to get the advantage of the British preferential rates, it was a proper practice, but with the dollar restrictions I think it is very difficult for either the Americans or the Canadians to enter those markets now.

Mr. CARTER: Before I close I take it that it will be all right to table the letter from the Newfoundland Co-Operative Union?

The CHAIRMAN: Mr. Carter is tabling a letter from the Newfoundland Co-Operative Union giving their views to this committee. Is it agreed that it shall be tabled with the correspondence? It is a two-page brief.

Agreed.

Mr. Thatcher?

By Mr. Thatcher:

Q. I am not just clear in my own mind about the significance of these figures we had tabled this morning. Are we to take it that the main point which is being made is that the appliance industry at the moment is losing money pretty consistently?—A. We could not make comparisons between price maintained goods and goods which are not price maintained, because we have not access to the records of other industries. On the floor of the House and

in the press, there have been a lot of erroneous statements made about the big electrical manufacturers' profits, and so on.

This invitation went out over the telephone and by letter couched in exactly the same way to all these appliance people. If you examine the basis on which the answers came back you will realize how hard it is to get something done on a uniform basis, in so far as costs are concerned, at any given time. You will note there is one thing in common throughout these. You will find that even before taxes in most cases, their profit was not even reasonable and you will find that since the impact of the tax in April in many cases the profit turned into a loss. That is why I would like to establish the fact that in so far as the Canadian public and this committee is concerned these manufacturers' prices are more than reasonable.

Q. Mr. Simpson, I am sorry but I do not follow. When there is such a loss as Company B had—27·3 per cent on one appliance, why doesn't the price go up to take care of it? Is it because the industry had such large inventories on hand when the new taxes came into effect?—A. There were not large inventories on hand when the tax came on, but they accumulated very rapidly —for the simple reason that you have a production line; you have personnel there to keep it operating at a certain rate; and if suddenly somebody cuts off your market you cannot stop that line tomorrow. It is a gradual process of trying to cut orders for materials and trying to let staff go. However, the first thing you know is that you have accumulated an inventory beyond the possibility of sales—before you can slow up.

If somebody would only say six months ahead: we are going to put these taxes on at the 1st of April, we could pull in our horns and get down to the proper level by that time.

Q. Are we to assume that sooner or later the prices of these appliances are going to go up pretty substantially, in order to cover these losses?—A. I think that is so, unless the situation changes.

Q. There is one thing that worries me in this appliance business. I wonder whether you can throw some light on it. In the appliance field, there are some manufacturers who sell through their own outlets direct to the consumer. Are there many who follow such a procedure to your knowledge?—A. No.

Q. Are there some?—A. Yes.

Q. Well, suppose this legislation passes— —A. There are two or three in that category and they are very large.

Q. Yes, I am thinking of Maytag Washing Machine Company and a few others?—A. They are not members of this association.

Q. Suppose this legislation goes through, Mr. Simpson, those companies would still be able to keep maintained prices if they desired?—A. You mean at their factory door?

Q. No, at their own stores.—A. I think this legislation, as I remember it, stated that there would be no harm in them publishing a price list but that would not then be a minimum list price.

Q. Perhaps I have not framed my question clearly. What I want to know is this—where a manufacturer has his own stores and is selling direct to the consumer right across Canada, would this legislation in your opinion—prevent him selling through those stores at a maintained price right across Canada?—A. I do not see how it possibly could.

Q. Would the proposed legislation not be giving that type of company a preferred position?—A. It is conceivable that it might. It might put them in the same state as the very large retailer who could sell his own branded lines at any price that he would prefer to sell and cut nationally branded lines of any other manufacturer.

Q. If price maintenance is abolished, and if companies with their own outlets are not going to be affected by it, would there not be a danger that more and more companies would try to sell direct to the consumer?—A. A trend could be developed along those lines—that manufacturers would establish their own retail outlets and sell directly.

Q. There are a lot of small retailers who are afraid of that happening. If manufacturers establish their own outlets, as they may do, the smaller dealer may lose his agency, and he could conceivably be forced out of business.

I do not know whether or not such a fear is justified. But I would appreciate it if the minister would state whether there will be protection against such a happening?

Hon. Mr. GARSON: Obviously they have the protection of competition. We must not assume that a manufacturer can establish a retail outlet for nothing. He has rent to pay, he has his employees to pay—he might have to pay them even more than they are paid by retailers now—and when he establishes that outlet he still has to face competition from the other manufacturers who are wise enough to sell through their distributors; and they will not have the fixed prices of resale price maintenance.

Mr. THATCHER: I am just wondering—suppose General Motors right across the country says, "All right, if we cannot fix our price to dealers we will set up our own agencies, that will be within the law." Could that not happen?

Hon. Mr. GARSON: Yes, but they have to face the competition of those dealers who are agents for other concerns and who are not operating under resale price maintenance. Whatever the price that may be arrived at of the other products at the retail level, in order to get their share of the business they have to meet these other prices. As one of the witnesses here the other day pointed out—one of the witnesses representing the beauty supply dealers—the mere fact that it is a manufacturer who sets up a retail outlet or even a wholesale outlet does not enable him to avoid the costs of operating that outlet. You are asking me for my opinion on that and I am giving it for what it is worth—it may not be worth very much—but I should think that on a retailing operation, especially in a smaller city or town, one individual could run it more efficiently than a big company could, because the company not only has to get good men to run it, but they have to supervise it and to audit it.

By Mr. Thatcher:

Q. Just one more comment. I repeat that some retailers are afraid certain manufacturers will take advantage of the legislation, and get around it by setting up their own agencies to sell direct. It must be admitted that this is one more danger of the proposed legislation. That is all, Mr. Chairman.

The CHAIRMAN: Mr. Croll, you are next.

By Mr. Croll:

Q. Mr. Simpson, I may have been mistaken, but I would like to draw your attention to this company "B". Would you mind referring to it? "Appliance—Range".—A. On the first page.

Q. The first, company "B". Before we get to that, in reply to a question by Mr. Carter when he asked you about the difference in cost as between the American and the Canadian products, you gave him a great number of reasons, and one of the reasons you gave him, you said, and I marked it down: "Labour costs were the same in both countries". I am going to suggest to you that the contracts, the union contracts in the United States and Canada, carry a differential of some 20 per cent to 25 per cent in favour of American labour.—A. That

is quite so, and—I cannot tell you where I saw it but I have seen it two or three different times—the production per man hour in the United States is much higher than it is in Canada. It would balance that out.

Q. I am in no position to refute you on that, because I have not the figure with me at the moment, but I did have the other one in my head and I remember it very distinctly. All right, we will get down to something we both know more about. You may be right on the other, I do not know. You said, in reply to a question by Mr. Favreau, that the retail margin of profit in dollars and cents was increased after the government increased its excise taxes.—A. In dollars.

Q. And cents. The retail margin of profit to the retailer was increased in dollars and cents after the government raised its excise tax.—A. That is correct.

Q. Let us carry it further. In effect, what happened was, and this is assuming that the retailer was receiving, say, 40 per cent, that 40 per cent was his margin, and if the product was originally $100, he would earn $40. That would be his profit in dollars and cents.—A. Gross?

Q. Yes, I am talking about gross, and then after the government increased its taxes, say 10 per cent, the product would then be $110 and then the retailer's profit would be $44.—A. I would think that is the basis on which he operated.

The CHAIRMAN: You are working on costs, they are working on selling price.

Mr. CROLL: I am talking about their selling price to the retailer. I am quite correct, Mr. Chairman.

The CHAIRMAN: When they talk about 40 per cent, it is not on their costs, it is a 40 per cent discount on what the retailer is going to sell it. That has been the point running through all those discussions—one group have mark-ups, and I believe you gentlemen have discounts, and a 40 per cent discount is 66⅔ per cent profit on cost price.

By Mr. Croll:

Q. What struck me—I may not be right on it—was this, that when the tax went on there was a profit made on the tax.—A. That is correct.

Q. That is the point I am getting at.—A. It does not matter what the dealer is paying for, if he is paying taxes it is the same as if he is paying for nails or anything else he buys. He marks it up, and, Mr. Croll, this thing happened during the war. I am not saying it was right or wrong. I am only telling you what happened. These mark-ups here, as you can see, cost the dealer, and particularly the smaller dealer who has to finance his paper at the bank, considerably more money in financial charges than he had to pay before, so he does need some mark-up to cover that. They went to the Wartime Prices and Trade Board and submitted their prices and retailers were given a mark-up by the W.P.T.B. and this is, in theory, no different than what was granted to them by the government during the war.

Mr. CROLL: During the war we were not operating in a free economy, as you well know; we were operating under the Wartime Prices and Trade Board, which was a planned economy.

Mr. HEES: If it was fair during the war, it is fair now.

Mr. CROLL: Do you mind if the witness and I have a discussion on this?

Mr. HEES: I was just putting a question.

Mr. CROLL: The witness does not need any help from you.

By Mr. Croll:

Q. It was a planned economy at that time, and what we are operating in today is a free economy, or what we hope is a free economy; so I do not see

the reference to what the Wartime Prices and Trade Board did during the war. I am getting back again to my original question. Prior to the increase in excise tax of 15 per cent in your business, was there not a general increase?—A. In April, 1951, there was a fifteen per cent tax imposed on major appliances, refrigerators, washing machines, ranges. At that time there was already a fifteen per cent tax on all the traffic appliances, which had been imposed in September, 1950, and in April, 1951, that was increased to 25 per cent.

Q. Getting back again to my original point: When the increase in excise tax came about there was a comparable increase in dollars and cents to the retailer at that time in profit, gross profit?—A. That is correct.

Q. And at the same time—I will take you now to company "B", the appliance—range figures that you provided. The percentage mark-up, prior to the increase, to the dealer was 51·7 per cent, to the distributor 12·7 per cent, and to the manufacturer 1 per cent. Mr. Simpson, I find that very hard to understand.—A. Mr. Croll, I can only say this to you, that from the accounting department of a very reputable company I have been given these figures and I presume they know what they are doing, that their accounts are in perfect order, and I cannot gainsay the figures which they have given me.

Q. I will just carry those figures a little further for the purpose of the record. That after the tax increase the percentage mark-up to the dealer was 51·3 per cent, which is a drop of ·4 per cent; to the distributor, it was 12·9 per cent, which was an increase of ·2 per cent; and the manufacturer, I gather, a loss 27·3 per cent—that red indicates a loss?—A. That is correct.

Q. It is a loss of 26·3 per cent—that is the situation as it stands at the present time?—A. It is really a loss of 28·3 per cent, because there was a 1 per cent profit which was changed to a 27·3 per cent loss. This might interest you. I know what you are getting at is the size of these supposed mark-ups.

Q. Mr. Simpson, not "supposed mark-ups", because I take it you say these are actual figures.—A. Yes, that is quite true. I have here the Dominion Bureau of Statistics daily bulletin dated November 19, 1951, and I read:

> Followiing are the gross and net profits respectively (expressed as percentages of net sales) of the 20 trades in 1950, as shown by the bureau's study, with the comparative figures for 1948 within parentheses: and I read midway down the list: Appliances and radio, 10 per cent for the year 1950 as against 9·5 per cent for the year 1948, being the net profit accruing to retail outlets in that business.

That may help you in your study.

Q. Will you turn over to Company "B"— "appliance—range—apartment size". I call your attention to the percentage mark-up, which was 47·1 per cent prior to the tax increase and became 51·6 per cent after the tax increase. You have those figures?—A. Yes, I have it here.

Q. I also find that very hard and difficult to understand, I suppose that is for the same reasons that you have already given?—A. Yes, the companies were asked to submit figures on these various units to assist the committee in their deliberations. That is a figure that was given to me. I have no doubt they were quite honest and faithful in their giving of them, but I am afraid I cannot explain the difference or differential in those figures.

Q. Coming back again to Company "B", the first one I had a little difficulty in following. On the fourth line of "appliance—range", you show manufacturer's cost $185.64, plus sales and excise taxes $16.27, making a total of $201.91. That is the price prior to the tax increase?—A. That is correct.

Q. And the price after the tax increase: manufacturer's cost $276.78, sales and excise taxes $44.75, making a total of $321.53. I do not quite follow that $276.78. Perhaps someone could explain that.—A. That is the increase, you mean? You cannot reconcile the $185.64 and $276.78?

Q. Yes.—A. That is the question I answered a short time ago, Mr. Croll, and is wholly due to the fact that production is now 40 per cent of what it was previously, and it merely relates to volume. When your volume goes down your cost per unit naturally increases.

Q. That is all, Mr. Simpson.

The CHAIRMAN: Thank you, Mr. Croll. Mr. Shaw, you follow.

By Mr. Shaw:

Q. Mr. Simpson, referring to Company "B" as an example, "appliance—washer". You show the manufacturer's cost prior to the tax increase at $97.41, and the price after the tax increase is shown at $124.10. Below that you have listed the actual sales and excise taxes in dollars. What period do you tie those prices to? Is that the average since the budget?—A. That, yes, is the price and breakdown of that machine previous to the budget on April 10, 1951, and the price comparison now. You cannot figure cost, Mr. Shaw, unless you take it at a given date.

Q. That $124.10 would be the manufacturer's cost as of when?—A. Last week, anytime during Octber.

Q. You cannot indicate what the comparable figure may have been for May?—A. For May?

Q. Yes.—A. I would say it probably would have changed very little in May, because by that time it would not have felt the full impact of the tax. In other words, the manufacturer having had no warning would not at that time have been able to slow his production or curtail the supply of materials being delivered to his door. His production was probably the same and, therefore, his cost the same as in the month previous, but as soon as he could slow it up and his volume began to decrease, which would slip him into June or July, then his costs would immediately start to go up as shown. That is purely a question of volume, of production.

Q. Yes, I appreciate that. Is it customary, Mr. Simpson, when tax increases are imposed, is it the general practice in anticipation, let us say, of a lower volume of business, for the manufacturer to rate his costs higher more or less automatically. Is it a customary practice in business to do that? In other words, increase manufacturer's costs almost immediately? Maybe I am not making myself clear.—A. I am sorry.

Q. What I have noticed, Mr. Simpson, is this, that almost invariably we find that immediately after taxes go up the manufacturer's costs go up, that is quite apart from the tax itself, adding the tax in. In their bookkeeping they immediately rate their costs higher.—A. Not immediately, but you have to remember that the impact of the tax is felt as volume decreases, and when you decrease volume you immediately raise the unit cost of production. You are not viewing these manufacturers' costs as arbitrary, Mr. Shaw, as arbitrary figures set by the manufacturer? They actually represent what it costs in dollars and cents, overhead, labour, material and so on, worked out on a dollars and cents basis. This is not an arbitrary figure.

Q. My only reason for asking that, Mr. Simpson, is that I have noticed frequently that with the bringing down of the budget the prices to the retailers will invariably go up beyond the actual tax increase itself. That is why I asked that question. It will be noticed in almost any store that after a tax increase the increased selling price to the consumer is in excess of the actual tax increase itself.—A. That is what Mr. Croll's question and discussion was about, that the mark-up is greater than the actual amount of the tax.

Q. Is that a common practice?—A. Yes, as I say, it is a percentage mark-up on the tax. It costs the retailers more to finance their paper at the bank, par-

ticularly the smaller retailers who have not sufficient funds to carry themselves, and, as I say, this practice was permitted by the Wartime Prices and Trade Board.

Q. According to practically all of these financial statements we have before us relating to appliances the commodity is going out from the manufacturer to the distributor below the manufacturer's cost?—A. Since the tax, yes.

Q. And the manufacturer is still manufacturing and moving those commodities out at less than cost; is that correct?—A. This is correct.

Q. And that is quite general in the appliance field according to the figures you have submitted?—A. That is correct, since the tax.

Q. The balance sheets of these companies over the period of the last four months would in practically all cases be in the red, is that your contention?—A. In so far as the appliance industry is concerned. If you will look at company E who was a manufacturer of small household appliances, you will note his profit has come down and in the third quarter he shows his loss, and his loss again for the month of October and his loss from July to October inclusive. I only point that out to you because it is mentioned there in dollars and cents for that particular company. I can say this, that as far as I know practically all companies in the appliance industry, certainly starting in August, and for the months of September, October and November, have shown losses.

Q. One other question along that line. Can you tell the committee why the manufacturer does not set his price to recover costs? Would he be any worse off if he arranged that the retail price or his price to the distributor enables him to recover his costs? You may say he would not sell, but wouldn't he still be better off than going broke this way? Why does he not sell to recover costs?—A. He has certain materials on hand in which he has a large investment. He cannot allow it to sit there, he has to keep the plant open and he is always hoping that tomorrow the government will reduce the tax and reduce consumer credit regulations. He cannot afford to shut down the plant with the large investment he has in it, and I think you stated yourself if he raised prices beyond all reason he would not sell his goods anyway.

Q. It is a question of going broke?—A. If it goes on long enough. We are looking for a reversal on policy; it is getting near Christmas and we are looking for Santa Claus.

Q. You are surrounded by manufacturers, I assume. May I ask one of them if he buys his raw material or component parts in the price maintained field?—A. The answer to that from one of the gentlemen is a wish that they did. As a matter of fact with the shortage of material they are buying in the grey market with prices often four times what they should be.

Q. You would advocate price maintenance, then?—A. If they had price maintenance on metals, which I think would be impossible of accomplishment, their costs would be considerably lower because they have been having to pay two and three times the price they should.

Q. I am not talking about government maintained price, I am talking about producer maintained price. Do you believe in the right of the producer of raw material to fix his price to the manufacturer in the same way the manufacturer in so many cases fixes the price to the consumer?—A. I prefer "suggests". I believe they should have the right to fix it for all the reasons we have given. We have shown the consumer gets a square deal and nobody can give him the rooking which these fellows get on the price of raw material which goes into their products.

Q. Do you mean the consumer of the finished commodity or the manufacturer?—A. I think it protects the consumer of the finished commodity because there is only sufficient mark-up to ensure a reasonable profit to distributors and retailers.

Q. Are you a manufacturer?—A. I am general manager of the Canadian Electrical Manufacturers' Association.

Q. You have manufacturers sitting with you; I cannot remember this gentleman's name?—A. Mr. Kennedy.

Mr. SHAW: Mr. Kennedy, you are a manufacturer, are you not?

Mr. KENNEDY: That is right.

Mr. SHAW: Would you prefer having raw materials and component parts which you use in your business price maintained by the producers?

Mr. KENNEDY: They are now in effect.

Mr. SHAW: Across the board?

Mr. KENNEDY: Yes .

Mr. SHAW: You are competing with other manufacturers for raw materials?

Mr. KENNEDY: That is right.

Mr. SHAW: Prices vary?

Mr. KENNEDY: That is right; there is no price maintenance in that field. The retail appliance dealer has the same opportunity to shop for appliances as I have to shop for steel.

Mr. SHAW: Not for your appliances?

Mr. KENNEDY: Yes, he has.

Mr. SHAW: Would you agree you should have taken from you the right to shop for a material which is produced by only one producer, or would you prefer to have it as it is now, where you can go out and barter?

Mr. KENNEDY: Would you repeat your question?

Mr. SHAW: Let us assume that there is a producer of a certain commodity which you require in your industry, and he is the only producer of that specific commodity. Would you prefer having him fix his price or would you prefer the right to go out and shop?

Mr. KENNEDY: I must answer your question by saying if he is the only supplier of that particular commodity the price is already fixed.

Mr. SHAW: You still want to shop for a comparable product?

Mr. KENNEDY: Yes, just as I would expect the dealer or consumer to shop.

By the Chairman:

Q. I would like to ask you one question. I heard what you said about the terrible effect of these taxes and you say the full impact was felt about August. I am looking at company B, and it is my recollection of the income tax returns in the electrical business, that they never had a better year. Before the tax increases company B made 1 per cent on ranges, lost 1 per cent on rangettes, lost 16·5 per cent on toasters, lost 13·2 per cent on washers, lost 11·6 per cent on irons, and what I am wondering is how they made as much money as they did.—A. This company which you speak of was in an expansion program and had some large capital expenditures in regard to the appliance end of their business. They are one of the larger companies and their other lines had to carry them until they had developed and obtained a market. They got caught in the middle of it when the tax was imposed, and here is the result of it. From a tax viewpoint you would only see the consolidated balance sheet which would show they had more than made up on the oranges what they had lost on the bananas.

Q. This is more than bananas, this is quite a range of fruit. Is this company a fair example if it is deliberately losing money on products to establish them in the markets?—A. I think you will find that all companies in the last four months have shown a loss.

Q. I am only talking about your figures before tax increases. I do not care what has happened since. You have explained the very serious effects these tax increases have had, but here the price is before tax increases.—A. It was due to a development program and you have to obtain your volume. There is an example in company L.

Q. I would like to stay with B, because B was picked by your association as a typical example. I do not think a company embarking on an expansion program is a fair example.—A. I did not pick any companies; I asked almost every appliance company in our industry to furnish me with figures. These figures got in on time, and I have picked nobody.

Q. Now, with regard to this matter of resale price maintenance, when the manufacturer fixes the mark-up the retailer got at 51·7 per cent, that is a discount of 100 per cent. Fifty-one per cent on the retail price is a 100 per cent mark-up on what he paid.—A. A discount is less than a mark-up. If you take an item that sells for $1 and have 50 per cent on it, that is $1.50, but if you take the consumer's price and refer it to the manufacturer's price of $1, that would be a discount of one-third.

Q. I agree. My point is this, if the retailer gets 51 per cent mark-up, the distributor 12·7 per cent, and the man who actually sets the price has 1 per cent, he is not a manufacturer, he is a philanthropist.—A. We agree with that.

By Hon. Mr. Garson:

Q. You say Canadian standards are more strict. Now, how much would you say they add to the cost, or can any of your colleagues answer that?—A. I do not think I can answer that. I might take as an example the Canadian Standards Association, which for the protection of consumers and because of fire hazard, insist on individual fusing for each burner and the oven in a Canadian range. In the United States they have only one fuse box that controls the whole range. That makes for easier servicing in Canada because if you have one burner go off, you know it is controlled by one fuse.

Q. I understand that, but my question is how much that added to the cost?—A. I cannot give you an estimate.

Q. On this point the chairman was discussing, which seems to be the crux of the whole matter, I would like to state what my understanding is of your evidence, my understanding is made up in part from inferences I have drawn. As I understand it, you have asked companies A, B, C and so on to state to you what their costs and profits were immediately prior to the tax increase and what they have been since, is that correct?—A. No, I didn't put the question in that way. I asked them to give me cost figures on their various appliances, and profit figures, and if possible show the differential between their cost and their sales to the distributor and the differential to the dealer. Some companies have given that and some haven't. I have no control over what basis they came in on, but we made the same request to each one.

Q. The purpose of these statements is to indicate the change in price and mark-up before taxes and as it was after the tax increase; isn't that right?—A. No, that is not altogether the case.

Q. It shows the price prior to the tax increase and the price after the tax increase. What does that language mean?—A. Mr. MacBain, would you care to answer that question?

Mr. MacBain: I think the point that most manufacturers had in mind when they submitted their prices and their costs in this way was to emphasize the fact that costs are not static, they fluctuate a very great deal.

Hon. Mr. GARSON: And when you submit column 1 as the price prior to tax increase you are saying to this committee that is the suggested list price on consumer's cost and distributor's cost and so on as of that date. Is this cost figure as of one month or is it for one day or what?

Mr. MACBAIN: It would vary with each manufacturer, depending upon the base period that he took.

By Hon. Mr. Garson:

Q. If it will vary from one manufacturer to another, and this is submitted to us as being on a uniform basis, will you tell us how much reliance as a committee we can place on it?—A. It is not submitted on a uniform basis. If you will look through these and take each one individually you will find that it is entirely different from the others.

Q. But they are in that form?—A. Yes.

Q. Company B—"appliances", "range", "suggested list price"—all of the language is the same and the figures are the same. Any person reading it would think it was the same, but I accept your point of view—because I was convinced that it was the case before I asked the question.

Now, Mr. Simpson, you said that even before the tax went into effect the majority of these companies were losing money on the majority of these appliances?—A. I did not say the majority of the companies.

Q. If you did not say the majority it is the majority is it not? Company B on ranges 1 per cent; Company B on rangettes— —A. The same company.

Q. —apartment size, 9 per cent. Company B, turnover toasters 16.5 per cent; washers 13.2 per cent; irons 11.6 per cent; refrigerators 7.4 per cent— —A. That is the same company. Let us go to some other company—take Company G.

Q. All right, what did it do?—A. They have figures for 1949, 1950 and the ten months of 1951.

Q. But Company G showed a loss on their washing machines, did they not?—A. In 1949, yes.

Q. Yes?—A. In 1950 they made a profit.

Q. But whether a given company shows a profit or loss upon a given appliance at a given point of time depends, I suggest, upon circumstances that have not very much to do with this comparison we in this committee are attempting to make. I understood you to say, for example, that some of these companies, even before the tax increases went into effect, had engaged in large production programs to produce these goods in Canada and to save American dollars?—A. That is correct.

Q. And that production program is reflected in their costs at the time?—A. That is correct.

Q. Therefore, and I am not suggesting for one moment that your figures are not accurate—and I think they are the only figures you could have got or could have submitted to this committee—but so far as being of any use to us in pinpointing the effect of the tax increase or the value of resale price maintenance as a policy, I would suggest—and would you not agree—that they are almost valueless?—A. No, I would not agree with anything you have said.

Q. Not even my statements of fact?—A. I think it is a misstatement of fact.

Q. The statements of fact are taken from your brief?—A. I beg your pardon, sir; I entirely disagree with you. We have shown you in good faith a complete cross-section of this industry and that the profiits, as you have in your conversation inferred, are less than reasonable—and in many cases they are losses.

They have not been picked and they have not been selected as to period. I asked these companies as a whole for returns and they gave the information. As we suggested last week we would much sooner have had you formulate the list of questions and let us answer, but that suggestion was thrown out.

Mr. HEES: Hear, hear.

Hon. Mr. GARSON: Company B shows a loss, a substantial loss on a number of appliances. I can only take it, and I do take it—but if I am wrong I want you to correct me—that the reason in the case of Company B was that it had gone into a large development program of capital costs which at that point in time were perhaps unduly reflected in the costs of their appliances as they are set out here? Because, you would not have us believe that this company is losing on all of the appliances it makes even before the tax goes into effect, would you? That is what your figures show but I cannot believe that is the statement you want to make. Now, what is the correct fact? Was Company B, before the tax went into effect, losing 9 per cent on its apartment rangette, 16·5 per cent on its turnover toaster, 13·2 per cent on its washer, and 11·6 per cent on its iron? Do you make that as a statement of fact—that it is losing on those appliances before the taxes went into effect?

The WITNESS: I do not make the statement at all. I asked for information from the companies and these are figures given by the accounting departments of those companies. I have every reason to believe they are correct and given in good faith.

Hon. Mr. GARSON: I expect they are given in good faith but I find them incredible.

Mr. THATCHER: There was already a substantial tax on those items before.

Hon. Mr. GARSON: Well, would it not be a fair thing to say that each one of those companies, in the year to which these figures apply, would show a substantial profit on the over-all operations—upon which they would pay income tax?

The WITNESS: Not if they were appliance companies. What year are you speaking about?

Hon. Mr. GARSON: Take the year prior to the tax increase?

Mr. THATCHER: This year.

Hon. Mr. GARSON: Yes.

Mr. THATCHER: Last year.

The CHAIRMAN: Take the last fiscal year.

Hon. Mr. GARSON: 1950. Did you—

Mr. CROLL: Let us get the answer.

The WITNESS: If you refer to Company G, it follows these things through.

By Hon. Mr. Garson:

Q. No, I would like to stick with Company B?—A. Of course you would, but I am trying to show you what this other company has done over a period of three years.

Q. What I am interested in—and what I would like you to be interested in if you do not mind, because you are the witness—is Company B.

Can you explain why, even before the tax went into effect, that company was losing substantial sums of money while at the same time it was allowing substantial discounts and mark-ups to distributors and dealers?—A. I do not think the discount to distributors and dealers has much to do with it. Regardless of your own cost of production which is reflected in unit costs—you cannot

pass that on to the distributor or dealer because he has to have his mark-up to stay in business. If you want to market your product you have to market it through the distributor and dealer and there is no other answer.

Q. The trouble in Company B is that it had just embarked upon a substantial development program which reflected additional costs— —A. I do not think there is any use in you asking me any more questions about the operations of this company. I do not know the intricacies and details of the company.

Q. Do any of your associates know?—A. No, they would not.

The CHAIRMAN: One last question, Mr. Garson.

Hon. Mr. GARSON: Now, the suggestion was made that the reason for the retailer's mark-up going up as a result of the imposition of tax was that, as it came to the retailer, it was part of his cost on which he had to have his percentage—and that has been recognized by the Wartime Prices and Trade Board. That would not be true if it were imposed in the form of a retail sales tax?

The WITNESS: No, it would not. We would prefer that. We would prefer that it had been applied at the retail level and then the public would know that you were putting these taxes on, and it would not be hidden.

The CHAIRMAN: Mr. Hees?

By Mr. Hees:

Q. I think it was when you were answering a question by Mr. Croll you said that the mark-ups which manufacturers allow retailers are approximately those which were O.K.'d by the Wartime Prices and Trade Board?—A. In effect, yes. What I was endeavouring to say was that the Wartime Prices and Trade Board had allowed mark-up on the actual tax because of the additional cost of financing involved.

Q. So the mark-ups which dealers are charging on electrical appliances today are approximately the same as those O.K.'d by the Wartime Prices and Trade Board?—A. I do not know whether they are on exactly the same basis or not, but in principle they are.

Q. In principle we can take it then that as the Wartime Prices and Trade Board was a government agency the mark-ups were fair at that time, and there is no reason to believe that they should be considered as unfair at this time?—A. That is right.

The CHAIRMAN: Did he say they were the same?

Mr. HEES: Mr. Simpson said they are in essence the same today.

The CHAIRMAN: I did not understand him to say that.

Mr. HARRISON: He said the principle was the same.

The WITNESS: I said the principle of the mark-up was the same as approved by the Wartime Prices and Trade Board. I did not say that the percentage was the same.

By Mr. Hees:

Q. I thought you said the percentage of mark-up was the same. If the percentage of mark-up which a retailer is allowed before the excise tax went into effect was 40 per cent, that would represent a certain dollar value, but after the tax goes into effect it would be 40 per cent plus 40 per cent of the excise tax?—A. Yes.

Q. That is the point I want to establish. We will say the margin allowed the dealer is 40 per cent and that amounts to $10—before the excise tax went into effect, then the profit to the dealer after the excise tax went into effect was $10 plus 40 per cent of the excise tax?—A. Yes.

Q. In other words, the customer is paying not only the excise tax but the retailer's mark-up on the excise tax?

That is a very important point I think, Mr. Chairman, and it is a point which I am very glad to have cleared up. It is exactly what the opposition declared would happen when the tax went into effect. The consumer is not only paying the excise tax which the government is collecting, but also he is paying the retailer's mark-up on the excise tax.

The CHAIRMAN: Under a system of resale price maintenance with fixed mark-ups.

Mr. HEES: No, under any system.

The CHAIRMAN: No, no.

Mr. HEES: Yes, it is. It does not matter whether there is resale price maintenance or no price maintenance. If the retailer takes a certain percentage of profit he takes that same percentage after the tax is applied and the consumer has to pay the tax plus the retailer's profit on the excise tax—whether it is under a system of resale price maintenance or not. Is that not correct?

The WITNESS: That is right.

The CHAIRMAN: That is Mr. Simpson's view.

Mr. HEES: Would the other manufacturers agree that it is a correct statement?

The WITNESS: Yes.

Mr. HEES: Thank you very much, that is all.

The CHAIRMAN: Senator Fogo?

By Hon. Mr. Fogo:

Q. I have just one question arising out of the reference to the Wartime Prices and Trade Board. Were not the mark-ups allowed by the Wartime Prices and Trade Board those which existed prior to the coming into being of the Wartime Prices and Trade Board?—A. I am sorry sir—

Q. A few minutes ago you were asked whether the mark-ups now existing were somewhat similar to those allowed by the Wartime Prices and Trade Board in your industry during the war, and I understood you to say yes.—A. I think, sir, my statement was that the mark-up of profit on tax, which is inevitable in this type of thing was allowed in principle by the Wartime Prices and Trade Board during the war. Originally, as a matter of fact, it did not apply but I understand the retailers came down here and sat in with Mr. Gordon and some of the others, and they were given an allowance of mark-up on the tax because of the additional financing involved, discounting paper at the bank and so on, to do their financing. What I am saying is this in principle is the same as they allowed during the war. I did not say the percentage was the same. It may be, but I do not know.

Q. My question was, if you recall: Were the percentages allowed not less than those that were in existence prior to the time of the Wartime Prices and Trade Board?—A. I do not know that.

Q. Are any of the other gentlemen here competent to answer that question?—

Mr. HUME: Mr. Kennedy perhaps could answer that.

Mr. KENNEDY: I believe, sir, that the Wartime Prices and Trade Board ruled on a percentage of the mark-up on the tax slightly smaller than the percentage of mark-up ordinarily enjoyed prior to the excise tax.

Hon. Mr. FOGO: Yes, but apart from tax altogether, were not the general mark-ups approved, as someone said, by the Wartime Prices and Trade Board, lower than those which the industry enjoyed, shall I say, prior to the regulation by the Wartime Prices and Trade Board?

Mr. KENNEDY: To answer your question directly, I would say yes, and while I have the opportunity I would like to say that in the industry I happen to be associated with, the trade discounts at the retail level are lower today than they were at that time.

Hon. Mr. FOGO: I believe that is right.

The CHAIRMAN: Senator Burchill.

By Senator Burchill:

Q. I do not know whether you have any figures on volume of sales. We know, of course, that costs depend a lot on volume. Now, have you any figures to give the committee as to the trend today in Canada of sales volume.—A. I have no figures, sir, but in a cursory sort of way some months ago, in September, we made an examination and, as I stated before—and these are approximate figures across the board—production in the appliance industry is approximately 40 per cent of what it was at this time last year, as to volume, and from conversations that I have had with retailers I understand that sales at the retail level are 25 to 30 per cent of what they were at this time last year. I cannot give you specific figures, but those are approximations in so far as we could determine by a spot check.

Q. Is there any evidence from the dealers as to purchasing resistance on account of high prices of your electrical appliance?—A. That is very general conversation. It is not wholly due to prices, sir, either; it is very much in part due to the very strict consumer credit regulations, which require the purchaser to pay 50 per cent down and the balance in 12 monthly payments on some items, and require him to pay on major appliances one-third down and 12 months to pay the balance.

Q. That has slowed up purchasing?—A. Yes, because the monthly payments are difficult out of the weekly wage for most people.

The CHAIRMAN: Mr. Harrison, you are next.

By Mr. Harrison:

Q. I think it was Mr. MacBain who made the statement that costs of manufacturing vary violently. Is that correct? Well, if that is correct, would not the figures shown in your profit sheets before us very violently also if made at different periods of time?

Mr. MACBAIN: Yes, they would vary, but unfortunately the costs of material, the cost of labour have been mounting steadily and up until recently manufacturers were able, by increasing efficiency and due to their larger volume, to keep up fairly well with that. However, immediately prior to the tax most manufacturers were buying material, mostly steel, at fantastic prices, and that particularly applies to the period before the tax was put on when volume was high, so that while profits do vary they have never varied to the same degree as the losses which have been experienced in the last few months.

Mr. HARRISON: That I can appreciate, but what I was trying to establish is that if you set out a set of cost figures, such as you have put before us today, covering different periods of time, even if you took them during the period of the increased tax or before, they would also vary greatly in their net result. Am I right?

Mr. MACBAIN: Yes, you are right, but my previous explanation applies.

Mr. HARRISON: What I am getting at is actually cost figures are only relative to this period and over, shall I say, a period of years those figures really do not mean very much. Am I right?

Mr. SIMPSON: I do not see how you can make that statement.

Mr. CROLL: The gentleman answering is competent—

The CHAIRMAN: Mr. Simpson is the head of the delegation, Mr. Croll.

Mr. CROLL: The question is directed to Mr. MacBain.

Mr. HARRISON: This subject was brought up by Mr. MacBain.

Mr. MACBAIN: Would you repeat your question again?

Mr. HARRISON: What I am getting at is the value of these reports to us. They certainly convey the picture as of the moment, but if they were related to a period before the tax increase they would be considerably different.

Mr. SIMPSON: You can take Company "G" again, which I have asked everybody to do. It goes back to 1949 and shows the whole thing.

By Mr. Harrison:

Q. Is it entirely in relation, though, to the figures we have? Those are appliances you are speaking mostly of, and Company "G" covers the whole of the operations?—A. These figures you have of the 11 different examples, are all appliances.

Q. Well, from the answer I have obtained from Mr. MacBain, so far as I gather, actually these figures we have before us are only relative to the particular period they cover, and if you had a set of sheets for, say, a year ago, comparable to these, they would convey a different picture altogether.—A. You have them in many cases for the years 1949 and 1950 and ten months of 1951, but you won't look at them.

Q. We will let that point go.

Mr. THATCHER: Let us look at them.

The WITNESS: Let us look at Company "G." They go through the whole range of their appliances in 1949 and show for the total of all appliances an average profit of 4·5 per cent in 1949. They go through the whole gamut there. They show a figure for 1950 of 7·4 per cent profit, and for the first ten months of 1951 they show a 4·1 per cent profit.

Mr. HARRISON: We will let that point go. I would like to address a question to Mr. Butters, and this is pertinent to the question I had sent to me by one of his dealers. I just want to establish the company policy here with regard to selling merchandise that has been increased in price. What is your attitude to the dealer who has some of that merchandise on hand? Can he, under your policy, proceed to retail that at the old price or must he increase it to the new price that you have established?

Mr. BUTTERS: We have not a definite policy, since you are asking me directly, in that regard. It is closely associated with the introduction of the tax. For instance, dealers had tax free merchandise on their showroom floors and in warehouses that they took the liberty of selling, in many cases, at a tax free price. In a case like that we would draw to the attention of the dealer the fact that when the tax comes off he will be caught with a lot of merchandise on his showroom floor on which he has paid the tax, so he has to make a profit at one end of the deal to offset the loss at the other. Answering your qustion on prices, our policy in that respect is somewhat flexible. It is not definite. If we raised the price and the dealer had some merchandise at the old price, I say if we raised the price, which we have not done for a long time, the dealer in most cases would be free to sell some or all at his choosing, and what he bought at the lower prices we would not impose on him too strongly to sell at the new prices.

Mr. HARRISON: As a former dealer, I can appreciate the point you are making that he must make a profit on his tax free goods in order to offset the loss at which he may have to sell goods which carry a tax which he has paid. In view of the question this man raised, I am glad to have your reply. He maintained that on some of your goods, when a price increase was put through by your company, not caused by taxes, that it was insisted that he increase the price of the goods on his shelf to the new prices, and he said if that was the system he was much in favour of resale price maintenance being discontinued, and he communicated that to me as his wishes in the matter. I thought that rather odd, inasmuch as he should be able to keep some benefit from your price maintenance policy. I think that is all.

The CHAIRMAN: Mr. Mott, you are next.

By Mr. Mott:

Q. Mr. Chairman, I would like to ask Mr. Simpson a question, referring to a question asked by Mr. Carter and also by Mr. Croll. I would like to have further explanation in regard to prices in the United States and here in Canada. Mr. Croll gave Mr. Simpson some figures showing a 20 to 25 per cent higher differential in favour of American labour, and Mr. Simpson replied that labour costs in the United States per unit were cheaper than in Canada. What is your explanation of that?—A. I do not know that I can give you any direct explanation of it. As I said to Mr. Croll, I remember reading it somewhere, but for the moment where I saw it I cannot remember. You have to remember, though, that their volume of production there is approximately ten times ours and unit costs are bound to be lower than ours.

Hon. Mr. HORNER: I read the article that Mr. Simpson is referring to. It was speaking of the cost of steel production in the United States, and it was true that Canadian workmen did not receive quite as high wages as they received in the United States, but production per man hour in the United States was much higher than it was in Canada.

By Mr. Mott:

Q. That is what I am coming at. It is not a case that they are not as good a class of labour as in the United States. You would say that labour works just as hard here as in the United States?—A. Well, I would think they would, but I am not professing to be an expert on that.

Q. The only other point would be in streamlining, mass production methods—have not the manufacturers here in Canada streamlined their factories to meet with the needs of the people?—A. They attempt in every way to be as efficient as possible, and they have streamlined things, which is the word you used, as far as they can. But the fact remains that a company here, with one-tenth of the volume in the United States, can never get down to the unit costs they have there, because, for instance, tooling costs are higher, and the manufacturer in Canada has only one tenth of the volume to amortize those tooling costs over.

Q. That is the reason, then, mass production and volume?—A. Yes, it is based on that.

Q. Is it the policy of manufacturers in Canada to have work done by their employees on a piece-work basis?—A. In some cases, yes. As a general rule I could not tell you, but I would think that various manufacturers adopt different methods, and I do know, from hearsay only, that there are some on piece-work.

Q. Thank you.

Mr. HUME: Mr. Chairman, before you commence to have questioning by anybody else, I would like to tell the committee that I have procured a list of models reasonably comparable, manufactured by an American company, and the same comparable model manufactured in Canada, and I have a few figures

here showing the percentage of increase as between the United States manufactured model and the Canadian manufactured model. A refrigerator manufactured by Westinghouse Electric Corporation, with their 10 per cent excise tax is $319.95 in the United States, while a reasonably comparable model, but not identical, manufactured by Canadian Westinghouse Company with our 15 per cent excise tax and 10 per cent sales tax is $479;—the percentage increase is 50 per cent.

An automatic washing machine which is comparable in the United States is $299.95 as opposed to the same model in Canada with our excise and sales tax at $439, or 46 per cent more in Canada.

An electric iron is $12.95 in the United States, while it is $15.50 in Canada, or a percentage increase of 19 per cent.

The CHAIRMAN: Thank you. I see you are first on the list Mr. Croll.

By Mr. Croll:

Q. I would like to clear up a few things. Let us go back to company B. I shall get to company G, and do not worry about that. But for company B, you gave me a figure of $276.78.—A. That is the manufacturer's cost of a range.

Q. Of a range?—A. After the application of the tax, yes.

Q. The tax went into effect in April, 1951.—A. April 10, I think, was the date of te budget.

Q. Yes, that is right. So I assume that the figure is of that date?—A. No, it is not.

Q. Well, then, of what date is it?—A. It is as of now.

Q. That is as of now?—A. That is correct.

Q. It has nothing to do with the date, though it says November.—A. No, it reflects the reduced volume and the increased cost of production.

Q. I realize that.—A. And as I have already explained, you cannot slow up on the very day a person applies a tax because it takes you two or three months to use up the material in your shop, before you can reduce production and so forth. So it does not happen immediately.

Q. You said that it was due to the 40 per cent loss in volume.—A. The volume now is only 40 per cent, not a reduction of 40 per cent, but a reduction of 60 per cent in volume.

Q. Let me get back to what the Minister of Justice asked. He asked you if the companies generally, some of those around the table, did not make substantial profits in the year 1950?—A. Is your question referring to the companies in all lines, in the apparatus field, or only to the companies in the appliance field? I would have to differentiate between them.

Q. I have to name a company; I am thinking, for instance—let us talk about the Canadian General Electric, they are here.—A. I would not answer that question as such; we agreed that there would be anonymity.

The CHAIRMAN: No, he says their representatives are sitting here today. No one has been told the names of those companies.

Mr. CROLL: They gave them to us at the first hearing; they gave us the names of the gentlemen.

The CHAIRMAN: Yes, but not of the companies listed.

By Mr. Croll:

Q. No, I am not talking about the companies listed in the list. We are a little in the dark on that. Some of us are dealing generally with companies, and a couple of them happen to be here today. The companies are familiar to

us, so I ask them if their profits are not substantial?—A. May I answer you in this way, Mr. Croll, speaking from memory. The General Electric balance sheet for last year was published in all the papers.

The CHAIRMAN: Yes.

The WITNESS: And if I remember correctly, on a volume of something like $50 million they showed an overall profit of 4·9 per cent for the year 1950. I believe that is substantially correct, but I am only speaking from memory, naturally.

By Mr. Croll:

Q. Then let me ask you this question, and you may answer it:

I will give you the net profit of the Canadian General Electric for a few years. The net profit for Canadian General Electric in 1946 was $2,411,505; in 1947 it was $3,144,381; in 1948 it was $5,300,079; in 1949 it was $4,506,375; and in 1950 it was $7,039,612.

Since Canadian Westinghouse is here also I shall give the following information: In 1946 the profits for Canadian Westinghouse were $605,904; in 1947 they were $2,300,288; in 1948 they were $4,177,340; in 1949 they were $4,487,708; and in 1950 they were $5,809,058.

The CHAIRMAN: Is that net or gross?

Mr. CROLL: These are net profits.

The CHAIRMAN: After taxes?

Mr. CROLL: Net is after taxes, as you know.

The WITNESS: May I point out that these dollar figures do not mean a thing unless they are related to volume of sales and turn-over, and percentage of profit. They do not mean a thing as dollar figures unless you relate them to sales volume and percentage of net profit. As a result the figures you have read out are meaningless.

By Mr. Croll:

Q. But they are not meaningless to the people who get the profits.—A. What was the percentage of profit on their volume of sales?

Q. Oh, that is another matter. The question arose following the question of substantial profits in the year 1950, and to give you some idea of what it is, I gave you authentic figures from the years 1946 to 1950.—A. You read out the dollar figures and if those dollar figures related to a turn-over, let us say, of $200 million instead of $25 million, or whatever it might have been, it would not show a very unreasonable profit.

Hon. Mr. GARSON: There is no suggestion that these figures are unreasonable. You seem to have a guilty conscience about them.

The WITNESS: I do not have a guilty conscience about them, Mr. Garson.

Hon. Mr. GARSON: Give us credit for having a little intelligence. No person thinks that these are abnormal. These are quite normal.

The CHAIRMAN: I think almost everybody here is anxious to see companies do well. Certainly the Department of Finance is. But company B appeared to be in the extraordinary position of losing money on nearly every item, yet—

Mr. CROLL: I do not know who company B or company G is, and I did not even ask you; but if it happened with company B or with one of those to which Mr. Sinclair and Mr. Garson have referred, it would not be quite compatible with these results which I have just read, would it?

The WITNESS: Oh yes it would and for this reason: as I stated before, if they are in a very greatly diversified line of products. Remember that we stated here last week that the appliance industry as such, in dollar volume, was approximately 15 to 20 per cent, of the over-all electrical industry, and that it was paid much more money for heavy apparatus such as transformers, generators, switching equipment, and oil circuit breakers; and that they might very easily make up on those large power items, because it was 80 per cent of the output, and would provide a greater share of the profit; so they might very easily lose on the other lines and still show what you have quoted, if it refers to one of these companies.

Mr. CROLL: I quoted from the Montreal *Gazette* of April 14, 1951, which said:

> 100 firms' net profits up 27·4 per cent in '50; "papers" featured with 33·7 per cent increase.

By "papers" they meant the pulp and paper industry.

The CHAIRMAN: You have had your second ten minutes, Mr. Croll. I now have Mr. Garson and Mr. Hees.

By Hon. Mr. Garson:

Q. Mr. Simpson, you referred two or three different times to the fact that one of the reasons for the higher costs in Canada was the fact that in the United States they had an output 10 times as great as that of Canada.—A. Approximately, yes.

Q. That puzzled me. That is not the turnout of one factory in the United States, is it?—A. I was speaking about refrigerator production. I was referring to a large refrigerator company in the United States as opposed to one operator here. They would turn out approximately 10 times what we could turn out of one of our factories.

Q. Would you say that the tooling of that large factory would be just the same as in the Canadian factory? Did you not make that statement two or three times?—A. I said that they would in effect have to have the same type of tooling.

Q. The same type of tooling but not the same quantity, I suggest; and I put it to you that while this seems to be quite obvious, your remarks seem to indicate very different conclusions. So I put it to you that if your have two factories, one in the United States and another one in Canada, which are turning out refrigerators and if the United States factory turns out 10 times as many per day as does the Canadian factory, then the cost of tooling in the same factories will not be just in the same ratio, would it?—A. I did not say it would.

Q. But I understood you to say so.—A. I did not say that. I said they would have a very much larger volume over which to distribute their tooling costs.

Q. But would they not have a very much larger tooling cost to distribute over that volume.—A. For example, if you had a press turning out refrigerator sides and forming them, you might have to operate it only about 2 hours a day in the Canadian plant to put out the required volume; but, the same press, if installed in the United States factory might turn out 10 times as much as did the Canadian press, as it would have to do if they had 10 times the volume.

Q. Oh no. I think that was what you were implying.—A. No. The Canadian manufacturer has to have the same type of tooling, but because of his reduced volume, he might only have to use it for one or two hours a day,

while in the American plant, with the very same thing, such as the metal press, they might be turning out 10 times that volume if they were working, let us say, for 12 or for 24 hours a day.

Q. I thought you were implying that the cost which was attributable to that one item was in the order of 10 times the Canadian plant; but you say you did not mean that at all?—A. No, no.

Q. What would it be? Twice as much?—A. I could not give you an answer to that question specifically. I can only say that the percentage of tooling cost in the United States, per unit, is very much lower than it would be here in the Dominion of Canada; I cannot tell you what the percentage is because it would vary with the product.

Q. Well, can any of your associates tell me?—A. I do not think they could either because it would vary with the product.

Q. I wonder if those of you who are from the Canadian General Electric Company could not tell us what is the capacity of the largest Canadian General Electric appliance plant, and how it would compare with that of the average American plant of the same company?

Mr. L. E. BUTTERS: Well, Mr. Chairman, I could answer you this way: all of their refrigerators—if you would like to use refrigerators as an example—are made at one plant in Erie, and all the refrigerators made in Canada are made in one plant in Montreal.

The point which Mr. Simpson made might be amplified and in this respect: that tooling costs, as has been emphasized, are very much higher, or rather they are comparatively higher here. For example, the tooling for stamping out a door of a refrigerator might run to $60,000 or $70,000. So to tool up for a large refrigerator would run in the general neighbourhood of $400,000. Let us say that the tool in question is one for stamping out doors, and that for the Canadian market it stamps out 50 per cent of the doors. But that tool would only be kept at stamping out doors until the model becomes obsolete. That is another factor of additional cost; whereas, in the United States they would use that tool until it started to wear out, whereupon it would be replaced.

Hon. Mr. GARSON: They would get much more than 50 per cent; but they would never reach 100 per cent in the United States, would they?

Mr. BUTTERS: Oh yes, they would. In some cases they would replace tools before they discontinued a model.

Hon. Mr. GARSON: Yes.

Mr. BUTTERS: The big difference in the cost is due to the higher mechanization that the larger volume will warrant. In Canada, we are refrigerator manufacturers and I think I can speak for all of us with the amount of mechanization of our plants in Canada. But a comparable statement certainly did not appear when we came down to a comparison with American plants. The American plants operate at a much lower labour content in the product which is a high element in the cost.

Hon. Mr. GARSON: Yes.

Mr. BUTTERS: So the whole thing can be boiled down to volume. A lot has been said here today regarding comparable volume. In 1940 in Canada there were only 72,000 refrigerators produced and sold in the Canadian market, and they were produced at a very high cost. In the Canadian market in 1950 the industry produced roughly 300,000 to 350,000 units. We are just beginning to arrive at a point where we are beginning to be related to their costs, and that is the reflection in these prices which we tried to emphasize here this morning as well as last Monday, in suggesting that our increases in list prices are not comparable at all to the other product, domestically.

But as the Canadian industry reaches a level where perhaps—and I am only guessing—we make 500,000 or 600,000 refrigerators a year, we have the means, as one company, to get very close to the American costs, or to get them down within a reasonable approach to the American cost. It is entirely a matter of volume. The Canadian market is not being enough to warrant continued production right over 12 months, and that is one of the big problems.

In the United States you do not have that problem. They operate at so many thousands a week, 50 weeks of the year. They close in the United States for a two-weeks vacation. So the United States production rate does not vary very much unless they hit an emergency such as we have here in this crop in sales due to taxes and the restrictions on credit buying. They continue to show the same rate of production week in and week out, and as a result their cost goes down and down and down until they are down so far that they would have difficulty in getting them down any lower. That is the objective of a good manufacturer, to reduce his costs in every way imaginable until he feels he has got them down about as far as he possibly can without affecting quality.

But in Canada, our volume has not reached the point where we can do that. With us refrigerators are still a highly seasonal line in the appliance business. That is one point we have been stressing. Although a refrigerator is an essential thing in the home, there are still a lot of people who will do without a refrigerator when the weather is down to zero and will wait to buy one when the butter gets soft in July. June, July and August are three big months in the year and will continue to be so. We just can't keep the level of production that contributes to good economy in the Canadian market. That is the reason for our higher prices. That is our problem in striving to get our costs down.

Hon. Mr. GARSON: You are in the development stage of this business and you hope from now on, as the market builds up, you will be able to bring down your price and widen your market still more?

Mr. BUTTERS: I can enlarge on that in another line. Take the electric iron market. An electric iron is a small domestic product and as you may have noticed in some of the figures here our price in Canada compares very favourably to the American price on an iron. We in Canada as manufacturers have been able to produce 200,000 to 300,000 irons a year and our cost is down to within a fraction of the General Electric cost in California as compared to Ontario. If we can get the volume we can get the cost down.

By Mr. MacInnis:

Q. I just have one or two questions to clear up a point which I think has already been cleared up, but I want to direct your attention to it. It has been pointed out here in the statement made that while wages for labour were higher in the United States unit labour costs were lower.—A. That is correct, the cost per unit would be less.

Q. Wasn't that explained by the very lucid explanation Mr. Butters gave us as to greater mechanization in the United States? American labour is getting better and more complete machining and consequently can produce cheaper?—A. That is correct.

By Mr. Shaw:

Q. Mr. Simpson, referring to company C, about in the middle of the page they refer to factory revenue. What would be the meaning of that expression? —A. My understanding of that is what the company would get for it when it's sold to the distributor. You will notice the cost of sales is directly below that.

Q. I wondered at first whether that would be the manufacturer's cost, but I see it would not be. How do you account for the fact that there is a very, very slight variation as between the year 1950 and the year 1951 both as applied

to refrigerators and over—oven ranges as far as factory revenue is concerned. It is less than $1 in the case of the range and as a matter of fact it is lower in 1951 by a few cents?—A. That is the question which I was answering.

Q. The only reason for asking that was I couldn't appreciate some of the wider fluctuations such as I find in company B's range and in company C it is almost the opposite.—A. That is what I was pointing out. I requested certain figures from these companies and they have been given. They are not prepared on the same basis, and that is what we talked about earlier. Company B has chosen to show its costs prior to the tax increase and after tax increase, and company C have shown the cost for the years 1950 and 1951 to date, that is for ten months. They had three very good months in the first part of the year and it tended to slump off in May down to August when it became very poor. That in effect is a sort of average because they would have had three good months, January, February and March, contained in it.

Hon. Mr. BURCHILL: May I ask the gentleman who gave us that most interesting statement from the Canadian General Electric Company one question? I was delighted to hear you say that, because some of us who are living in the maritime provinces have to pay what we think are perfectly awful prices for manufactured articles made in Ontario and Quebec and have been wondering if there is ever going to be any let-up. I take it from your statement this morning it is just a question of volume of sales and the Canadian manufacturer, given the volume, is just as capable of producing an article at as low cost as the American manufacturer.

Mr. BUTTERS: That is correct, Mr. Senator. In fact after I made that statement about irons I tried to recall what our prices were compared to the United States prices before the tax, and I am quite sure I am correct that they had a 10 per cent excise tax, they had no sales tax, and of course we had roughly 10 per cent sales tax and no excise tax. The last time I compared these figures their price for our best iron in the United States was $11.95 and the price in Canada was $12.50.

Hon. Mr. BURCHILL: I take it if you had the benefit of the volume of the American market you would not be afraid to compete with any American manufacturer?

Mr. BUTTERS: That is right.

By Mr. Jutras:

Q. You stated it depended a great deal on volume and costs could be reduced by greater volume in this country. Unfortunately I have some difficulty in understanding that. We have had periods in our history when certain products were completely shut off from competition and Canadian manufacturers had the market to themselves in certain lines, and consequently in those periods their unit production has increased substantially on. Then almost inevitably when the tariff is removed and when competition is re-established the cost goes down a bit, and when you revert back and close the market the Canadian manufacturer still has the large manufacturing volume that they had during the open market period and the prices goes up instead of down. That is the practical result of the situation although in theory it may be very nice, in practice it does not work out that way, it works out to higher prices. I have one case in mind that I think is very indicative of the whole thing. Vacuum cleaners in 1947 were almost free of competition in this country. There was a 20 per cent tariff from the United Kingdom and 5 per cent from the United States where most of the vacuum cleaners came from. In that year the total number was 105,295 and the price per unit was $45.66. From November 12, 1947, to January, 1948, the market was closed due to government restrictions. Then Canadian production

increased from 105,000 to 138,585 and the cost was reduced to $43.30. Then it was closed again in 1949 and the production in Canada remained what it was during the other period when it was closed. The price now went up to $49.93 with the result that in 1949 when they had the market in their own hands the price instead of going down went up in spite of having a larger volume.

Mr. SIMPSON: When that dollar import regulation was brougt in in 1947 there was a 25 per cent excise tax applied on electrical appliances. I think you are also forgetting, sir, that during that period labour rates were increased and material rates were increased. Furthermore, in general materials had to be procured in Canada because of the necessity of saving U.S. dollars and, the prices for material were higher than those that prevailed in that period also.

By Mr. Jutras:

Q. I think it would be very interesting to have some figures. As I say, I know there may be other factors entering into the picture but I do not think anybody ever proved the point with any figures—proved the point that the Canadian manufacter, given a larger volume, could pass on lower prices to the consumer. As a matter of fact I would be very much interested in seeing those figures, but I do not think they have been produced. All we have heard so far is theory?—A. I do not think it is a question of production if I may say so.

At Geneva all the electrical tariffs were reduced from 25 per cent to 22·5 per cent—which is a 10 per cent reduction. The reduction on wire and cable was much more than that, but the thing that had the most effect was the change in Section 35 of the Customs Act which determines the value for duty of imports. I have forgotten the wording but in effect the value for duty is based upon an open sale in the country of origin. While the United States was supposed to have passed a Customs simplification bill which would definitely regulate that value, they have not done so. The result is that all they have to do in the United States is to establish a sale in the open market and that is accepted as the value for duty.

The fact that from January to September of this year (1951) there were over 100,000 refrigerators imported into Canada—and if that had continued for the full year it would have represented 39 per cent of the Canadian production for the year 1950, is due to the value for duty. It is not just a question of tariff. The whole thing is a complicated argument.

Mr. CARTER: I have just one little question. I want to make sure that I understood Mr. Butters correctly when he was talking about refrigerator plants. Did I understand you to say that if the market were big enough to enable you to double the output of your present refrigerator plant you could get costs down to meet U.S. prices?

You did not use the word "double" but you used figures?

Mr. BUTTERS: I said with respect to refrigerators that if the over-all industry was twice as big, as it is currently or as it has been in 1950 and 1951, I think manufacturers would aggressively target U.S. costs.

Mr. CARTER: If the manufacture of refrigerators were double what it is now?

Mr. BUTTERS: Yes, but that is quite a volume of course. You will appreciate that because I mentioned that in 1940 we only produced and sold roughly 75,000 refrigerators, but in 1950 the Canadian figure was 346,000.

The WITNESS: That is all of the industry in Canada—not just General Electric?

Mr. BUTTERS: Yes, so if we could get close to three-quarters of a million refrigerators in Canada in a year it would be a lot of business. We are looking to that of course in the future, but it may be quite a long way off.

In Canada there is another important feature to the problem. We appreciate, as manufacturers, that business in the first quarter was distorted, and we went along with everybody's thinking. We could not keep pace with it and that is why the American refrigerators came in. They could not compete with Canadian prices, in most cases, and a lot of people thought those American refrigerators which came in in the first and second quarters came in at better prices than we could sell them for in Canada. That is not the case, because the highest percentage sold at prices higher than those for Canadian refrigerators—but there was a shortage and they were picked up.

The CHAIRMAN: There was really a lot of buying in anticipation of the tax increase?

Mr. BUTTERS: It was just as inconvenient for us in the first quarter and we would far rather have had it spread out ourselves.

The CHAIRMAN: I want to thank you, gentlemen, especially Mr. Butters and Mr. Simpson, for the explanations which they have given on a question which has been repeatedly raised in the House of Commons. His explanation will do a great deal to promote better understanding by the members, and by the people of the country at large, of the way in which the Canadian Electrical Manufacturers industry functions. I think that not only ourselves but the industry as well is going to be better off for the explanations which have been made here today.

We will meet again at 10.30 o'clock tomorrow morning.

The committee adjourned.

APPENDIX "A"

RADIO-TELEVISION MANUFACTURERS ASSOCIATION OF CANADA
159 Bay Street
Toronto, Ontario

SUBMISSION

TO

JOINT COMMITTEE ON COMBINES LEGISLATION

November, 1951.

The Radio-Television Manufacturers Association of Canada includes in its membership 70 Canadian companies engaged in the manufacture of radio and television receivers, transmitters, radio components and miscellaneous electronic equipment. The Association was established 25 years ago and presently has 3 active Divisions; a Receiver Division with 18 member companies, a Transmitter Division with 8 member companies and a Parts and Accessory Division with 44 member companies. (Attached is a complete list of the Association's executive officers and the names and addresses of the member companies.)

The members of our Transmitter and Parts Divisions are not normally engaged in the manufacture of products sold to the public and it is therefore the members of our Receiver Division that are particularly interested in the subject of resale price maintenance since these latter companies do manufacture brand line radio and television receivers which are distributed throughout Canada and sold to the Canadian public through retail outlets.

We wish to emphasize that all of the member companies of the Radio-Television Manufacturers Association of Canada are manufacturers and that retailers are not eligible for membership and have no connection or affiliation whatsoever with this Association. Further, the Radio-Television Manufacturers Association of Canada has nothing whatsoever to do with the prices or discount structures of its members and each company handles it own pricing on a completely independent basis.

Our Association edeavours to represent its members in all matters of concern to the industry and to serve its members by such means as the collecting, assembling in useful form and distributing of statistical, commercial and engineering data relative to the Canadian radio and television industry.

All of the member companies of our Receiver Division are equally represented on our Board of Directors and each of these companies has strongly indicated that it favours continuation of its present individual right to resale price maintenance on its own products and believes that such a system is in the best interest of the public, particularly in the distribution and sale of such specialized products as radio and television receivers. All of these manufacturers depend for the maintenance of their goodwill on the technical performance of their products and wish to ensure that their radio and television receivers are sold and serviced by properly qualified agents.

The manufacture and sale of radio and television receivers in Canada is highly competitive and, considering the population of the country and the size of the market, there are probably more companies engaged in this field in Canada than in any other country in the world. In the case of radio receivers, there are in addition to the 18 member companies of the Radio-Television Manufacturers Association of Canada, at least 10 other Canadian manufacturing companies engaged in the production of radio receivers. (Note that 29 Canadian companies are currently listed in the Dominion Bureau of Statistics

monthly reports on production and sales of radio receivers.) Although television is still in its infancy in Canada due to the lack of transmitting stations, approximately 60,000 television receivers have been sold to Canadian residents within range of U.S. border city television broadcasting stations and it is interesting to note that the division of these sales has been between no less than 18 different Canadian manufacturers. At least 6 other Canadian companies have announced plans to manufacture and sell television receivers in Canada as the market expands. It is readily apparent that in such a highly competitive industry, where in general even a so called "large" manufacturer accounts for less than 10 per cent of the total market, there is intense competition at the manufacturing level which projects itself through the entire distribution process and assures the consumer of a fair price. Obviously no single manufacturer could suggest a resale price which was not competitive with comparable receivers made by his many competitors and expect to take any substantial portion of the market.

The maintenance of the retail price of a radio or television receiver produced by any one Canadian manufacturer does not in any way interfere with the right of competing manufacturers to produce similar products and price them as they wish and it is our contention that the publication of suggested retail list prices by individual competing radio and television manufacturers has protected the Canadian public and has assured the consumer of a fair price. Without an established or suggested list price on radio and television receivers, the consumer could not intelligently go about buying such products and in order to protect himself would feel that he should have a quotation from every retailer handling each make of receiver.

Each individual radio and television receiver manufacturer in Canada in suggesting the prices at which its branded receivers are to be resold does so on its own accord and such an arrangement does not involve any price agreement with other manufacturers of radio and television receivers. Under these conditions, competition between the large number of radio and television receiver manufacturers remains free and unrestricted in all respects and there is obviously no lessening of competition or restricting of manufacture.

A review of the Report of the Royal Commission on Prices, which recommends "that the Combines Investigation Commission give careful study to the problem of resale price maintenance" fails to reveal any evidence or conclusions that the policy of resale price maintenance on such items as radio and television receivers is not in the public interest and it is our belief that to deny the individual manufacturer the right to suggest a consumer price on his brand of radio and television receivers would be very much against the public interest. This would be particularly so in times of scarcity or in the case of residents of remote towns or villages where the consumer would be at the mercy of prices determined by non-existent local competition if not protected by the suggested list prices on nationally advertised products such as radio and television.

Radio and television receivers are not products purchased by a consumer at frequent intervals and for maximum operating efficiency and life they may on occasion require expert servicing and maintenance. The actual transaction therefore does always end with the initial purchase and the manufacturer who depends for continued sales on retaining the goodwill of those who use his receivers must be sure that the receivers are installed, serviced and maintained by the technical staffs of properly qualified retailers. In turn, the properly qualified retailer should be assured of a fair return on the receivers he sells and of fair competition with others selling the same products.

The study of the Royal Commission on Prices was mainly devoted to items which the consumer is normally buying on a day to day or other frequent

interval basis and which are in an entirely different category than radio or television receivers. In the case of the products of our member companies, the consumer is concerned not only with the initial price but with the durability and useful life of the product, the integrity of the manufacturer, the problem of installation and the service and maintenance that can be expected over a period of many years. These factors necessitate a much closer relationship between the manufacturer, wholesaler and retailer of radio and television receivers than would appear necessary in the merchandising of products purchased and used on a day to day basis. There is, for example, the matter of proper installation and servicing by the retailer. Members of the retailer's organization in many cases must receive their training and instructions from the technical divisions of the manufacturer's organization. It is obvious that in the merchandising of such products the manufacturers could not fairly take the view that their responsibility ends with the sale of the radio or television receivers to their wholesalers or retailers.

The members of our Association believe in the system of free enterprise and consider that the right of any single radio and television receiver manufacturer to suggest retail prices on his products is an inherent part of the free enterprise system. We believe that the manufacturer should have complete freedom of action in the sale of his products at all levels, regardless of the channel or channels through which the products move, since of necessity his greatest interest lies at the consumer level and without a suggested list price he could not be assured that the consumer would receive fair treatment as to price, performance and the service to which he is entitled.

We believe that to deny the manufacturer the right to suggest the list price on radio and television receivers would be very much against the public interest for the reasons outlined herein, and our Association went on record to that effect in its submission to the Committee to Study the Combines Investigation Act in September, 1950.

Respectfully submitted,

S. D. BROWNLEE,
Executive Secretary.

Radio-Television Manufacturers Association of Canada
Executive officers—1951-1952

PRESIDENT—R. A. Hackbusch, Stromberg-Carlson Co. Ltd., Toronto.
VICE-PRESIDENT—A. B. Hunt, Northern Electric Co. Ltd., Montreal.
EXECUTIVE SECRETARY—S. D. Brownlee, 159 Bay street, Toronto.

Member companies (November, 1951)

(*a*) *Receiver Division*

Addison Industries Limited, 9 Hanna avenue, Toronto.
Canadian Admiral Corporation Limited, 500 Lakeshore road., Port Credit, Ontario.
Canadian General Electric Company Limited, 212 King street west, Toronto.
Canadian Marconi Company, 2442 Trenton avenue, Montreal.
Canadian Radio Manufacturing Corp. Ltd., 11 Brentcliffe road, Leaside, Ont.
Canadian Westinghouse Company Limited, Hamilton.
Chisholm Industries Limited, 4515 Main street, Vancouver, B.C.
Coronet Television Corporation, Box 50, Walkerville, Ontario.

Deseronto Electronics Limited, Deseronto, Ontario.
Dominion Electrohome Industries Limited, Kitchener.
Electrical Products Mfg. Co. Ltd., 5680 Fullum street, Montreal.
Northern Electric Company Limited, Belleville.
Philco Corporation of Canada Limited, 1244 Dufferin street, Toronto.
Pye Canada Limited, Ajax, Ontario.
RCA Victor Company Limited, 1001 Lenoir street, Montreal.
Sparton of Canada Limited, London.
Stewart-Warner-Alemite Corporation Limited, Belleville.
Stromberg-Carlson Company Limited, 211 Geary avenue, Toronto.

(b) *Transmitter Division*

Canadian General Electric Company Limited, 212 King street west, Toronto.
Canadian Marconi Company, 2442 Trenton avenue, Montreal.
Canadian Radio Mfg. Corp. Ltd., 11 Brentcliffe road, Leaside, Ontario.
Canadian Westinghouse Company Limited, Hamilton.
Federal Electric Manufacturing Company Ltd., 9600 St. Lawrence blvd., Montreal.
Northern Electric Company Limited, Belleville.
Pye Canada Limited, Ajax, Ontario.
RCA Victor Company Limited, 1001 Lenoir street, Montreal.

(c) *Parts and Accessory Division*

Aerovox Canada Limited, 1551 Barton street east, Hamilton.
Alliance Tool & Motor Co. Ltd., Grand avenue & Queensway, Toronto.
Arrow Radio Company, 1829 Davenport road, Toronto.
Audio Tool & Engineering Limited, 114 Jarvis street, Toronto.
Burgess Battery Company, Niagara Falls, Ontario.
Campbell Manufacturing Company Limited, 45 Sheppard avenue east, Willowdale.
Canada Wire and Cable Co. Ltd., Postal Station "R", Toronto.
Canadian Astatic Limited, 2271 Danforth avenue, Toronto.
Canadian General Electric Company Limited, 212 King street west, Toronto.
Canadian Marconi Company, 861 Bay street, Toronto.
Canadian Radio Manufacturing Corp. Ltd., 11 Brentcliffe road, Leaside.
Canadian Westinghouse Company Limited, Hamilton.
Copper Wire Products Limited, 349 Carlaw avenue, Toronto.
Diamond State Fibre Company Limited, 46 Hollinger road, Toronto.
Dominion Electrohome Industries Limited, Kitchener, Ontario.
El-Met-Parts Limited, Dundas, Ontario.
Elora Industries Limited, Elora, Ontario.
Erie Resistor of Canada Limited, 1151 Roselawn avenue, Toronto.
Farley (T.S.) Limited, 176 Catharine street north, Hamilton.
Federal Wire & Cable Company Limited, Box 90, Guelph, Ontario.
Fleck (R.D.) & Company, 184 Bond street west, Oshawa, Ontario.
General Dry Batteries of Canada, 228 St. Helen's avenue, Toronto.
Hammond Manufacturing Company Limited, Guelph, Ontario.
International Resistance Company Limited, 11 King street west, Toronto
Kester Solder Company of Canada Limited, Brantford, Ontario.
Marsland Engineering Company, 154 Victoria street south, Kitchener.
Measurement Engineering Limited, Armprior, Ontario.
Meredith, C. C. & Co. Ltd., Queen north & Elgin streets, Streetsville, Ont.
National Carbon Limited, 805 Davenport road, Toronto.
National Fibre Company of Canada Ltd., 107 Atlantic avenue, Toronto.
Phillips Electrical Works Limited, Box 100, Brockville, Ontario.
Radio Components Limited, 560 King street west, Toronto.
Radio Condenser Company Limited, 6 Bermondsey road, Toronto.

Radio Speakers (Canada) Limited, 37 Hanna avenue, Toronto.
Radio Valve Company of Canada Limited, 189 Dufferin street, Toronto.
RCA Victor Company Limited, 1001 Lenoir street, Montreal.
Sangamo Company Limited, Leaside, Ontario.
Slater (N.) Company Limited, Hamilton.
Smallwood (S. G.) Limited, 397 King street east, Kitchener.
Smith & Stone Limited, Georgetown, Ontario.
Standard Radio Products, 108 Sydney street, Kitchener.
Stark Electronic Instruments Ltd., Stark bldg., Ajax, Ontario.
Stromberg-Carlson Company Limited, 211 Geary avenue, Toronto.
United-Carr Fastener Company Limited, 265A Davenport road, Toronto.
White Radio Limited, 41 West avenue north, Hamilton.

APPENDIX B

BRIEF

to the

JOINT COMMITTEE OF THE SENATE AND THE HOUSE OF COMMONS ON COMBINES LEGISLATION

Appointed to Study
The MacQuarrie Interim Report

Submitted by

DRUG TRADING COMPANY, LIMITED
Toronto, Ontario

Friday, November 23, 1951

Preface

We are pleased to have the opportunity to present this brief in which we have offered opinions and evidence which it is hoped will be of value to the Committee in its deliberations.

The privilege of submitting this brief was requested because of the unique position of this Company, which is owned and operated by 1535 retail druggists throughout Canada. It is at present the largest individual wholesale drug house on this continent and last year transacted over 25% of the wholesale drug business of Canada. We have a wholly owned manufacturing subsidiary doing a substantial volume and we operate a voluntary chain of 450 independently owned retail drug stores under the name "Independent Druggists' Alliance" (I.D.A.).

We are quite sure that the proposed legislation would affect us materially in all three phases of our business—manufacturing, wholesaling and retailing —and for this reason we are anxious to present our views. . . .

THE BRIEF

The Loss Leader:

We submit that the MacQuarrie Committee's recommendations were made without due regard for the consequences which might ensue from the proposed legislation. The Committee recognizes the evils of the "loss leader" device, declaring that "it is a monopolistic practice which does not promote general welfare and therefore. . . .not compatible with the public interest."

The Committee expresses the opinion that this device presents no immediate danger, that extreme forms of price-cutting are not very likely in this period of inflation and relative scarcity. It suggests that effective and more desirable methods of controlling the "loss leader" device than price maintenance can be found.

We suggest that the Committee's unwillingness to make hasty recommendations regarding the "loss leader" practice leaves its recommendation in regard to price maintenance open to criticism on the very basis of being hasty and being based on a lack of thorough knowledge of the problem. . . .thereby rendering its conclusions invalid and its recommendations untenable.

May We Present The Following Arguments

1. Price maintenance is a particularly common practice in the drug trade and in the electrical goods field. Our knowledge of the drug trade leads us to assert positively that no condition of scarity exists among the lines sold under price maintenance. Supplies are freely available of practically all types of merchandise sold through drug stores. A similar condition exists, we are informed on good authority, in the electrical goods trade. Yet the Committee infers that extreme forms of the "loss leader" device are likely where goods are relatively abundant. It is therefore in these particular trades that the "loss leader' 'device can reasonably be expected immediately to exert great influence against the general welfare, if price maintenance is made illegal.

2. The use of the "loss leader" technique, as the Committee recognizes, tends to lead to monopoly power at the retail level. Large traders, particularly department, chain stores and mail order houses, whose main business is in other lines, commonly use the lines of the specialized retailers as "loss leaders" to draw trade to them. In this connection, we would draw your attention particularly to the phrase "NO TELEPHONE OR MAIL ORDERS", commonly appearing in the advertising of large operators. This makes it quite apparent to business men that the motive behind such advertisements is not to sell the greatest possible volume of the advertised lines, but rather to bring unwitting buyers into the stores in order to sell other long-profit merchandise.

Unquestionably, the standards of values developed by price maintenance on branded lines leave the specialized trades open to the depredations of the "price jugglers".

In this connection, we also would refer you to pages 5 and 6 of the Appendix in which the facts of a price-cutting situation in the United States were revealed by a survey. Records showed that in two adjacent markets, one in Kansas, where Fair Trade was and is law, and the other in Missouri, a non-Fair Trade State while price juggling was "rampant" in the latter state in 1948, "the cut-throat Missouri market (was) using less than 2% of its drug store items as loss leaders"....and "the Missouri consumer without Fair Trade (was) paying 2½% more for drug store merchandise than the Kansas consumer with Fair Trade".

May we also refer you to the remark in the last paragraph of page 6 of the Appendix, "It appears that the only ones benefiting from the fact that Missouri does not have Fair Trade, are the large metropolitan newspapers carrying pages and pages of heavy black type—cut rate ads." The consumer does not benefit by "loss-leadering" and "price juggling" of a few known brands!

3. Eliminating price maintenance is expected to have little effect on the cost of living. This view is credited to the Prime Minister, as quoted in the *Globe and Mail.* October 21, 1951. Yet, the apparent reason for such legislation being instituted is because of the hue and cry against the rapidly advancing

cost of living. Members have quoted in the House, as reported by *Hansard*, the large price differentials existing between the United States and Canada. Yet, these differentials are largely due to the fiscal policy of the Government, whereby a total of 25% excise tax and 10% sales tax is now levied in Canada against many of the items quoted in the comparisons. Additional taxes on semi-necessities have accentuated this condition, as witness the fact that well over half the retail price of a package of cigarettes represents tax.

Throwing out a system under which large sections of the country's retail trade have been reasonably prosperous for many years, on the dubious assumption that there will be some general price reductions, is a risky procedure.

4. The MacQuarrie Committee's recommendation suggests that the undesirable attributes of the "loss leader" device need not cause any immediate worry in what it terms "this period of inflation and relative scarcity". We submit that any legislation of this nature should be such as will stand the test of time—and will be in the public interest not only today but in years to come. Yet the Committee infers that in periods of stable or declining prices or periods of abundance, the "loss leader" device would have widely destructive effect.

The MacQuarrie Committee does not suggest that price maintenance has been a major factor in the advancing cost of living (on the contrary, there is ample evidence that it has had a stabilizing tendency). Yet, it recommends ruling out this practice, while sounding the warning of the evils that may arise from such action at a period that may be not far off.

5. The MacQuarrie Committee offers no definite solution to the problem of "loss leaders". It suggests that further study will reveal the solution. We submit that a reasonably equitable system should not be thrown overboard until a better system, with no unsolved weaknesses, can be devised. Our experience with many years of "price juggling" in the drug trade, as well as the recent lengthy period in which price maintenance has been widespread leads us to state categorically that no equitable solution to the "loss leader" problem is possible without price maintenance. Price maintenance has certainly curbed the "loss leader" practice with what even its opponents admit has had little effect on price levels.

6. A system of maximum pricing with no maintained minimums offers the manufacturer a strong incentive, not present under price maintenance, to set his list price abnormally high, in order to gain the support of retailers in pushing his products at full price in opposition to competing open-price lines. This could result in non-advertised products being pushed at excessive profits, while the distribution of established brands would become limited and consumers would find difficulty in obtaining these desired brands.

Price Maintenance and the Consumer

You are aware of the basic arguments as to why price maintenance favours the consumer, as reported in the MacQuarrie Committee's submission, and, as no doubt included in other briefs submitted to this Committee.

We would like to draw particular attention to a few points:

Price maintenance has been largely responsible for an equalization of prices across the country. The consumer today pays the same price for a price maintained product produced, let us say, in Niagara Falls, whether she lives in Niagara Falls, Toronto, Vancouver, Halifax, Kapuskasing or Bancroft. From the source of a manufacturer outward, and from east to west, price maintenance has leveled consumer prices to a great extent because of the fact that the manufacturer is able to advertise his maintained prices in national publications reaching into every community. Thus we believe that price maintenance has had a pronounced effect in equalizing transportation charges. Certainly, in the drug trade, prior to the advent of price maintenance, many products made in Central Canada sold at higher prices in the West.

In the drug field, minimum maintained resale prices have become the everyday price of individual products. Before minimum resale prices were common, many prices were cut below the manufacturers' list prices. On the other hand, the same products sold at a considerably larger mark-up in centres where competition was not keen. For example, one of the best known drug products sold as low as 53c.—about 30c. below wholesaler's list price—when it was featured as a "loss leader". It sold ordinarily at from 89c. to 98c. In some places it sold at $1.25, and in northern Ontario, it sold as high as $1.60. When it was price maintained at 98c., this price became the recognized resale price and very soon was adopted generally in all parts of Canada.

2. Under a system outlawing price maintenance, many manufacturers wishing to exercise control over their brands can be expected to short-circuit the wholesaler and sell direct only to retailers that they contact and on whom they feel they can count to "unofficially" protect their prices. This would unquestionably mean that many retailers in remote areas not normally reached by manufacturers' salesmen would be unable to supply their customers with the products of such manufacturers. In the drug trade this condition could mean a serious curtailment of the efficiency of the health service performed by the druggists in small and remote centres.

3. Canada is a rapidly growing country. A great deal of the expansion is taking place on the outskirts of large centres. It is desirable that good local business districts develop in fast growing suburban areas. Without an assurance of a reasonable return for his services, the druggist, the hardwareman, the electrical appliance dealer, the haberdasher, etc., will not readily pioneer these new districts. If large traders, located either in the centre of the urban areas or in the well developed outskirts, and soundly entrenched financially, are at liberty to juggle prices so as to undermine the development of these pioneer retailers, making their operations unprofitable, forcing them out or scaring them away from such districts, the normal and sound retail development will be stunted, with a consequent deterioration of local service to the spreading population.

4. Consumer groups have been clamouring for passage of the proposed legislation. Yet most consumers will readily agree that the retailer should make a profit on his handling of goods. It is a common fallacy among consumers that the large traders operate at a substantially lower overhead than the smaller merchants. The brief submitted by the Canadian Pharmaceutical Association has presented ample proof of the incorrectness of this belief. Consumers are beguiled by the screaming bargain headlines into believing that the big traders sell everything for less, whereas the number of items bargain priced at any one time would represent the merest fraction of the operator's inventory. As the survey referred to in the Appendix points out (page 6), "with 2% of their drug store merchandise they (the price jugglers) convince a credulous public that they are buying the remaining 98% at deep cut prices."

To amplify this point, we reproduce below a statement made by Irving A. Kathman, Vice-President in Charge of Sales, Eversharp Corporation (U.S.) in an address to the Los Angeles Advertising Club on July 17, 1951:

> Macy's has now cut prices on upwards of 6,000 fair-traded items. Sounds like a lot? Let me put it in its proper perspective for you. Brand name fair-traded items on the shelves of retail outlets amount to about 5% of the total merchandise offered to the public. Actually, only about 5% of all brand name products sold through a department store are fair traded. Macy's itself admitted this in an ad they ran on May 29, 1950, in which they stated that less than a tenth of the items they sold fell under

price fixing. This 10% divides about equally into 5% for price suggested products (which is a horse of quite a different colour) and 5% for fair-traded items. So all this noise Macy's is making is about 5% of the goods on their shelves? What about the other 95% of almost 250,000 items? As Shakespeare had it, "Ah, there's the rub!" For the procedure is this: Monopolist retailers who seek dominance in their trading area depend on mass selling and buying. These monopolist retailers' most potent weapon is deception. They use honoured, branded merchandise of reputable manufacturers as price bait to divert traffic through the store. When the consumers buy on a price-war basis, their minds are keyed up to "variety buying". In other words, they start with a fair-traded, well-known item and end up taking home a dozen more so-called "bargains" not advertised, and to the store this more than makes up for the loss they take on the brand name items for the other merchandise is unbranded, unadvertised and highly profitable. When fair trade is kicked out the window, you can be sure that it is the consumer who pays and suffers.

Price maintenance in some trades at least prevents the monopolistic tendencies of this type of operator from having full force... and the public is thereby protected.

5. One of the bases for sound development of any business is customer loyalty. We believe the loyal customer shouldn't be penalized... but she will be if price maintenance is ruled out! If she relies on her regular supplier for the purchase of all the lines she needs that he carries, if she doesn't flit around from store to store to try to save a penny here and a nickel there—she is penalized, because with wide open pricing, no retailer can ever meet all competition on all items. The good customer loses out by sticking to her supplier!

6. Under price maintenance the consumer is amply protected against prices being established at too high a level by the competition in the market. There is no compulsion for the consumer to purchase any specific product if the price is too high, and most price maintained products in Canada are in industries where competition between brands is extremely keen and where the manufacturer must make every effort to keep prices down.

7. Among the ranks of consumers a substantial number are themselves employed in the distributive or manufacturing trades. The security of their jobs or their earnings would be threatened if the retail trade were thrown into the chaos of widespread price cutting, for the repercussions of chaotic price cutting at the retail level would soon be felt all the way through the distributive and manufacturing trades.

Price maintenance and the retailer

We submit here these further arguments, looking at the problem from the retailer's and supplier's standpoint:

1. Elimination of price maintenance discriminates against the smaller retailer who cannot economically market his own brands. He is left without lines on which he has an assured mark-up while remaining competitive, whereas the larger retail operators who can market their own brands can also set their own price policies to show whatever margins they want. They can destroy the small operator's margin on branded lines stocked by both, while maintaining their over-all margin with their own brands.

2. Price cutting discourages small town buying. Induced by the advertising of urban price jugglers, consumers flock to these outlets, thus adversely affecting local merchants, regardless of their efficiency and pricing policies. This tends to lower the calibre of retail service available in the smaller centres.

3. Flagrant examples of unidentifiable merchandise being promoted at excessive mark-up are common when price slashing is practised. Note the instances revealed in the survey in the Appendix, page 2.

4. Economies in retail operation are possible when the retailer feels he can cooperate with the manufacturer of trade market goods. Where there is co-operation, rather than opposition, all concerned stand to gain in the long run—manufacturer, retailer, consumer. Such relationship is only possible when the dealer is adequately recompensed for his services.

Where the retailer has an assured profit margin, he is able to buy more confidently the merchandise in demand in his community. He needn't resort to costly "hand-to-mouth" buying because of the constant threat of being left with or having to mark down inventory.

5. In the drug trade, at least, where price maintenance is so widespread, although conditions in recent years have been good, surveys indicate that price maintenance has not led to unduly high profits for the retailer. The Lilly Survey of drug stores in the United States and Canada for 1950 reports an average net profit of 5·6 per cent. This represents a decline from previous years despite the advancing price level. While no strictly Canadian figures are available for the drug trade, it is estimated that net profits are on a par percentage-wise with the survey figures.

The Toronto Telegram reports on November 20, 1951, that a D.B.S. Survey among 10,000 independent retail stores in 20 trade groups, shows net profits for most of the stores smaller last year than in 1948. This survey indicated that gross margins had increased slightly. Inasmuch as expenses averaged higher by a small figure (in the 20 trades, 4 showing a decrease of 0·1 per cent and 16 showing increases ranging from 0·1 per cent to 3·7 per cent), obviously gross margins must have risen by an even smaller average, as the survey reports net profits down in 18 of the 20 trades. It seems apparent that if price maintenance has become more widespread in the past few years, as it is claimed, it has not tended to increase retailers' profits at the expense of the consumer.

6. Price maintenance contributes to the stability of the retail trade, which is a vitally important factor in the country's economy. Facing competition from many other outlets for substantially similar goods, even the efficient operator needs the safeguard it provides in order to plan his operations to produce a profit therefrom. Otherwise, the pull of competition to meet changing prices in order to maintain volume against the need for adequate margins results in a rule-of-thumb type of operation that makes it exceedingly difficult to forecast a volume of business or a gross profit that will yield a predictable return—and the results of one year's operations can no longer be used as a criterion for estimating the next year. Similarly, the results of one retailer's operation can no longer be a reasonable criterion of the operations of any other retailer.

With most of his overhead costs fixed or advancing, the retailer who would find himself in a "profit squeeze" due to such competition has to reduce his wage bill by cutting staff or reducing salaries or by reducing his own "take" from the business.

Conclusions

There are no convincing arguments that price maintenance in this country (or Fair Trade in the United States) has been detrimental to the consumer. Many of the arguments being voiced against price maintenance indicate an obvious confusion between manufacturer-to-retailer price agreements and

"horizontal price fixing". There is ample proof, on the other hand, that such a system is in the interests of all three of the manufacturing, distributing and consuming groups.

The following quotation from Dr. Robert L. Swain, Editor of "Drug Topics", from the issue of November 19, 1951, summarizes the Fair Trade picture in the United States:

> "Fair Trade is the only anti-inflationary force now working for the benefit of the consumer. The fair trade dollar is the only one having the same purchasing power it had ten or more years ago. Fair trade has checked predatory competition and given a high degree of employment in the production and distribution of fair trade products. And, by the way of emphasis, it should be pointed out that predatory competition has been strongly condemned both by the Department of Justice and the Federal Trade Commission.
>
> Fair Trade has met with the sustained acceptance and approval of consumers and there is no evidence of any valid consumer opposition to fair trade laws. Such laws are now in effect in 45 states. No fair trade law has been repealed except for the purpose of enacting a more adequate one. Consumers have received their full money's worth under fair trade and they know it!
>
> Fair Trade has laid a heavy hand upon the price juggling sharpsters who rake in hug profits through the practice of misrepresentation and deception. The price tricksters offer widely known, identified merchandise at and attractive price only to exact an exorbitant profit on less known, unidentified items.
>
> Documentary evidence is to the effect that as much as 2,000 per cent mark-up is enjoyed by price jugglers in the sale of unidentified articles. This vicious type of distribution is a fraud upon consumers, a fraud which fair trade either makes extremely difficult or impossible. What right has a merchant to victimize customers merely because he has been able to lure them into his store? Should the consumer be the fly merely because the price juggler is a spider in disguise?
>
> Fair Trade is the very opposite of monopoly. No product may be lawfully under fair trade unless it is in free and open competition with other products in the same general class. As long as such competition is demanded by law, monopoly cannot raise its head. Fair trade and antimonopoly are synonymous terms.
>
> Fair trade is beneficial to small business, a principle to which most Senators and Congressmen have pledged allegiance. It keeps the door of opportunity open to those who might otherwise be sacrificed to mass distributors."

Substitution of the term "PRICE MAINTENANCE" for "FAIR TRADE" in the above quotation renders the statements substantially true in the case of Canada.

The MacQuarrie Committee's own report infers that price maintenance is an effective solution to the "loss leader" device. We maintain that the danger of the evils of "loss leader" merchandising is far too great to justify legislation against the lawful prescribing of minimum resale prices.

Recommendation

It is our earnest recommendation that, in the best interests of the Canadian economy, the legislation proposed by the MacQuarrie Committee be not enacted. In lieu of this, we urge that the Combines Investigation Act be revised so that, operating under such Act, a board be set up with wide powers to investigate complaints that instances of resale price mainte-

nance are an offense against the public interest; such a board to include representatives of the consuming public, the manufacturing, wholesale and retail trades and the Government; and where it becomes evident to such a board that an instance of resale price maintenance is contrary to the public interest, the board shall have the power to evoke penalties against the offending parties and to require that such price maintenance arrangements be modified so as to eliminate the offense.

Respectfully submitted,

DRUG TRADING COMPANY, LIMITED

per: J. C. GOULD,
President

R. CARY,
Managing-Director

THE KANSAS PHARMACEUTICAL ASSOCIATION

Phone 2-2717

824 Kansas Avenue,
Topeka, Kansas,

November 6, 1951

Reg Cary, Managing Director,
Drug Trading Company Limited,
King and Ontario Streets,
Toronto 2, Canada.

Dear Mr. Cary:

It is interesting to realize that the Canadian Government proposes a "minimum resale prices" law.

As you know, Kansas, sets right here by Missouri—a Fair Trade State bucking a Non Fair Trade state's cut prices. This has caused us a great deal of trouble in the form of repeal laws before the Kansas legislative body—attacks on Fair Trade.

Kansas, has quite a number of Crown Drug Stores, a large chain of the Midwest. Missouri has a number of these stores also. These two states have another Kansas and Missouri chain called the Parkview Drug Stores. Both of these chains want Fair Trade for they have seen the effects of the Missouri cut rate market and they have suffered, as the public has from it.

I went to the head offices of these two chains for my figures and find that the public in Kansas under Fair Trade is buying drug store merchandise in the over all picture three per cent cheaper than they were buying drug store merchandise in the Non Fair Trade state of Missouri.

I am enclosing a copy of the talk I made before the Massachusetts Pharmaceutical Association shortly after this survey was taken. This is my office copy and the last one we have. Will you please return it to us when you get the information you need from it?

Let us know if we can help you in any other way.

Sincerely,

CLARA MILLER,

OFFICERS

Norman McCullough, Kingman, president
Robert Lowis, Colby, President elect
Carl Elkins, Topeka, 1st Vice-President
Guy Minor, Ulysses, 2nd Vice-President
Clara Miller, Topeka, Secretary
John Schrepel, Pratt, Treasurer
Dean J. Allen Reese, Lawrence, Librarian

FAIR TRADE

Clara Miller—Mass. Pharmaceutical Assn.
Convention Swampscott, June 14, 1948

Fair Trade is on trial—and we in the drug field are not equipped to defend it.

We need facts—we need to know the why of Fair Trade and its relation to our future.

Many of our younger druggists know nothing of the drastic competition of pre-Fair Trade days. Sales staffs in our stores do not realize that Fair Trade is largely responsible for the present good business—their jobs, decent pay, better hours.

Our greatest danger is our reluctance to equip ourselves to intelligently explain Fair Trade to the public. Fair Trade will remain on the Statute books only so long as we can prove, when challenged, that it operates in the public interest. Fair trade is our number one Public Relations problem. In the time allotted today, let's undertake a short course on Fair Trade. Let's review its original purpose and bring its accomplishments up-to-date.

Fair Trade is a law that protects honesty and decency in business. Like any good law, it protects everyone affected—in this case the manufacturer, the retailer, and the public.

Mechanically, Fair Trade is merely a law which allows the manufacturer to protect his brand name—his investment—from damage or complete destruction. It is not a mandatory law. It is permissive. A manufacturer may or may not establish a minimum price on his product. In explaining this to the public, we can use as an example—Sarsaparilla, which was "footballed" to death in the Pre-Fair Trade days—a dollar item "loss leadered" at 39-49-59c. We all recall the experience of Pepsodent on the West Coast—used as a loss leader until the retailer despised it and the public became confused and suspicious of the product. Sales diminished on Pepsodent until its owner "Fair Traded" it. The same thing happened to Carter's Liver Pills in the Middle West. The cut-raters were using Carter's Pills as "bait"—at 5, 7 and 9c. The public learned to know it as a cheap item and because of a continuous loss, the retailers buried it. Fair Trade was created to stop this debauch in the retail field—to stop damage and destruction to popular-branded items. As Allen Newcomb points out, "when a retailer sells merchandise in connection with the name of another man, he is selling two things—the merchandise and the other man's name."

Fair Trade merely extends the "Coverage of Protection" of our "Patent and Trade Mark" laws to the manufacturer through his distributive channels.

The second channel of distribution protected by Fair Trade is the retailer. Fair Trade restrains the "chiseling" retailer from practices that would destroy competition. The Cambridge, Massachusetts court said it well, in their recent opinion upholding the Massachusetts minimum price law of Taxi Companies, and I quote: "Prevention of cut-throat rates assures that the field will not be monopolized by a few concerns, and will make business sufficiently lucrative to attract an adequate number of well maintained and safely operated cabs".

Examples of false statements in the drug field designed to destroy competition can be taken from our Missouri non-Fair Trade market—one from a Katz ad—"A Big Special Sale" on hot water bottles, $2.98 values, limit one to a customer, Sale Price $1.29. This same hot water bottle sold from drug store shelves in Kansas at a regular price of $1.00. The bottle wasn't a $2.98 bottle —it wasn't even a $1.29 value—just false statements.

Then there was the 19c Special on a certain vase advertised as the "lowest price in town". Independent druggists were selling the identical vase at 15c.

Fletcher's Castoria was advertised at 26c in a recent Katz ad. When one of my friends went to buy a bottle, the clerk asked, "is it for a baby?" She answered, "yes". He wrapped it up and said "36 cents", and sure enough in the same ad was an inconspicuous block listing Fletchers' Baby Castoria at 36c—misleading advertising.

Fair Trade has been accused of protecting a profit for the "lazy inefficient retailer". Doc Webb of Florida says—remember!! Profit margins shown in our new Kansas Fair Trade price book, with its 728 companies covering 15,000 individual items, are proof that Fair Trade does not protect an unfair profit to the retailer. Fair Trade merely protects the retailer from actual loss in the pricing of his merchandise. If retailers and wholesalers are looking at Fair Trade Laws as a means of protecting them on a margin of profit, they are misinterpreting the law.

The third and vital channel in distribution which Fair Trade protects is the consumer—what does Fair Trade do for the consumer? You and I must know the answer to this question because the future of Fair Trade depends upon proof that Fair Trade benefits the public.

In the Middle West, we have the two large states without Fair Trade laws—Missouri and Texas. These are great states—beautiful states—states rich in agriculture, natural resources and industry. Back in 1937, when pharmaceutical leaders of alert states became alarmed over the high mortality of retail business and were marshalling their forces to do something about it, Missouri and Texas druggists were drifting along with an isolationist complex. They had no organization, scant funds, and no apparent leadership. They were incredibly indifferent as to what was happening around them. State after state passed Fair Trade laws—stronger states, like Massachusetts, followed through logically with the passage of Unfair Practice Acts.

Around 1941, Missouri and Texas druggists woke up. They rallied forces and went to the legislature for "Fair Trade" relief—but it was too late. Giant chains, supermarkets—grocery, department, drug and syndicate—had pirated the drug business. The Pharmaceutical Associations, flanked by allied retail groups, fought a losing battle for Fair Trade laws. They were able to hold the bills in committee through several biennials. The knock-out blow came in 1947 when both Missouri and Texas legislative bodies killed Fair Trade outright. Small business of Missouri and Texas is dying rapidly. Organized pharmacy has spent its resources. They have no heart to go back into the battle.

Anti-Fair Trade forces no longer have their "foot-in-the-door" in Missouri and Texas. They have kicked the door wide open. All hell seems to have broken loose. Price wars are raging in these states.

Missouri Metropolitan newspapers flood Kansas twice daily carrying cut-rate ads from these giant supermarkets. Here's an example of the story they herald to the Kansas public. These prices were taken from Katz' weekend ad of June 4—Phillips Milk of Magnesia, 21c. in Missouri—49c. in Kansas because of Fair Trade; Zonite, 59c. in Missouri—79c. in Kansas because of Fair Trade; Murine, 34c. in Missouri—49c. in Kansas; Bromo-Seltzer, 39c.

Missouri—57c. in Kansas; Anacin, 89c. in Missouri—98c. in Kansas; Bisodol, 49c. in Missouri—59c. in Kansas; Fletchers' Castoria, 26c. in Missouri—36c. in Kansas; Noxzema, 37c. in Missouri—49c. in Kansas. Remember, price-cutting in Missouri was resumed about three months ago. It becomes more violent each week. Soooo——the result of all this is that Kansas housewives, veterans and well-meaning consumer organizations are on the march demanding a repeal of what seems to them to be an unfair law.

We have a Legislative Council in Kansas functioning the year round, studying bills that affect the public. This Council directs research for the parent body, the Kansas Legislature, which convenes next January. This Legislative Council has been asked to study the Fair Trade law of Kansas in its relation to the Public. The Council in turn has asked the Kansas Pharmaceutical Association to furnish them facts—proof that the Consumer of Kansas does not pay more for drug store merchandise under Fair Trade than the consumer of our neighbor state, Missouri, without Fair Trade.

As you well know, everybody's material for such proof is inadequate. We have only the Dr. Nourse, Minnesota University School of Business, Survey taken back in 1940 which proved that the consumer was paying 1% less for drug store merchandise after Fair Trade than he was before Fair Trade. Minnesota figures taken in 1940 are not sufficient. The Kansas Legislative Council is face to face with angry housewives and veterans, who are armed with 1948 newspapers telling, to them at least, an entirely different story. We, the druggists of Kansas, know from actual situations like the hot water bottle, the vase, etc.—particularly from the extreme high prices of Missouri prescription—that the Kansas consumer in the overall picture is paying less for drug store merchandise under Fair Trade than the Missouri Consumer without Fair Trade. Our problem was to get proof.

We have two large Supermarket drug chains in the Middle West—one with 83 stores scattered over Missouri, Kansas and Oklahoma—the other with 22 stores operating in Missouri and Kansas. These two aggressive chains were in operation when Fair Trade came into being. They know all of the cut-throat experience of Pre-Fair Trade days. Within their records is the history of retailing in the Fair Trade states of Oklahoma and Kansas versus the non-Fair Trade market of Missouri. They had the proof we needed for our Legislative Council. Would we be able to get it?

Last week I, personally, spent two days in the Kansas City headquarters offices of these two mighty chains and two days studying their individual units. It wasn't hard to convince the owners that it was to their advantage to open books to me and allow their gross profit figures to be released for the Kansas Legislative Council. These big operators like Fair Trade. With pride they informed me that their Kansas and Oklahoma stores under Fair Trade were netting more profits than their stores in the non-Fair Trade Missouri "dog eat dog" market. They are sick and tired to death of cut-throat battles.

Now, friends, these boiled-down figures are fairly confidential. They were given to me for the Kansas Legislative Council. We are bringing them to the Massachusetts druggists for use in contact with legislators and the public. We have no authority to release them for publication. Please do not publicize any part of this speech without first checking with Martin Adamo or Sam Silverman. Perhaps the Fair Trade Policy and Planning Committee of the N.A.R.D. will sponsor a larger survey—ammunition for all states faced with Fair Trade repeal moves.

Here is the story: we eliminated the liquor and fountain departments because Kansas and Oklahoma do not have liquor and Kansas drug stores serve very little food—besides, Fair Trade does not affect fountain departments.

The gross profit records taken from these two chain groups, comparing Fair Trade Oklahoma and Kansas Stores with the non-Fair Trade Missouri stores, prove beyond a doubt that Fair Trade does benefit the public.

The Missouri consumer without Fair Trade is paying 2½ per cent more for drug store merchandise than the Kansas consumer with Fair Trade and 3 per cent more than the Oklahoma Fair Trade consumer.

We find from the records that the cut-throat Missouri market is using less than 2 per cent of its drug store items as loss leaders. Just think of it—with 2 per cent of their drug store merchandise they convince a credulous public that they are buying the remaining 98 per cent at deep cut-prices.

It was interesting to note that on this 2 per cent "loss leader" group, listed as advertising on the books, a 4 per cent gross profit was recorded last year.

We find that gross profits on Missouri prescriptions are running 65 and 70 percent as compared to 45 and 50 per cent on Kansas prescriptions.

In the sundry departments, shoddy merchandise was purposely mixed in with relatively few standard brand items—the inferior merchandise in many cases carrying exorbitant mark-ups. The main evidence of "diluted quality" is undoubtedly in sundry departments. Of course, cut-rate stores were packed with "just" as good items—the old switch game. Missouri cut-rate stores seemed to be using quality pharmaceuticals in their Prescription Department and were certainly hiring top-level Pharmacists.

A gratifying observation, in analysing the book, was the verification of the owner's early statement that their stores in Fair Trade Kansas and Oklahoma were making a greater net profit than the non-Fair Trade stores of Missouri. This statement was proved true in the case of every Unit—in other words, under Fair Trade the consumer pays less for drug store merchandise, and the retailer makes more money.

It appears that the only ones benefiting from the fact that Missouri does not have Fair Trade, are the large metropolitan newspapers carrying pages and pages of heavy black type—cut-rate ads. The small newspapers of Missouri are struggling for a mere existence.

Yes, Fair Trade is sound, both legally and economically. Fair Trade has been sustained in the Courts and no Fair Trade law has been repealed. Dr. Robert Swain says, "Fair Trade is our most priceless economic and business asset." Fair Trade has demonstrated its anti-inflationary effects. Our 1947 survey showing drug store prices held at a 3·1 per cent rise while commodity prices generally climbed 59 per cent, should be standard equipment in every drug store of the nation.

Fair Trade is one of the supreme achievements of economic leadership and legal scholarship. Fair Trade assures integrity, honesty and morality in the market place.

Fair Trade is a challenge to our common sense. This challenge demands that we know what Fair Trade is, that we know what it has accomplished, that we know what can be done to make it work effectively.

We of the drug field will meet this challenge We will protect, defend and preserve this law which is necessary to our economic welfare.

APPENDIX "C"

MEMORANDUM

OF

THE CANADIAN AND CATHOLIC CONFEDERATION OF LABOUR TO THE JOINT COMMITTEE OF THE SENATE AND THE HOUSE OF COMMONS ON COMBINES LEGISLATION.

Re: Setting of retail prices

The C.C.C. of L. has repeatedly gone on record in recent years in favour of price control by the Canadian government. We still believe that this measure would be the most effective to fight inflation. Our stand in this matter is relatively simple: we claim that at the present time we have no choice to make between government controls and the lack of controls, or as it is called, free economy; we have to make a choice between government control and private controls.

It is not necessary to undertake a long inquiry to show that we are presently subjected to a system of private controls; one has but to enumerate the industries in which competition no longer exists either by reason of the small number of manufacturers, or by reason of certain agreements made between apparently independent producers. Among the latter are to be found aluminum, nickel, asbestos, pulp and paper, iron and steel producers, the automobile industry, the chemical industry, oil, farm machinery, the fertilizer industry, electrical equipment, textiles, tobacco, etc. And we could easily extend this list, so that we are in a position to assert that competition and hence free enterprise, in the true sense of the expression, have almost completely disappeared from the manufacturing industry, to be replaced by a private system of controls wherein those who occupy the driver's seat are responsible to nobody.

However, the effectiveness of private controls practised at the manufacturing industry level would have been greatly weakened if the controls had been limited to the field of manufacturing production. In fact, of what avail is it to cause the disappearance of competition in this field either by way of an agreement between producers or by means of another stratagem, if it reappears in the retail trade? Controls in the manufacturing industry have shown the need of controls in retail trade which were established thanks to the practice of resale prices.

This practice, it is known, gives the manufacturer the power of setting and imposing by coercive measures a resale price for his products. Thus, thanks to this practice, producers, after wiping out competition and setting up a private system of control at the manufacturing industry level, are in a position to do the same thing in the wholesale and retail trade. Thus, their system of control becomes complete because it makes its way right down to the consumer.

It is not necessary to reflect at great length to note that a system of price controls determined by irresponsible individuals, solely concerned with their personal interests, is inconsistent with the requirements of the public interest and of general welfare, since it leads inevitably to a high price level, if not to inflation. Now, there are only two ways of preventing the operation of a private system of controls: either to replace it by government controls or else destroy it by adopting effective legislative measures against monopolistic controls. We know that Parliament is still opposed to the setting up of government controls. Therefore, if it aims to be logical with itself and protect the

interests of the public to the extent possible within the framework of the present system, effective control measures must be adopted against monopolistic controls and in the circumstances against the maintenance of resale prices. The C.C.C. of L. cannot accept that the Canadian parliament should rule on the one hand against government controls and on the other hand in favour of a private system of controls, which would be the case if it refused to render the practice of resale price maintenance illegal.

At this level, the C.C.C. of L. accepts in their entirety the recommendations of the MacQuarrie report and desires that the legislation in this respect be enacted at the present session of Parliament. The C.C.C. of L. also supports the reasons motivating these recommendations. In fact, our movement is of the opinion that resale price maintenance eliminates competition in the matter of retail prices, encourages and renders more effective agreements between manufacturers, increases distribution costs by compelling the retailers to secure the services which the consumers do not desire, raises the prices and stiffens them more, thus contributing to render production unstable.

We should like to insist particularly on the fact that resale price maintenance compels all retailers to sell at the same prices, while operation costs vary between one establishment and another depending on the location, the services offered and the scale of operations. This aspect of resale price maintenance is unacceptable because it does not take into account economic realities and it constitutes a dangerous practice because if such a rule is accepted at the retail trade level, it will have to be tolerated also, to be logical, when it is applied in other fields, such, for instance, as the manufacturing industry.

This feature of resale price maintenance bears particularly on the working classes. Because their purchasing power is low, workers strive to save when making their purchases. To these ends, they shop in unpretentious stores whose overhead costs are relatively low and those that offer the minimum of services. However, resale price maintenance prevents the workers from making such savings, since it does not allow stores whose operating costs are trivial to sell more cheaply than those whose costs are high. The C.C.C. of L. believes that if the wealthy class wishes to patronize pretentious stores that offer all the imaginable services, it must pay more for its products than the working class which does not demand the same luxury or the same services. Thus, it can be said that resale price maintenance is a practice inconsistent with the interests of the consumers in general and with those of the worker in particular.

The main argument invoked so far to justify this measure consists in the contention that it protects the small independent retailer. Such a claim is far from being proven. In the first place, there is cause to distinguish between the case where the manufacturer occupies a position of near-monopoly and where he is in a position to impose a price on the retailers and the case where the manufacturer must fight competitors and where he must more or less yield to the pressures exercised by the retailers, if he wants to dispose of his product.

In the first case, that is to say when the retailers are compelled to stock the merchandise come what may, the manufacturer is in a position to impose on the retailers relatively low profit margins; this situation corresponds with very concrete conditions, for the retailers daily complain of this state of affairs. In this case, resale price maintenance does not protect the small retailers since he himself claims that the profit margins thus set make it impossible for him to make a living. Nay more, with the application of resale price maintenance the small retailer loses his independence and is henceforth subjected to the will of the manufacturer. Thus, in the cases where the manufacturer occupies a near monopoly position, resale price maintenance does

not protect the small retailer. Quite the contrary, this parctice renders the latter's position more unstable and more uncertain. It must be noted that the cases corresponding to this situation are numerous and that they will increase in numbers accordingly as the movement of economic concentration will become more pronounced in the manufacturing industry.

There now remains the second case where the manufacturer is in a competitive position, when the retailers are not absolutely required to stock his product. Under these conditions, it is true that the retailers can bring pressure to bear on the manufacturers to secure high profit margins that will be protected thanks to the maintenance of resale prices.

But, even if the guaranteed profit margins are high, it does not necessarily follow that the small retailer is thus protected. The two arguments presented on this point in the MacQuarrie report, (page 20, paragraph 6) no doubt deserve the attention of your Committee. According to this report, resale price maintenance has the effect of subjecting the smaller retailers to a keener competition on the part of the large stores in the sector of merchandise non price maintained and attracting, thanks to the high profit margins it guarantees, a too large number of vendors in the retail trade, the consequence of which is to lessen the volume of sales made by each establishment. We claim that in the present discussion too great importance is attached to profits and profit margins. We contend that the value of sales flows from the price multiplied by the quantities sold and that the retailer's revenue is computed by multiplying the profit margins by the quantities. Now, to the extent that resale price maintenance increases the prices and ensures high profit margins, it reduces by that very fact the volume of sales. Hence, that means if the full effects of resale price maintenance and not merely its consequences on profits and profit margins are taken into account, one cannot come to the conclusion that this practice effectively protects the small retailer. It could quite easily happen, however, that by rendering such a practice illegal, several retailers would be compelled to go out of business. Such a contingency would only serve to prove, in our opinion, that the setting of resale prices keeps in business a too large number of retailers and encourages inefficiency.

But supposing resale price maintenance affords effective protection to the small retailer, it is not justified by this single fact. As a matter of fact, such a supposition only serves to raise a new problem which consists in asking one'self if small enterprise deserves to be protected even to the detriment of the consumers. If this question is answered in the affirmative, that means that resale price maintenance is in the circumstances the ideal form of subsidization likely to help and save small enterprise. The C.C.C. of L. is not of this opinion, for we believe that resale price maintenance protects the little fellows as much as the big fellows and favours as much those who do not need help as those who might need it. Precisely because it constitutes a subsidy that helps all retailers, we consider that this is an excessive and too burdensome form of help that falls on the shoulders of the consumers. There are no doubt more direct, more effective and less costly methods of helping small enterprise than resale price maintenance.

In the name of public interest, the C.C.C. of L. therefore urgently requests the Joint Committee of the Senate and the House of Commons on Combines Legislation to recommend to the Canadian Parliament to render illegal the maintenance of resale prices by the manufacturers.

CANADIAN AND CATHOLIC CONFEDERATION OF LABOUR.

Quebec, November
23rd, 1951.

APPENDIX D

THE CANADIAN CHAMBER OF COMMERCE

Board of Trade Building
Montreal 1.

November 16th, 1951.

The Chairmen,
The Joint Parliamentary Committee on
Combines Legislation,
House of Commons,
Ottawa, Canada.

Gentlemen:

On behalf of the Officers of The Canadian Chamber of Commerce, we wish to express our appreciation of your invitation to make representations before your Committee.

For your information we should like to state first of all that The Canadian Chamber of Commerce is the national federation of 700 Boards of Trade and Chambers of Commerce located in all ten provinces. The member Boards of Trade and Chambers of Commerce (the terms are synonymous) are voluntary groups of citizens organized to promote the civic, commercial, industrial and agricultural progress of their respective communities. The policy of the national Chamber is established either through the vote of the accredited delegates of our constituent members in attendance at an annual meeting or by the taking of referenda among the member organizations in the interim between annual meetings.

The proposal to prohibit suppliers of goods from requiring or including distributors to sell such goods at fixed or minimum resale prices, as foreshadowed in the Speech from the Throne, was discussed by the delegates to the 22nd Annual Meeting of the Chamber held in Quebec City, on October 30th, 31st and November 1st. It was evident from the discussion of this topic that because there was a lack of unanimity among the membership, it was felt that further serious consideration should be given to the whole matter affecting as it does the established distributive arrangement of our economy. The members, however, requested the Officers of the Chamber to urge the Government to defer legislation on resale price maintenance until the proposal could be further studied so as to determine whether the practice of resale price maintenance is detrimental to the public interest. This request was forwarded to the Prime Minister and to the Honourable the Minister of Justice.

We are now endeavouring to ascertain further the views of our constituent members but shall not be able to complete such a survey within the time set by your Committee for the presentation of the Chamber's views, viz., Monday, November 19th, next.

Despite the absence of any Policy Declaration approved by the members on this matter, our Officers are of the opinion that before any legislation is enacted the answers to at least the following questions should be determined:—

1. Will the economic efficiency alleged to be derived from the prohibition of the practice of resale price maintenance contribute in the long run to reduced prices and therefore to a lowering in the cost of living?
2. Does the practice of resale price maintenance, when not carried out in combination, actually restrict competition and detract from the freedom of the Canadian economy in such a manner as to be detrimental to the public interest?

3. Is it in the public interest to deny the basic civil right of one trader to contract with other traders, when not in combination, through the prohibition of resale price maintenance?
4. The larger proportion of retail trade is conducted by small and medium-sized retailers. In a period of expanding economic activity when adequate and increased distributive outlets are likely to be needed, is it in the public interest to prohibit resale price maintenance which might handicap the ability of small and medium-sized retailers to withstand the competitive pressure from larger retail units which can operate at a smaller margin of profit?
5. Would the effect of the prohibition of resale price maintenance be detrimental to small and medium-sized businesses and, if so, would such effect tend to bring distribution into the hands of fewer powerful outlets?
6. On certain brand-name products, where resale price maintenance is involved, there is in the buyer's mind an assurance that certain standards have been met. Frequently such products are of a kind that the consumer is unable to judge their standards at the time of initial purchase. If in such cases present standards could not be maintained without resale price maintenance, would it be wise to deprive the consumer of the assurance of such standards by prohibiting resale price maintenance?
7. It is alleged that some consumer products require specialized maintenance and skilled service. The provision for such maintenance and service may be included in the price set under a resale price maintenance arrangement. Would it be wise to interfere with the provision of such facilities?
8. Is it desirable to embark on legislation prohibiting resale price maintenance, with the considerable dislocation in the distributive system that would necessarily attend it, until the constitutional validity of the proposed legislation (which deals with matters of private contracts for the sale of goods) has been clearly established?

Some further clarification which would not appear to be readily available on the above and other related questions during the Committee's current sittings would, in the opinion of the Officers of the Chamber, appear to be desirable. We suggest, therefore, that your Committee consider including in its findings the recommendation that no action be taken on this question at the present session of Parliament.

Yours respectfully,

R. B. PERRAULT,
President.

D. F. MORRELL,
General Manager.

APPENDIX E

DOMINION JOINT LEGISLATIVE COMMITTEE RAILWAY TRANSPORTATION BROTHERHOODS

J. L. D. Ives, Chairman, 117 Blackburn Building, 85 Sparks Street, Ottawa.
J. B. Ward, Secretary, 502-3 Plaza Building, 45 Rideau Street, Ottawa.
Brotherhood of Locomotive Engineers, Brotherhood of Locomotive Firemen and Enginemen, Order of Railway Conductors.
Brotherhood of Railroad Trainmen, The Order of Railroad Telegraphers, Brotherhood of Maintenance of Way Employees.

November 27, 1951.

Mr. A. L. BURGESS, Clerk of the
Joint Committee of the Senate and the
House of Commons on Combines Legislation,
Committees Branch, House of Commons,
Ottawa.

Dear Sir:—Reference is made to your letter of November 17 enquiring as to whether the Dominion Joint Legislative Committee of the Railway Transportation Brotherhoods desired to make representation to the Joint Committee of the Senate and the House of Commons on Combines Legislation.

I regret that the members of this Committee were in the Maritime Provinces at that time which, unfortunately, has delayed our reply; and that circumstances will not permit of our filing a formal brief. However, I would now advise as follows:

From time to time this Committee, along with other organizations, has made representations to the Government requesting that some form of price control be inaugurated to stem the continuing advance in the cost of living. Some encouragement and hope was experienced by this Committee in the Speech from the Throne, in particular that portion reading as follows:

> The government has received an interim report from the committee studying the combines legislation recommending that suppliers of goods should be prohibited from requiring or inducing distributors to resell such goods at fixed or minimum resale prices. You will be asked to consider legislation arising out of the committee's interim report.

While the proposed action on the part of the government is not all that we would hope for, it is at least a step in the direction of halting to some degree the steadily increasing cost to the consumer.

The Dominion Joint Legislative Committee of the Railway Transportation Brotherhoods concurs, therefore, in legislation which will,

Firstly, make it illegal for a manufacturer or supplier to name the price at which his goods may be sold by a retailer;

Secondly, make it illegal to refuse to sell goods to a retailer because that retailer has not maintained minimum prices suggested by the manufacturer or supplier.

Yours very truly,

J. B. WARD,
Secretary.

APPENDIX F

Copy of Resolution passed by the 27th Annual Meeting of Delegates of the Saskatchewan Wheat Pool, held in Regina, November 6-16, 1951.
No. 40

THAT we commend the Federal Government for proposing to introduce legislation to stop the practice of resale price maintenance by manufacturers and business corporations and recommend that this meeting declare its unalterable opposition to any degree of retail price fixing, or the determining of resale minimum prices by manufacturers, processors and suppliers of all kinds; and deplore the action on the part of some business firms in withholding supplies from wholesale houses and retail merchants who, through patronage dividends or otherwise, have not conformed to this form of monopolistic price control; and urge the Federal Government to proceed with the legislation declaring the practice of resale price maintenance by manufacturers and business firms illegal, as originally proposed, and have this done as soon as possible during the present session of Parliament.

Carried Unanimously.

APPENDIX G

CEMA

CANADIAN ELECTRIC MANUFACTURERS ASSOCIATION
126 Davenport Road (at Belmont)
Toronto 5, Canada

Telephone Midway 1139

November Thirtieth, 1951.

TO:
The Joint Committee, both Houses of Parliament
to consider the Interim Report of the MacQuarrie
Committee on Price Maintenance.

Reference: Submission of Price Information.

In acknowledgment of a letter received from Mr. A. L. Burgess, Clerk of the Committee, dated November 26th, we are submitting herewith information from certain compagnies showing the price information, which in our opinion would provide the Committee with sufficient data on which to base their judgment.

It was suggested at the hearings on Monday, November 26th, covered by "Minutes of Proceedings and Evidence No. 6" that the Committee itself would formulate a list of questions to be answered. However, it was later determined by the Committee that the manner of presentation of this price information would be left to the manufacturers themselves, with the understanding that the Committee would confine its questioning to such representations as we would care to put forward.

To clarify the situation I might say that this letter was received at 11:00 P.M. on November 26th, necessitating my return to Toronto on the 27th, and therefore, my contacts with various member companies were subsequent to that date.

Since this is a national Association with member companies spread out from British Columbia to Quebec, you will understand that the time factor did not permit submissions by all companies in the Appliance Industry. Even at the time of writing, therefore, some promised information was in transit in the mail, but was not received in time for submission to the Committee.

However, sufficient price information has been tabled, particularly in regard to what might be termed "major appliances" e.g. Refrigerators, Ranges and Washing Machines, to prove without doubt that the profit accruing to the manufacturers is entirely reasonable.

You will note that in many cases the manufacturers have shown their costs and profit margins both previous to the tax increases and subsequent thereto. Therefore, it will be noted that in several cases the result has been a loss to the manufacturer rather than a profit, since the excise tax was levied in April of this year.

COMPANY "A"

"Confirming our conversation re List Prices on Electrical Appliances.

The Distributor's profit on the Appliances which we manufacture is only 20 per cent on the selling price, whereas the usual profit on non-electrical housewares is 25 per cent on the selling price.

In view of the fact that the distribution of Appliances involves a certain amount of service, we feel that the present margin of profit is very low."

COMPANY "B"

Appliance Range

	Price Prior to Tax Increase	Price After Tax Increase
Suggested Consumer List Price	$ 349.00	$ 399.50
Dealer's Cost	230.00	264.00
Distributor's Cost	204.15	233.70
Manufacturer's Cost	185.64	276.78
Sales and Excise Taxes	16.27	44.75
Total	$ 201.91	$ 321.53
Percentage Markup		
Dealer to Consumer	51·7	51·3
Distributor to Dealer	12·7	12·9
Manufacturer to Distributor	1·0	27·3

Appliance — Range — Apartment Size

	Price Prior to Tax Increase	Price After Tax Increase
Suggested Consumer List Price	$ 239.75	$ 279.00
Dealer's Cost	163.00	184.00
Distributor's Cost	141.45	163.25
Manufacturer's Cost	144.32	215.16
Sales and Excise Taxes	11.04	31.25
Total	$ 155.36	$ 246.41
Percentage Markup		
Dealer to Consumer	47·1	51·6
Distributor to Dealer	15·2	12·7
Manufacturer to Distributor	9·0	33·8

APPLIANCE — TURNOVER TOASTER

	Price Prior to Tax Increase	Price After Tax Increase
Suggested Consumer List Price	$ 9.95	$ 10.95
Dealer's Cost	6.35	7.00
Distributor's Cost	5.27	5.80
Manufacturer's Cost	5.33	7.73
Sales and Excise Taxes	.98	1.50
Total	$ 6.31	$ 9.23
Percentage Markup		
Dealer to Consumer	56·7	56·4
Distributor to Dealer	20·0	20·0
Manufacturer to Distributor	16·5	37·2

APPLIANCE WASHER

	Price Prior to Tax Increase	Price After Tax Increase
Suggested Consumer List Price	$ 159.50	$ 184.50
Dealer's Cost	103.50	120.00
Distributor's Cost	89.75	103.75
Manufacturer's Cost	97.41	124.10
Sales and Excise Taxes	5.91	20.30
Total	$ 103.32	$ 144.40
Percentage Markup		
Dealer to Consumer	54·1	53·7
Distributor to Dealer	15·3	15·6
Manufacturer to Distributor	13·2	28·1

APPLIANCE—IRON

	Price Prior to Tax Increase	Price After Tax Increase
Suggested Consumer List Price	$ 13.95	$ 15.50
Dealer's Cost	8.95	9.95
Distributor's Cost	7.39	8.21
Manufacturer's Cost	6.98	10.11
Sales and Excise Taxes	1.38	2.13
Total	$ 8.36	$ 12.24
Percentage Markup		
Dealer to Consumer	55·8	55·8
Distributor to Dealer	21·1	21·2
Manufacturer to Distributor	11·6	33·0

APPLIANCE—REFRIGERATOR 7 Cu. Ft.

	Price Prior to Tax Increase	Price After Tax Increase
Suggested Consumer List Price	$ 375.00	$ 389.00
Dealer's Cost	255.00	265.00
Distributor's Cost	225.00	233.40
Manufacturer's Cost	192.86	275.02
Sales and Excise Tax	16.67	46.68
Total	$ 209.53	$ 321.70
Percentage Markup		
Dealer to Consumer	47·0	46·8
Distributor to Dealer	13·3	13·5
Manufacturer to Distributor	7·4	27·4

APPLIANCE—REFRIGERATOR 9 Cu. Ft.

	Price Prior to Tax Increase	Price After Tax Increase
Suggested Consumer List Price	$ 399.00	$ 497.00
Dealer's Cost	270.00	325.00
Distributor's Cost	239.40	287.40
Manufacturer's Cost	222.72	317.60
Sales and Excise Taxes	17.74	57.48
Total	$ 240.46	$ 375.08
Percentage Markup		
Dealer to Consumer	47·8	47·3
Distributor to Dealer	12·8	13·1
Manufacturer to Distributor	·5	23·4

COMPANY "C"

PRODUCT PROFIT AND LOSS ANALYSIS

	Years 1950		Years 1951	
	Approx. 6 Cu. Ft. Cabinet	4 Burner Over-Oven Range	Approx. 6 Cu. Ft. Cabinet	4 Burner Over-Oven Range
Retail Price	299.75	229.75	345.75	265.75
Less: 5 Year Protection Plan	5.00	....	5.00	....
Dealer Allowance	4.00	4.00	4.00	4.00
Factory List	290.75	225.75	336.75	261.75
Less: Average Discount	107.79	84.36	128.30	98.49
Gross Sale	182.96	141.39	208.45	163.26
Less: Sales Tax	11.97	9.81	14.98	11.80
Excise Tax	....	....	22.47	17.70
Freight Allowance	4.00	4.00	4.00	4.00
Co-Operative Advertising	4.36	3.39	5.05	3.93
Material Warranty	1.88	1.68	2.49	2.39
Factory Revenue	160.75	122.51	159.46	123.44
Cost of Sales	114.17	107.63	133.58	124.54
Gross Profit	46.98	14.88	25.88	1.10
Gross Profit %	28.98	12.15	16.23	.89
Selling Expenses	8.50	6.48	16.27	12.60
Operating Profit	38.08	8.40	9.61	13.70
Operating Profit %	23.69	6.86	6.03	11.10
Income Tax	17.71	3.91	7.87	11.22
Net Profit	20.37	4.49	1.74	2.48
Net Profit %	12.67	3.67	1.09	2.01

PRICE STRUCTURE

	Year 1950		Year 1951	
	Approx. 6 Cu. Ft. Cabinet	4 Burner Over-Oven Range	Approx. 6 Cu. Ft. Cabinet	4 Burner Over-Oven Range
Retail Price	299.75	229.75	345.75	265.75
Dealer Cost	198.93	150.58	229.61	174.59
Dealer Profit	100.82	79.17	116.14	91.16
Dealer Profit %	33.63	34.46	33.59	34.30
Distributor Cost	166.66	125.52	192.23	145.53
Distributor Profit	32.27	25.06	37.38	29.06
Distributor Profit %	16.22	16.64	16.28	16.64

COMPANY "D"

COMPARISON OF PRICES, COSTS, AND MARKUP RATES ON ELECTRIC REFRIGERATORS BEFORE AND AFTER TAX INCREASES

	Prior to Tax Increase		After Tax Increase	
	7½ cu. ft.	8½ cu. ft.	7½ cu. ft.	8½ cu. ft.
(A) Prices				
Suggested Consumers Price	$344.50	$374.50	$397.50	$432.50
Dealers Cost	232.35	248.90	268.15	287.50
Distributors Cost	192.25	205.50	221.80	237.30
Manufacturers Cost Delivered	159.05	166.67	187.43	195.92
Sales and Excise Tax	13.97	14.95	43.61	46.72
Total Cost Delivered	$173.02	$181.62	$231.04	$242.64
(B) Percentage Markup				
Dealer to Consumer	48.27%	50.46%	49.24%	50.43%
Distributor to Dealer	20.86%	21.12%	20.90%	21.15%
Manufacturer to Distributor	11.11%	13.15%	4.00%	2.20%

Note: (1) Manufacturer's Cost does not include expenditures of a capital nature, interest, or income taxes;

(2) Manufacturers Costs after tax increase do not reflect the current situation caused by progressive decline in volume and increases in costs of labor and material.

E. & O.E.
November 29, 1951.

COMPANY "E"

January-June 30, 1950

List (including 8% sales tax)			$ 86.50	
Distributors' 40% and 10% equal	$39.79	Balance	46.71	
Freight allowance equals	.96	"	45.75	
Sales tax 8/108 equals	3.39	"	42.36	(Manufacturer's net income)
Manufacturer's cost for period			34.75	
Manufacturer's profit			$ 7.61	

May-October, 1951

Suggested list of (includes 10% sales and 15% excise)			$100.00	
Distributors' 40% and 10% equal	$46.00	Balance	54.00	
Freight allowance equals	1.08	"	52.92	
Sales tax 10/125 equals	4.23	"	48.69	
Excise tax 15/115 equals	6.35	"	42.34	(Manufacturer's net income)
Manufacturer's cost for period			42.17	
" profit 17¢ (or)	.17%			
Suggested list price (10% sales and 25% excise)			$107.85	
Distributors' 40% and 10% equal	$49.61	Balance	58.24	
Freight allowance equals	1.08	"	57.16	
Sales tax 10/135 equals	4.23	"	52.93	
Excise tax 25/125 equals	10.59	"	42.34	(Manufacturer's net income)

May-October, 1951—*Concluded*

Manufacturer's cost for period	42.17	
" profit 17¢		
This company reports a third quarter loss in 1951		$ 9,896.66
" " " Oct. 1951 loss		3,298.88
Loss July-Oct. inclusive		13,195.54

COMPANY "F"

Average Net Profit for 1950
8.7% on sales
(range on various appliances from 6.5% loss to 14.2% profit)
after tax increase—Spring 1951
average loss 7.7% on sales
Electrical Appliance

(Suggested list)	Dealer receives from consumer	$13.95
	Distributor receives from dealer	9.30
	Manufacturer receives from distributor	7.53
	Less tax and transportation	.87
	Manufacturer's net f.o.b.	6.66

1950 cost $6.03 — net profit per unit 63¢.

At present time cost in own warehouse $7.17 — loss per unit 51¢.

COMPANY 'G'

Discounts to Retail Dealers
from Manufacturer's Suggested Retail Prices

	Minimum Discount	Maximum Discount
Refrigerators	27%	36%
Ranges	25	35
Washing Machines	30	38
Small Appliances	25	40

This manufacturer sells his large appliances direct to dealers, and not through distributors. He gives distributors a discount of 46 per cent on small appliances.

His variation in dealing discounts between minimum and maximum are based on the following factors:

1. A lesser discount on low-priced utility models.
2. The volume of the dealer's purchases.
3. The efficiency of the dealer in sales promotion, sales training, store location, and in recognition of expenses incurred therein.

November 29/51

COMPANY 'G'

Profits earned during the years 1949 and 1950 and 10 months of 1951 on Appliances

expressed in per cent of manufacturer's selling price

Federal plus Provincial Income Tax on Corporation taxable income was 40 per cent in 1949, 41·6 per cent in 1950, and is 52·6 per cent in 1951.

	Net profit before income tax expressed in % of sales			Net profit after income tax expressed in % of sales		
			(10 mos.)			(10 mos.)
	1949	1950	1951	1949	1950	1951
Refrigerators	0·7	5·1	1·0	0·42	3·0	0·5
Ranges	10·1	13·1	6·9	6·1	7·7	3·3
Washing Machines	14·3*	5·5	5·4	*	3·2	2·6
Other Appliances	11·5	11·2	10·6	6·9	6·5	5·0
TOTAL ALL APPLIANCES	4·5	7·4	4·1	2·7	4·3	1·9

*(loss).

November 29/51

COMPANY—"K"

This Company does not sell through Distributors.

Ranges

	Cost	*Average Selling Price*	*Consumer List*
January 1, 1951	$162.52	$183.58	$274.00
November 30, 1951	216.21	213.73	319.00

Refrigerators

	Cost	*Average Selling Price*	*Consumer List*
January 1, 1951	$192.85	$233.83	$349.00
November 30, 1951	244.40	247.23	369.00

COMPANY "L"

Electric Kettles

	Cost	*Selling Price*	*Jobber's Price*	*Consumer List*
January 1, 1951	$10.14	$8.27	$10.33	$15.50
December 1, 1951	11.86	8.80	11.00	16.50

It is felt that within the short time given, sufficient factual information is submitted herewith to prove, as stated to the Joint Committee, that profits in the Appliance Industry to put it mildly, have not been unreasonable. It is hoped that the presentation of these figures will assist the Committee in its recommendation on "Resale Price Maintenance."

Yours very truly,

B. NAPIER SIMPSON,
General Manager.

B. Napier Simpson.
ds.

COMPANY "M"

Amount Retained by Manufacturer From Each Dollar Sale To Distributor By Product

Product	*Year 1950* Net before Income Taxes	Deduct Income Taxes	Net Retained	*Year 1951 to date* Net before Income Taxes	Deduct Income Taxes	Net Retained
A	.228	.095	.133	.230	.115	.115
B	.235	.098	.137	.223	.112	.111
C	.120	.050	.070	.130	.065	.065
D	.084	.035	.049	.076	.038	.038
E	.003	.001	.002	.082	—	.082
F	.217	.091	.126	.213	.107	.106
G	.243	.101	.142	.182	.091	.091
H	.207	.086	.121	.176	.088	.088
I	.035	.015	.020	.391	—	.391

Amount Retained by Manufacturer From Each Dollar Sale To Consumer By Product

Product	*Year 1950* Net before Income Taxes	Deduct Income Taxes	Net Retained	*Year 1951 to date* Net before Income Taxes	Deduct Income Taxes	Net Retained
A	.118	.049	.069	.123	.062	.061
B	.121	.050	.071	.117	.059	.058
C	.061	.025	.036	.070	.035	.035
D	.044	.019	.025	.040	.020	.020
E	.001	.0005	.0005	.041	—	.041
F	.115	.048	.067	.116	.058	.058
G	.135	.056	.079	.099	.050	.049
H	.144	.060	.084	.099	.050	.049
I	.019	.008	.011	.136	—	.136

HOUSE OF COMMONS

Fifth Session—Twenty-first Parliament

1951

(Second Session)

JOINT COMMITTEE OF THE SENATE AND THE HOUSE OF COMMONS

ON

COMBINES LEGISLATION

Joint Chairmen—The Honourable Senator A. L. Beaubien
Mr. James Sinclair, M.P.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 12

TUESDAY, DECEMBER 4, 1951

WITNESSES:

Mr. R. B. Taylor, Chairman, Legislative Committee, Canadian Manufacturers Association; Mr. G. R. Bradley, Director of Merchandising, Peak Frean (Canada) Limited; Mr. R. L. Linton of Sisman and Company, Aurora, Ontario, all representing the Canadian Manufacturers Association.

F. A. McGregor, Esq., C.B.E.

OTTAWA
EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY
1951

ADDENDUM

Minutes of Proceedings and Evidence, Monday, December 3, 1951:

In attendance: Mr. Thos. N. Phelan, K.C., and Mr. Guy Favreau, Counsel for the Committee.

MINUTES OF PROCEEDINGS

TUESDAY, December 4, 1951

The Joint Committee of the Senate and the House of Commons on Combines Legislation met at 10.30 o'clock a.m. The Joint Chairmen, The Honourable Senator A. L. Beaubien and Mr. James Sinclair, M.P., were present, Mr. Sinclair presiding.

Also present:

For the Senate: The Honourable Senators Burchill, Golding, Hawkins, Horner.

For the House of Commons: Messrs. Beaudry, Blair, Boucher, Carroll, Carter, Cauchon, Croll, Dickey, Fleming, Garson, Harrison, Hees, Jutras, MacInnis, Mott, Murray (*Oxford*), McLean (*Huron-Perth*), Shaw, Stuart (*Charlotte*), Thatcher.

In attendance: Mr. Thos. M. Phelan, K.C., and Mr. Guy Favreau, Counsel for the Committee; Mr. R. B. Taylor, Chairman, Legislation Committee, Canadian Manufacturers Association; Mr. G. R. Bradley, Director of Merchandising, Peak Frean (Canada) Limited; Mr. R. L. Linton, of Sisman and Company, Aurora, Ontario; all representing the Canadian Manufacturers Association.

Miss Margaret P. Hyndman, K.C., addressed the Committee, urging that a hearing be granted the representatives of the Canadian Retail Merchants Association.

The Chairman explained that a decision on this matter had already been made by the Committee.

Mr. Taylor was called, tabled a brief on behalf of the Canadian Manufacturer's Association, which is printed as *Appendix A* to this day's Minutes of Proceedings and Evidence, was heard and questioned thereon.

Messrs. Bradley and Linton were called and questioned.

The witnesses retired.

At one o'clock p.m. the Committee adjourned until 3.30 o'clock this day.

AFTERNOON SITTING

The Joint Committee resumed at 3.30 o'clock p.m. The Joint Chairmen, The Honourable Senator A. L. Beaubien and Mr. James Sinclair, M.P., were present, Mr. Sinclair presiding.

Also present:

For the Senate: The Honourable Senators Burchill, Fogo, Golding, Hawkins, Horner.

For the House of Commons: Messrs. Beaudry, Blair, Boucher, Carter, Cauchon, Croll, Dickey, Mrs. Fairclough, Messrs. Fulton, Garson, Harrison, Hees, Jutras, MacInnis, Mott, Murray (*Oxford*), McLean (*Huron-Perth*), Shaw, Stuart (*Charlotte*), Thatcher.

96979—1½

In attendance: F. A. McGregor, Esq., C.B.E.

Mr. MacInnis moved that the 10 minute rule relating to questioning by one member, adopted on November 26, be strictly adhered to.

And the question having been put on the said motion, it was agreed to.

Mr. McGregor was called, heard and questioned.

At 4.27 o'clock p.m. the proceedings were interrupted by the division bell in the House of Commons.

At 4.50 o'clock p.m. the Committee resumed.

The witness retired.

In accordance with the recommendation contained in the Fourth Report of the Sub-Committee on Agenda and Procedure, concurred in on November 30, the following documents are printed as appendices to this day's Minutes of Proceedings and Evidence:

Appendix B: Brief submitted to the Committee by the Canadian Federation of Agriculture.

Appendix C: Brief submitted to the Committee by the Canadian Association of Radio and Appliance Dealers.

Appendix D: Brief submitted to the Committee by the T. Eaton Company, Limited.

At 6.00 o'clock p.m. the Committee adjourned until Wednesday, December 5, at 3.30 o'clock p.m.

A. L. BURGESS,
Clerk of the Committee.

EVIDENCE

DECEMBER, 4, 1951

10:30 a.m.

The CHAIRMAN: Gentlemen, come to order.

This morning we are going to hear from representatives of the Canadian Manufacturers Association. Their brief was circulated to you about a week ago. If members want a copy there are other copies here.

Will the representatives of the Canadian Manufacturers Association come and sit at the table?

Miss MARGARET P. HYNDMAN, K.C.: Before you start taking evidence may I address the committee on a point of procedure. I appear on behalf of the Retail Merchants Association of Toronto and I was requested yesterday afternoon by Mr. Thomson, vice-president, St. Catharines, to say that he is very anxious to be heard by this committee, that he had sent a telegram to Mr. Garson, asking if there was any way to arrange for his appearance before the committee; and, if I might, I would like to read Mr. Garson's telegram to him:

> Garson wired today as follows. Mr. Boisseau was advised that the agenda subcommittee of the joint parliamentary committee appointed to consider combines legislation had decided time did not permit hearing representatives from his organization. This decision I understand was made in view of the fact that his organization had filed a brief and that the Canadian Retail Federation of which it is an affiiliate had three hearings before the committee. It was considered that the thorough presentation by the Retail Federation covered the points raised by the Retail Merchants Association. This same procedure followed by committee in respect of other organizations in order to avoid duplication and repetition of argument. However I am advised in view of the urgent representatives made by Mr. Boisseau last week it was agreed to hear representations from your organizations along with the Canadian Retail Federation on November 30 but after this concession granted it was rejected by your organization. Previous correspondence to which you refer makes it clear that after appointment of parliamentary committee briefs and representations were to be directed to it and since a committee is master of its own procedure regret am unable to intervene Stuart S. Garson, Minister of Justice unquote since proposed legislation is of tremendous importance to our membership of approximately 20,000 across Canada we urge you to do everything possible to endeavour to persuade the committee to postpone conclusion of its hearings in order that our representatives can be heard.
>
> J. R. THOMSON, Vice-President,
> Dominion Board, Retail Merchants
> Association of Canada Inc.

The CHAIRMAN: Miss Hyndman, may I point out that it is a rather extraordinary procedure that a point of order should be raised by people who are not members of the committee, and the answer to what you have just read is very similar to the ones Senator Beaubien and myself have addressed to

a great number of groups who have not filed briefs, although the Retail Merchants' Association of Canada did file a brief and asked to be heard here. The procedure has been that we would accept briefs as considered statements of opinion from any groups in the country who are interested. It is the experience of every parliamentary committee dealing with a matter of wide national concern that they are flooded with representations. The group you are representing has submitted a brief. In the three sessions when the Retail Federation was before us we certainly explored every point raised by the Retail Merchants' Association of Canada, and with all due deference to you, because of your sex, I may say I have never been on a committee before where a person who is not a member raised a point of order. The group you represent have answers both from the Minister of Justice and from the Joint Chairmen of the Committee. I think any further point as to who is going to be heard before this committee will be decided by the steering committee.

Miss HYNDMAN: I am sorry if you thought I was raising a point of order. I know I have no right to do that although your reference to my sex would make me wish I had the right to raise a point of order.

The CHAIRMAN: I would have cut you off as soon as you started if you had not been a lady.

Mr. THATCHER: How many retailers does this lady represent?

Miss HYNDMAN: Approximately 20,000 and they are the small ones.

Mr. THATCHER: Do you not think it shows that we are trying to rush things a little too fast, Mr. Chairman?

The CHAIRMAN: This is a matter which has already been discussed by the committee and I do not think we should spend much time on it again. This is a problem of very great national concern, and provincial groups, local groups and national groups are all very interested, but if we are going to prolong the hearing for months and months to hear everybody who feels it is his democratic right to appear before the parliamentary committee, we will never reach the end.

We have indicated the procedure we are following; we have received briefs, we have circulated them and studied them. Those who could not afford to turn out 75 copies of their briefs had them turned out by the committee. So far we have received only two of that kind, and I won't say they couldn't afford to turn out 75 copies, and we have had them printed and they will be in today's proceedings, I expect. When a committee's procedure is to be changed it cannot be changed on a motion by a member who has previously voted against the motion to adopt the procedure.

Mr. THATCHER: Do you mean I cannot make a motion?

The CHAIRMAN: I am very grateful that your colleague next to you drew this point to my attention, as did the Clerk of the House.

Mr. THATCHER: I will make the motion anyway.

The CHAIRMAN: I rule your motion out of order, since you already made a similar motion that was turned down.

Mr. THATCHER: I did not make a motion that this lady be heard. I move that this lady, who represents 20,000 retailers be heard by this committee.

The CHAIRMAN: Mr. Thatcher's motion is a reversal of the rule set by the steering committee. We had decided that we would only hear from affiliated organizations who dissented from the views of their national associations. We received no brief from any retail group which dissented.

I do not want to read you the whole report on that, Mr. Thatcher, but I would refer you to page 457 of our official report where you will see what was determined by the steering committee. I direct your attention especially to

paragraphs 1, 2 and 3. In view of that decision which has already been confirmed on at least two occasions to the Retail Merchants Association of Canada, and which was made clear to the president of the Canadian Retail Federation when he was here, and in view of the fact, also, that we have had three sittings with the representatives of the Canadian Retail Federation, I think we will proceed with our order of business.

Miss HYNDMAN: I was not asking that I be heard. I was asking that Mr. Thomson of St. Catharines be allowed to give his evidence; and in spite of the decision that was made he was informed that he could appear, but he did not get the message in time.

The CHAIRMAN: That was when the secretary of his association telephoned here, and the Canadian Retail Federation said yes; they had three or four other representatives sitting here, and he could have sat in with them.

Miss HYNDMAN: He is asking permission to give his evidence tomorrow, evidence that you apparently were willing to hear last week.

Hon. Mr. HORNER: He was given that permission last week?

The CHAIRMAN: He was told that he could join with the representatives of the Canadian Retail Federation, and the Canadian Retail Federation could have brought him along.

Hon. Mr. HORNER: The lady just said he did not get the message in time to appear.

Miss HYNDMAN: And it is not on behalf of the Canadian Retail Federation he wants to give evidence, it is on behalf of the Canadian Merchants Association.

The CHAIRMAN: We have read many briefs, and there was no point raised in any of those briefs which was not raised either in the briefs of the Canadian Retail Federation or in the very able evidence given by Mr. Harris and his associates here. This committee is not here to hear repetition and repetition. We have made our decision, and I thank you for appearing.

Miss HYNDMAN: I am in your hands, but my client felt that he had something important or different to say, or he would not want to come and say it. That is all.

The CHAIRMAN: There isn't one person who has written to this committee who has not had the same feeling. It is quite a common feeling among people who are interested in things.

Mr. Phelan, Committee Counsel, will now examine representatives of the Canadian Manufacturers Association who are here today. Mr. Taylor, would you introduce yourself and the representatives who are with you.

Mr. R. B. Taylor, Executive Vice-President, General Steel Wares Limited, Chairman of the Legislation Committee of the Canadian Manufacturers Association, called:

The WITNESS: I have with me Mr. G. R. Bradley, Director of Merchandising, Peek Frean (Canada) Limited, and Mr. R. L. Linton, of Sisman & Company, Aurora, Ontario, who will be glad to answer your questions or assist me in answering questions.

The CHAIRMAN: The members have all studied your brief, Mr. Taylor, and if you care to give a brief summary of it—not to read it, because we have read it— then our counsel will conduct the opening examination, and then you are in the hands of the members of the committee.

The WITNESS: In favouring resale price maintenance for lines that are suitable, manufacturers are thinking primarily of themselves. Not to relieve

themselves of competition because all of the opponents of resale price maintenance, so far as I have read their briefs and evidence, agree that there is plenty of competition at the manufacturer's level. The reason manufacturers favour resale price maintenance is to preserve competition. We want there to be many retailers to buy our goods, not just a few. We do not want to be in a position where we are dependent on a few large retailers for our business, because when that comes about they will have us at their mercy. It is perhaps of little consequence to you if manufacturers are at the mercy of retailers, but if you think a retailer with a monopoly won't also hold up the consumer you are mistaken. It is too bad you cannot inquire into the profit margins taken on lines which are not subject to resale price maintenance when, because they are imported or otherwise, there is a monopoly.

The prohibition of resale price maintenance will force independent retailers out of business and force manufacturers into the retail business. I do not think there is any doubt of that. There will be less not more competition than there is now. There will be resale price maintenance and prices will be higher not lower.

Dr. Forsey's testimony on the subject of competition illustrates the general rule that people see their own problems very clearly but incline to feel that other people overemphasize their problems. They can see excellent reasons why their own group should not be subject to unrestricted competition in what they have to sell but have great doubt there should be any restriction on competition in what they require to buy.

It is not the full truth to say that in one case we are talking about humanity and in the other about inanimate objects such as refrigerators or stoves. We are not representing the case of the refrigerator aggrieved at its price being cut. We are speaking for the human beings who make and sell refrigerators and we believe we are speaking in the best interests of the human beings who buy refrigerators.

If resale price maintenance is prohibited Dr. Forsey seems to assume the simple situation that one store will adopt one price level and another store a different price level more or less permanently so that a housewife will know that the price of a certain article in store A is $1 and in store B is 90 cents. There will be nothing nothing permanent about these prices. If store A finds its sales dropping it may try to get its trade back by also going down to 90 cents or even 85 cents. If store B finds it is not getting enough extra business to compensate for reducing the price it will soon put it up again. The housewife, to be sure of getting the best price, has to shop both stores every time she makes a purchase and in most cases it will not just be two stores. Just think of how many stores you would have to visit in Montreal or Toronto to be sure of getting a radio at a good price if every retailer set his own price independently.

It appears from the Canadian Congress of Labour and other representations there is a general impression that a retailer can select a location and method of merchandising which requires a margin of say 40 per cent or, alternatively, can select an inferior location, have a smaller, plainer store, employ fewer sales people and thus require only 30 per cent margin. This would be true if he could obtain the same volume in both cases. Generally, however, the first merchant with his better located and better equipped store will sell far more goods. His revenue is not a percentage but a percentage multiplied by his volume and with his higher volume he needs no more percentage, sometimes less than the other fellow. The retailer with a cheap store in a cheap location needs, in most cases, a high margin to compensate for his lower volume.

Mr. Chairman, I think the committee here should seriously consider before passing this law that they are introducing a new principle into the Combines Act; namely, that an act is a crime even though it cannot be proved that it has been or is likely to be detrimental to the public.

The phrasing in the Combines Act that an act is a crime if it is likely to be of detriment to the public must surely refer to the particular acts before the court at that time. It is certainly a very serious thing to take something and to declare it a crime without any proof having been adduced that it is a crime and that although pretty generally admitted at most it could only be objectionable in a minority of cases or at least only in some cases.

This law is a new departure. So far as we are aware there is no such law in any other jurisdiction and we suggest the utmost caution.

The Canadian Manufacturers' Association has, Mr. Chairman, no knowledge of prices or costs of its members. I have, however, naturally, a knowledge of prices and costs in our own business. In our own business, I mean my company's business, we sell a large volume of goods on a price maintained basis but we sell a larger volume of goods on which we do not maintain the resale prices. It may be of interest to the committee to know that our margin of profit on the price maintained merchandise is substantially lower than it is on the goods that we sell without price maintenance at the retail level.

Thank you, Mr. Chairman.

The CHAIRMAN: Thank you, Mr. Taylor.

By Mr. Phelan:

Q. What is your business, Mr. Taylor? You are in the producing business? —A. We are manufacturers and wholesalers.

Q. Of what commodities?—A. Of all kinds of housewares, manufactures in porcelain enamel, copper, cast iron, aluminum, tin, of milk cans, hot water tanks; of all kinds of stoves and furnaces; electric and ice refrigerators; institutional kitchen equipment and many other lines.

Q. Can you tell me briefly what groups are in the price maintained field and what are not?—A. Yes, sir. Articles in the price maintained field are stoves of all kinds, electric and ice refrigerators, one class of kitchenware, and what we call a traffic item in the electrical business, that we manufacture. All those.

Q. So, apparently the larger items are those which are price maintained, are they?—A. Yes, sir, mainly that is true of our business.

Q. What percentage of your total business would you say is price maintained, just roughly speaking?—A. Somewhere around 37 per cent.

Q. About 37 per cent is price maintained. Directing your attention for a moment or two to your brief, I notice that you say on page 1 that resale price maintenance does not make prices higher. In your judgment, are there any exceptions to that general statement?—A. No, sir, I do not know of any.

Q. You do not know of any. Well, it seems to me we had a good example yesterday. Let me put this question to you. Where a manufacturer runs into a period of reduced demand as some have at the present time, I suppose the manufacturer has two choices open to him. One would be to reduce his price and enlarge the field of purchasers and the other would be to reduce his production and maintain his price. Which practice would you follow?—A. Well, sir, I think I can be factual in that. We, in our business, are going through such a period now and what we have done is that we have reduced prices in one way or another.

Q. In one way or another?—A. Yes, sir.

Q. In all lines?—A. No, sir. We have on the lines most severely affected.

Q. Have you reduced production in some lines and still maintained your prices?—A. We have done so in some lines.

Q. Well, would you consider that an exception to your general statement that resale price maintenance does not make prices higher? Because, I suggest to you in these places where you have reduced production and maintained

prices you have made them higher to the public? Do you agree with that suggestion first of all?—A. No, sir. In answering your question as you gave it to me we cannot see that we can reduce prices in every case when it would mean bringing our prices below cost.

Q. No, I am just putting a different problem to you. If you reduce production and do not lower prices is not that one method of keeping prices up to the public?—A. Yes, it would have that effect.

Q. I am simply saying to you, if you reduce production and do not lower prices is that not one method of keeping prices up to the public?—A. Yes, it would have that effect.

Q. Then in the case of the dealer who happens to have a large supply of resale price maintained goods on hand and meets the situation I have just described to you, it prevented him reducing his price in order to get rid of that supply?—A. In our business at the present time I do not think any retailer is bothered by the manufacturer. Retailers in our line are having a hard time moving merchandise and are reducing prices and using every other possible device to do so, and we are certainly not interfering with them in any way.

Q. Is that common with all manufacturers who deal on a resale price basis?—A. According to our information it is.

Q. Then we turn to the next page of your brief, page 3. Before I come to that let me deal with this other situation. Leaving aside for the moment the situation where there is a sudden reduction in demand—just leaving that aside and dealing with the situation where all retailers are average and sell the same article at the same price—do you realize as far as the consumer is concerned that does not take into account the margin of cost on which retailers do their business?—A. Our experience has been that there are no significant differences in the margin required by various retailers. There may be a difference in the margin required by a retailer in the drug business and a retailer in the electrical appliances business.

Q. I am speaking of the same article, two dealers selling the same article at a maintained price. Did you find between the two retailers there are substantial differences in their costs by which those retailers do their business generally?—A. No, sir, I did not find that.

Q. Let me call your attention to certain figures given by the Dominion Bureau of Statistics. I find here the following results for 1949: first of all we will take something along your line, the hardware business, and arriving at these conclusions the department has divided the distributors into four groups and eliminated the highest and lowest group so as to avoid unfair conclusions, and they have taken only the two middle groups. In the hardware field they find that the difference in cost averages between 11·8 and 19. Would that be your experience in the trade?—A. Yes, sir, I would say in the hardware business there is room for a difference.

Q. There are articles where the price is maintained and the first man sells at 11·8 and is forced to sell at the same price as the man who is selling at 19 per cent.—A. I would hardly credit there would be that difference in the retail of certain articles on which we maintain prices.

Q. I am dealing with the hardware business generally. The man who sells at 11·8 and has to maintain his price is in some position of disadvantage to the man who sells at 19?—A. In the hardware business we do not attempt to ask him to maintain prices.

Q. I am putting to you the situation in the hardware business where a man is selling certain goods at a fixed retail price.—A. I am answering that we only attempt to fix resale prices where we think there is no significant difference in retailing cost.

Mr. FLEMING: Is there anything in that issue of the Dominion Bureau of Statistics to indicate in these cases quoted the statistics on resale price maintained products?

Mr. PHELAN: We know the hardware business has certain articles price maintained.

Hon. Mr. GARSON: This witness has just said so.

The WITNESS: In 99 per cent of the lines we sell in hardware stores we do not maintain prices.

By Mr. Phelan:

Q. I am quoting from the report of the Dominion Bureau of Statistics for 1949, marked E-15. Let me take another one, not in your line, but ask you if in your experience generally in the manufacturing trade it is correct? In the case of automobile accessories there is a differential of 16·5 and 28. Would you have any comment to make on that finding?—A. No, sir, I do not know that business.

Q. Drygoods is not your business, what have you to say about that?—A. Certainly there may be a differential.

Q. According to the Dominion Bureau of Statistics the differential in the metal group is 10·1 to 16·7. Have you any comment to make on that?—A. No, sir, merely to point out there is no indication to what extent retail price maintenance applies in these circumstances.

Q. We have to use our own judgment on that, I suppose. In the Dominion Bureau of Statistics report for 1949, paragraph D-10, in plumbing and heating supplies we find a differential of 9·4 to 14·7; in piece goods it is 9·6 to 17·3; tobacco and confectionery 4·2 to 7·6; groceries 5·6 to 8·4, so there is a substantial difference in the costs that the retailer experiences if these figures are correct?—A. Yes, sir, I would like to point out I am not familiar with these figures and I do not know on what basis they are made up. We certainly do not find any evidence of such a wide difference in our business. Are these taken across Canada?

Q. These are taken across Canada, as I understand it.—A. With our own products there happens to be a 5 per cent difference in freight rates in western Canada and eastern Canada, and furthermore in large stores there is a tremendous difference in the cost of doing business compared to the small retail store.

Q. Who pays the freight?—A. The retailer.

Q. That would be reflected as part of his cost?—A. Yes. It is the usual practice in western Canada to maintain prices more than it is in the east.

Q. Well, I have given you the references now and you can check the figures if you like. Do you suggest this to the committee, that the difference in cost is one that ought not to be passed on to the consumer if the distributor or retailer sees fit to pass it on? Should the retailer or distributor be at liberty to pass on a portion of that differential to the purchaser if he sees fit to do it?—A. Sir, we felt that it would not be a case of the retailer passing on the minor differences, and I think they would be minor differences. It would be a case of certain retailers selling these goods below the full cost and making a football out of the thing.

Q. My question did not involve making a football out of anything, it is a simple question. Are you suggesting to this committee that the retailer ought to be prohibited by private arrangement with the manufacturer from passing on part of that differential if he wants to do it; do you think he should be prohibited or should he be free to do that?—A. I think the consumer should be asked to pay a fair price and should not be penalized because the retailer's costs are abnormally high.

Q. What is your opinion as to whether the retailer should be free to pass on a portion of that margin if he sees fit to do it?—A. I do not think he should be free to injure the manufacturer who sold him the goods.

Q. How would that injure the manufacturer if he passed on part of his profits?—A. If the retailer is free to cut prices the large ones are going to make it unprofitable for the small retailers to carry your line and you will not get distribution.

Q. Under the present system of retail price maintenance we have this situation, that the smaller dealer and the less efficient dealer gets the same margin of mark-up that the larger and more efficient dealer gets?—A. Not necessarily.

Q. Let me quote the figure I gave you a moment ago; a man whose costs are 11·8 as compared to 19—now, that man must sell at the same price as the man who is getting 19?—A. It doesn't mean he has the same mark-up.

Q. He sells at the same price?—A. That is right.

Q. I suggest to you the system is entirely inelastic in that it gives the same benefit to the man whose mark-up is 19 and the man whose mark-up is 11·8.—A. It is certainly not the experience in any business I am familiar with.

Q. Apart from experience, I am speaking of what might be assumed to be the results of the system. It would be an entirely inelastic system that would give the less efficient man the same subsidy that it gives a man who is selling and making a higher margin of profit.—A. I think, sir, if we had the situation in any line with any significant number of retailers getting a higher margin than they needed, the manufacturer would discover that and hasten to reduce the margin. The manufacturer is not interested in bonusing the inefficient retailer.

Q. That is the effect of it, isn't it? If we have a differential between the cost to the efficient dealer and the inefficient dealer, the inefficient dealer is getting a bonus?—A. From the manufacturer's standpoint whatever the retailer gets comes out of the manufacturer.

Q. I do not know whether I am not making my questions clear to you, but you are not answering them. I say that under the present system the least efficient gets the same bonus as the most efficient?—A. Not necessarily, he may not buy at the same price.

Q. What do you mean by that; the price is maintained legally?—A. The price that is maintained is the selling price, not the cost price.

Q. There is a differential on cost price with quantity buying?—A. Quantity buying would certainly have a great deal to do with it.

Q. Take a situation where two dealers are buying the same quantity, at the same price, and assume they are doing business at a different cost level.—A. I think that is largely an imaginary situation.

Q. Just be patient for a minute. The man who has the greatest efficiency gets the same benefits and advantages as the man who is least efficient. You can answer that yes or no. The question is: the man who is least efficient gets the same bonus as the man with the highest efficiency?—A. I think it is one of those questions that cannot be answered by simply saying yes or no.

Mr. HEES: Mr. Chairman on a point of procedure, I would like to say I think Mr. Taylor is being treated like a criminal here.

The CHAIRMAN: I have heard the committee counsel ask the same question three times. Every member knows and every housewife in the country knows that there are some efficient and some non-efficient stores.

Mr. HEES: I object to the way it is being done.

The CHAIRMAN: The witness has not yet answered the question.

Mr. HEES: He hasn't had a chance to answer him; he hasn't had a chance to talk. I do not object to the question, I object to the way it is being put and he is being treated like a criminal.

Hon. Mr. GARSON: Just because it is unpalatable to my hon. friend he doesn't have to take that attitude.

Mr. FLEMING: It is whether yes or no is a complete or truthful answer. The witness has said quite frankly that the questions Mr. Phelan has put do not permit the use of a yes or no answer and has also made the further observation that the basis on which this last line of questioning has proceeded is imaginary. Now, if this is a hypothetical question the witness is under no obligation whatever to proceed on a hypothetical basis, and it is not fair to accuse him of trying to avoid answering questions.

The CHAIRMAN: Mr. Fleming, the question Mr. Phelan asked is a question in the mind of every member of this committee other than perhaps one. Every one of us knows that some shops will operate efficiently and some will not. Far from being imaginary I think most members would like to answer the question themselves. The witness should answer yes or no or qualify it.

Mr. HEES: All I suggest is that he be given the chance to answer without being cut off.

The CHAIRMAN: The only time he was cut off was on the last question. This is the third time Mr. Phelan has put the question and has not received an answer.

Mr. FLEMING: You are getting away from your function as chairman. I suggest what we are interested in here is trying to be fair in our own judgments and fair to the people giving evidence here. We will judge whether the witness has given full evidence on that, but I think it is most unfair for anybody in this committee to suggest a witness is trying to avoid answering questions. You say the question should be answered yes or no.

The CHAIRMAN: I did not say that.

Mr. FLEMING: You are suggesting that.

The CHAIRMAN: I am not suggesting that.

Mr. HEES: Let him give an answer.

The CHAIRMAN: One purpose for having counsel was that counsel could ask questions that were generally in the mind of the committee. One of the reasons for having counsel was to speed up the proceedings of this committee.

Mr. THATCHER: Why didn't he ask McGregor questions?

The CHAIRMAN: The reason he did not ask Mr. McGregor questions was that every member of the committee was given the opportunity of questioning him. The purpose of having counsel is to speed up proceedings because some members of this committee are not stalling. In earlier questioning witnesses have agreed there is a difference in cost of operation between merchants having the same volume. Mr. Phelan asked the question three times and he was given no answer. As chairman, I think I am the judge as to what are proper questions. This is the third time the question has been asked.

Mr. PHELAN: I will let the witness say he cannot answer yes or no and leave it to the judgment of the committee.

Mr. HEES: Mr. Phelan, you cut him off when you immediately start another question.

Mr. FLEMING: May I suggest the witness be allowed to make his comment?

The WITNESS: I appreciate this is a very vital and important question Mr. Phelan is asking me and I think there may be in the minds of many people the idea that the way price maintenance works is that the margin

allowed an inefficient retailer is sufficient to show him a profit and that consequently it shows an unnecessarily high profit to the efficient retailer. I do not think that is the actual case, and I think you would find in actual practice that an inefficient retailer is not making money on his price maintained merchandise, and that an efficient retailer is not making an abnormal profit, but is making a normal profit and that is all. The manufacturer regards the mark-up he allows the retailer as something that comes out of him, not as something that comes out of the public, and he is not going to allow retailers any larger margin of profit than is necessary to keep efficient retailers in business.

By Mr. Phelan:

Q. Is that your complete answer, Mr. Taylor?—A. Yes, sir.

Q. So I would be wrong in my conception that resale price maintenance had something to do with trying to keep inefficient retailers in business?—A. Certainly you would, sir. Manufacturers cannot afford inefficient retailers.

Q. The next thing I would like to draw your attention to is on page 3 at the top of the page where you say: "The MacQuarrie committee's contrary conclusion that resale price maintenance raises prices and harmfully curtails competition at the retail level is based, it is submitted, on the assumption that the large volume retailer is necessarily more efficient than the small volume retailer." Is that your conclusion?—A. Yes, sir.

Q. As to the meaning of the MacQuarrie committee report?—A. That appeared to be their assumption, sir.

Mr. SHAW: May I ask that the witness speak a little louder because we are having trouble hearing him?

The WITNESS: I will try to, sir.

By Mr. Phelan:

Q. Let me read the MacQuarrie committee report statement on page 19, at the middle of the page, to see whether your assumption is warranted:

> In particular, the practice represents an undue restriction on low cost distributors, because it forces each type of retailer to sell at a uniform price, irrespective of his costs. Services, which are the real products that distributors have to offer, differ both in quality and costs. To force retailers to sell these services at the same price injures the low cost distributor and the community as a whole.

Do you find anything there to indicate that the MacQuarrie committee based its conclusions on any question of efficiency or prices— —A. I find, sir, that they based their conclusion on an erroneous conception of the actual practical facts of business. They seemed to assume that most articles subject to resale price maintenance can be sold in the high priced specialty shop or can be sold in the bargain basement—and that any retailer can choose which of those methods of merchandising he wants to follow. That simply is not the case. I do not believe that Burberry overcoats could be successfully marketed in the bargain basement at any price, at any practical price. I do not believe that work clothes can be successfully retailed in a high priced specialty shop. They would not get customers.

Q. And do you still maintain the view expressed in your brief, that the MacQuarrie committee proceeded on the basis that the large volume retailer is necessarily more efficient than the small retailer? Do you still adhere to that view?—A. I thought so, sir.

Q. Do you still think so—after what I have read you from page 19?—A. I do.

Q. All right. Would you have any ideas to the total percentage of business done by members of your association on the resale price basis?—A. No, sir; I have not.

Q. You have no conception of that?—A. No.

Q. Would you agree with the suggestion that this practice has grown steadily within the trade in the last ten years or so?—A. No, sir. I have difficulty in believing that is the case.

Q. Well, we have been told here in certain trades, for example the electrical trade, that it has grown to from 80 to 90 per cent; in the beauty equipment trade to 90 per cent; in the drug practitioner's business up to 60 per cent?—A. Well, sir, my answer is based on this. In the case of those lines that lend themselves to resale price maintenance, resale price maintenance is favoured by manufacturers and dealers alike. I would therefore assume that even ten years ago or five years ago it was probably applied to any goods that were considered suitable for its application. As far as our own business is concerned we have not applied it to any fresh lines in twenty years.

Q. But the quantity of sales, in the lines you have, has increased in twenty years?—A. Yes, sir, in common with all other lines sales have increased.

Q. One other question and I am through. I wish to deal with your loss leader problem which you mention in your brief and its effect upon competition. I suppose 1929 would not be an unfair year to determine something of the effect of competition on business. I have here the report of the International Chamber of Commerce for that year, founded on Bradstreet's reports and they give this merely as to the cause of failures in 1929. Competition of all kinds, good, bad, and indifferent—3·9 per cent. That would not be a very substantial total would it?—A. No, sir.

Q. And if you take everything else except the loss leader out of 3·9 per cent you would have a pretty small percentage of failure due to loss leader?—A. Indeed you would but I am wondering whether you have selected a typical year when you select 1929.

Q. I thought it was a useful year in viewing business and economic conditions?—A. It might be, but as I remember 1929 it was a year of excellent business conditions and it had to be a pretty poor businessman indeed who went out of business in 1929.

The CHAIRMAN: Mr. Fleming is first on my list.

By Mr. Fleming:

Q. Mr. Taylor, in the broad lines of goods with which you are personally acquainted in your own business, what in your opinion would be the effect to the consumer of immediate elimination of resale price maintenance on all those goods which are subject to resale price maintenance? I would ask you to give your answer first on an immediate basis and, secondly, on the long term basis.—A. I think, sir, that the immediate effect would be loss leader offering of our price maintained merchandise and that would have the effect of making it unprofitable for many of our present customers to handle our merchandise. That would make us either dependent on a much smaller group of retailers or it would require us to open our own retail outlets. In either event once that loss leader selling has served its purpose, in reducing competition at the retail level, I firmly believe that those retailers left in the business would take advantage of their position to extend their margin of profit and that the upshot of this lessening of competition in the retail end of the business would be higher prices for the consumer.

Q. And how long would it take for this initial period to pass into the period where competition would be eliminated and prices would be raised?—A. I have no idea, sir, on that. I do not know that we have a typical situation. We had a case in Hamilton where lower prices were offered by a store there for a matter of a few days, and prices were then restored, I believe. We had a case in the United States where lower prices were offered for a week or two and then I understand they were restored to previous levels.

Now, we just have to imagine, Mr. Fleming, what would happen. We do not know. We cannot point to a case. The trouble is that resale price maintenance has never been prohibited anywhere, so we have got nothing on which to observe. Canada is going to lead the world, if you want to put it that way—Canada is going to lead the world in saying: Now, here is a commercial practice that is widespread and practiced everywhere but we are going to prohibit it.

Mr. THATCHER: Could I just ask a question?

The CHAIRMAN: With Mr. Fleming's permission, and it will be on his time.

By Mr. Fleming:

Q. Just let me continue. You have spoken of your fear that goods now subject to resale price maintenance will be seized upon to be used as loss leaders. On what ground do you put that fear—that they will be seized on for that purpose—rather than goods not price maintained?—A. Because if they desire to do it on goods which are not price maintained they would already be doing it. They are free to do it now. It is not worth their while to do it unless someone has succeeded in establishing a value in the minds of the public.

Q. So that the loss leader depends upon conveying to the mind of the public that they are getting goods at less than the price they are accustomed to paying?—A. That is right, sir.

Q. Have you considered the possibility of legislation being drafted to abolish or prohibit this practice of loss leaders? Have you looked at that suggested legislation introduced at the last meeting by Mr. Croll, for instance?—A. Yes, sir. I think I can most certainly say that any legislation which permitted a retailer to sell on a 5 per cent margin over his cost would not represent any protection to other retailers at all.

Q. What do you say, having looked at that proposed legislation, as to its practicability and enforcibility?—A. I have felt that there were great difficulties in the way of loss leader legislation, because there is the matter of motive—and that is a very difficult thing to administer in court.

If a man is over stocked on goods he should be allowed to liquidate his stock. In our industry, if we find a retailer who is in difficulty we certainly never make any objection to him reducing prices and getting himself out of his difficulty.

Q. Could you make any more general comment as to the enforcibility of the type of legislation we are speaking about now?—A. No. What we have seen certainly looks ineffective to us and it has thrown us back on the conclusion that the only protection that we know of is resale price maintenance.

Q. Well, Mr. Phelan this morning used the word "inelastic" as applied to the present method or practice of resale pricing. What do you say about the possibility of introducing legislation to prohibit the so-called practice of loss leaders?—A. I would have to see the proposed legislation and have a chance to study it before expressing an opinion on it. We have considered, of course, what form such legislation might take, but we have not arrived at any satisfactory suggestion. Therefore, we are thrown back, as I say, on the feeling that the only protection we know of against loss leading merchandise is resale price maintenance.

Q. You mentioned earlier in your remarks that large stores would take a wider spread than the ordinary retailer—and they pass on the burden to the manufacturer from whom they are buying. Can you be more specific as to the percentages in individual cases?—A. I would not like to talk percentages if I can be spared from so doing. I based that statement on our experience in our business in seeing the prices at which we sell them goods and their subsequent

selling of the goods—in the case of the independent dealers and the others—in seeing what they freely set their selling prices at.

Q. Do you make a practice of checking the price with Eaton's for instance, as compared with other retail outlets?—A. Yes, we do.

Q. This is a general conclusion based upon your observations of their figures?—A. Yes, sir, and other manufacturers tell me the same thing.

Q. My last point is in regard to your statement that the abolition of resale price maintenance will force manufacturers into the retail business. Can you be more specific about that so we can estimate the degree of danger or the extent to which that might become a practice on the part of manufacturers?—A. Mr. Fleming, you are asking me to deal with a situation we have never had to face. As I see it, we would have to adopt the merchandising tactics of, for instance, the Singer Sewing Machine Company, in that we would open our own stores in various places. If you decided to buy a McClary refrigerator you would go to one of those stores, owned and operated by us. We could not possibly provide as many stores as now sell McClary refrigerators but we would try to provide enough to give us a satisfactory volume of business.

Q. What would be the effect on prices, eventually, to the consumer?—A. Well, sir, unless we proved to be more efficient retailers than the retailers in business now, the price would not be any lower. I, myself, have had a long and assorted business experience and I am a little inclined to think that there are very few people who have a talent for manufacturing and who have a talent for retailing also.

Q. Well, in short— —A. I am sure that we would not be any more efficient than the average good retailer today—and consequently we could not sell at any lower price.

The CHAIRMAN: Your last question, Mr. Fleming.

By Mr. Fleming:

Q. Is size a badge of efficiency in retailing?—A. No, sir. Size is not a badge of efficiency in any line.

Q. The question put to you this morning was as between the large efficient retailer on the one hand and the smaller inefficient retailer on the other hand, and I take it you are not prepared to say that is a correct reflection of existing circumstances?—A. No, sir, it is an incorrect conception.

The CHAIRMAN: Thank you, Mr. Fleming. Mr. Shaw is next.

By Mr. Shaw:

Q. Mr. Taylor, reference has been made to the loss leader. Would you define loss leader for us, please?—A. Mr. Chairman, I will try to do so. A loss leader, to my mind, is a case where a price is set which is below full cost, with some other motive in mind than just selling those goods.

Q. When you say "below cost" do you mean the cost to the manufacturer or the cost to the retailer?—A. Pardon me, sir, I thought your question referred to loss leaders selling at the retail level.

Q. That is fine, then your answer would apply to the retail level?—A. That is right.

Q. I am not sure you used the word "suggested" in connection with fixing prices at the retail level, but most of the associations appearing before us have used such words as "setting of suggested retail prices." Do you use that term or does the Canadian Manufacturers' Association use that term?—A. The Canadian Manufacturers' Association has nothing to do with prices or terms and never has anything to say on that subject.

Q. I will ask you as an individual manufacturer—do you call it "suggested retail prices"?—A. To be specific we call it "a list price".

Q. Now, with respect to enforcement, would you elaborate upon the previous answers you have given with respect to the enforcement of that list price at the retail level? As far as a manufacturer is concerned?—A. Well, sir, to the best of my knowledge we have never taken punitive action at any time towards any retailer.

Q. I take it, from previous answers you have given, that yours is a rather loose practice, flexible if you like to call it that, or elastic, in so far as the enforcement of resale price maintenance is concerned? Is that correct?—A. I do not think that as far as these lines we follow which are price maintained are concerned, that we would like to say they are elastic—except of course under present chaotic conditions in our industry. We are all desperate to sell goods at the moment and we are in many cases selling them at a loss and the retailer is selling them at a loss.

Q. Under so-called present chaotic conditions, I understand that you have allowed dealers to reduce prices where it was necessary to liquidate heavy inventories? Under present chaotic conditions you have done that?—A. Under present chaotic conditions that is very widespread. Under other conditions the situation would arise occasionally and we never interfere. We would think it was quite wrong to interfere with the retailer getting out of his difficulty.

Q. Are you still speaking of the so-called present chaotic conditions?—A. No, sir. I hate to call them normal times, because I have been waiting so long for normal times to arrive, but when business is a great deal better than it is at present you would occasionally find a retailer in financial difficulty and if he had to get out certainly we would not stop him getting out.

Q. Well, are you familiar with any manufacturers who are today preventing the reduction in resale prices of any commodities, even though conditions may be in some respects chaotic? Are you familiar with any manufacturers in Canada who will not permit those reductions today?—A. As far as our own industry is concerned—it is not a subject I discuss with my competitors—but my observation would be that they cannot be preventing it because it is going on in a widespread way.

Q. Would you agree in effect under present day conditions that resale price maintenance doesn't really mean very much?—A. It certainly doesn't mean much in our lines.

Q. It is not such a vital factor in your particular manufacturing business?—A. I am not thinking about today, I am hoping that these conditions are not going to last very long.

Q. You did say from time to time relaxing of conditions with regard to resale price maintenance has been necessary?—A. Yes, sir.

Q. You referred to 37 per cent of your production selling on a price maintained basis; is that dollar volume?—A. Yes.

Q. You also used the expression that some goods lend themselves to resale price maintenance: stoves, refrigerators and different types of kitchenware. Now, what do you mean when you say some of these lend themselves naturally to it?—A. I mean that in some lines you have a condition of absolute uniformity.

Q. In what?—A. In the products.

Q. You are speaking of quality?—A. Of quality and features; perhaps I mean the same thing. I mean, for example, with a model 25 McClary electric range, it is exactly the same range as near as you can make it in Mr. Jones' store and in Mr. Smith's store.

Q. Would you agree that there may be goods manufactured by your concern which are presently not price maintained but which may be put in that category as time goes on? —A. I wouldn't like to say that, although nothing is impossible. I did mention earlier that there has been no shift in our business from one category to another in twenty years.

Q. I am asking you for an expression of opinion now.—A. No, sir, as far as our own business is concerned I think it is rather doubtful that we would desire to extend the practice of resale price maintenance.

Q. If there is a trend in any direction would you say it is likely to be upward or downard?—A. It would be upward to the extent that we went into more lines of ranges and refrigerators. For example, if we went into the manufacture of deep freezers, automatic washing machines, vacuum cleaners, and so on, I think it is quite likely we would conclude those goods ought to be price maintained.

Q. As a manufacturer do you observe that there becomes a greater standardization as between similar products manufactured by one manufacturer and by another as time goes on? Do you find there is a gradual trend towards standardization and greater equality between the two products; does competition tend to do that?—A. That is another question I do not think can be answered yes or no. We all try to introduce some feature in our merchandise that no competitor has. As soon as it proves it is a desirable feature your competitor tries to get it in his product and to that extent they draw together again.

Q. In referring to the T. Eaton Company I think you criticized them; although they were in a position to indulge in mass buying they didn't as a rule pass the benefits on to the customers. Did I understand you to say that?—A. Our observation is they make more as a percentage than the average small retailer.

Q. In selling to your retailers do you provide discounts for volume purchases?—A. Yes, sir, we do.

Q. Under resale price maintenance would the benefit of mass purchases be passed on to the retailer?—A. Yes, it is the general situation that the man who buys larger volume gets lower prices.

Q. I think you are quite elastic in your policy, but in many instances there is a rigidity of enforcement. I do not want to mention any company, but would you think in such circumstances the benefits derived by the retailer from mass buying would not be passed on to the consumer?—A. If you are maintaining a price, as long as you do maintain that price, then the retailer can neither pass along to the consumer the benefits of his efficiency or the penalties of his inefficiency. I do not believe the adjective "rigid" can be fairly applied to resale price maintenance. Prices of these commodities change and they change for various reasons. You have to continually meet the competition of other manufacturers' goods and if you discover you have set your price too high you must lower it.

Q. What I was talking of was the same commodity. For example, merchant A is selling stoves which you manufacture. I am in a position to buy twelve stoves from you and maybe thus enjoy a discount in the cost. Now, under strict enforcement of resale price maintenance I would not be allowed to sell those stoves to the consumer at a lower price than John Smith in the next town who is selling possibly two. Under a strict policy of resale price enforcement that would be the result?—A. Yes.

By Mr. Jutras:

Q. I would like to follow the line of questioning of Mr. Fleming. A moment ago I think you intimated it was your view, and I suppose you were speaking for the manufacturers generally, that you doubted very much if the manufacturers could sell their own products more economically to the consumer themselves than under the present sept-up of distributor and independent retailer. Is that right?—A. It is not the opinion of the Canadian

Manufacturers' Association. Such a subject is hardly one we would express an opinion on. As a manufacturer I was expressing that opinion as an individual about a hypothetical condition.

Q. What I meant was in the opinion of the manufacturers generally, not your association as such. In other words, do manufacturers feel generally that the practice of using independent retailers and distributors is one that is desirable?—A. We do.

Q. Generally you do feel that this is one practice that is desirable?—A. We do indeed.

Q. Then I have a little difficulty in understanding how the practice of price maintenance is compatible with this idea of independent retailers. Once you get price maintenance established in a more general way than at the present time—for instance if a retailer handles products that are 90 per cent under resale price maintenance, do you not remove the independence from the retailer and more or less make him an employee of the company?—A. I do not think that is so. There are very few cases, and in fact I do not know of any myself where the retailer buys only the goods of one manufacturer. He generally handles the goods of a number of manufacturers and furthermore he frequently changes them. If he comes to the conclusion that manufacturer A's products can be more profitably sold by him than manufacturer B's products, he changes to manufacturer A.

Q. I appreciate your point of view, but you are thinking mostly in terms of this elastic price maintenance. I am protracting this into the future and naturally it will become, I assume, more and more rigid if it becomes more and more general. Although the price may be varied by the manufacturer the retailer is under direct instructions from the manufacturer at all times as far as his product is concerned. If 90 per cent of his lines are under price maintenance he may not be following instructions from one manufacturer but will be following instructions from ten or fifteen or twenty, or as many lines as he has, and I do not see how he would have any opportunity of doing what you say.—A. If you consider the situation is that there are twenty manufacturers who are trying to get him to buy their goods I think you will realize he is certainly going to have something to say.

Q. Under resale price maintenance?—A. Yes.

Q. Now, you said a moment ago in answer to counsel that the manufacturers could not keep inefficient retailers in business. I presume that is quite a correct statement, but my point is how can you do that under resale price maintenance?—A. Because we endeavour to set the retailer's margin at the lowest possible point.

Q. In other words, the means of doing it would be an elastic margin to the point where it would eliminate the inefficient retailer?—A. Yes, sir, that is the way it would work. We set the margin just large enough to bring sufficient returns to market our products.

Q. Yes, but you see if you do cut the margin down to the limit then do you not encourage the retailer with large volume because if you reduce the margin doesn't it become just a question of volume as far as the retailer is concerned, because if the margin is small he will have to have a large turnover?—A. No, sir, I thought I made it plain earlier but I will repeat it. The manufacturer who is trying to attain wide distribution feels that to get that he must have not a few retailers but a lot of retailers, and if he reduces the margin to the point that it became unprofitable for a considerable number of retailers to handle his products he defeats his own purpose, so he will not do that.

By hon. Mr. Garson:

Q. In this instance you have just given you point out that twenty manufacturers may be competing for the patronage of one retailer. Now, under a

thoroughgoing system of resale price maintenance I put it to you whether there is any other basis of that competition than the opportunities of profit for the retailer which the twenty manufacturers can offer in competition with one another?—A. I would think that is what the retailer is interested in.

Q. So these manufacturers are all competing with one another to see which can make the most profit for that retailer?—A. That is right, sir.

Q. Do you think that is a situation which is calculated to produce the best value for the consumer?—A. Well, sir, if it were the manufacturer's conception that the way to make the retailer a profit was by providing him with a big mark-up you would be quite correct. The manufacturer's conception of how to provide a profit for the retailer is to give him a line of goods at a price he can sell them at, which means he must give the retailer a reasonable price and a price which is acceptable to consumers.

Q. We had some examples the other day in the pharmaceutical trades where advertisements from their trade journals, putting them side by side, seemed to place most of the emphasis on the first part of the picture, that is the question of the mark-ups. One was offering 75 per cent profit to the retailer, another 100 per cent. It led pretty irresistibly to the conclusion that was the main basis upon which this competition took place. But would you say that was the general practice under resale price maintenance?—A. Well, sir, that is another question to which I cannot answer yes or no.

Q. Answer it any way you like or not at all if you do not want to.—A. Retailers are very sensitive on the subject of their margin and they react with great hostility to any suggestion that they ought to operate on a lower margin of profit. As I think anyone can see, the manufacturer is interested in selling his goods, he wants to produce a lot of goods and sell them, and the key to that is the price to the consumer. A short time ago we had a refrigerator priced at $462. We thought it would expedite the sale if we reduced the price to $419. Some of our retailers had some of these refrigerators in stock and they certainly did not like it one bit, but we felt actually we were acting in our interest as well as their interest. We felt that it would be better to sell some of these refrigerators at a smaller margin than to keep them in stock. That is the reason, as I have explained, that the manufacturer does not go around threatening to reduce retailers' margins and he is more inclined to try to use the selling point that the retailer is getting every consideration. It is very important the retailer should feel the manufacturer is sympathetic.

Q. That he is getting a large margin?—A. Not a large margin.

Mr. HEES: A reasonable margin.

Hon. Mr. GARSON: Reasonable in the sense that Mr. Hees uses the term.

By Hon. Mr. Garson:

Q. Now, you said earlier in your testimony that your experience with powerful retailers like the T. Eaton Company was that they were in the habit in their dealings with you of driving a pretty hard bargain and making you take a smaller manufacturer's profit than these other concerns.—A. I wanted to emphasize the wrongness of the conception that appears to have been reached by the MacQuarrie Committee and which I think a reader of the T. Eaton brief would get, that a large retailer such as Eaton's was continually kicking against the price. He is saying, "I would like to sell these goods at a lower price." On resale price maintained lines we try to keep them in line.

Q. I got the impression and I hope you will correct me if it is unfair to you, that you would prefer to do business with a group of independent retailers whose prices you could fix yourself than bother having to haggle with a tough bargainer like Eaton's. Is that a wrong impression?—A. Well, sir, I think if I have something to sell I would like to deal with someone from whom I could get the best price.

Q. I am not applying this necessarily to your firm or association, but might it not be the case that the manufacturer too was quite powerful and if the interests of the consumer were to be protected it might be well for his emissary too to be strong in bargaining power?—A. Which large manufacturer?

Q. I was not speaking of your company or any particular company, but of any manufacturing concern that was very much more powerful than an independent retailer or independent wholesaler. In this business of having prices fixed by the manufacturer, apart from the element of competition that you have to face in order to get distribution, the manufacturer fixes the price and also the retailer's mark-up, doesn't he?—A. It is better to say he fixes the price from time to time.

Q. I gather that in your negotiations with the T. Eaton Company you did not fix the price. There were two people who fixed the price there, is that right or wrong?—A. I think in dealing with any customer the question of the price you are going to charge him for the goods is certainly a thing which you discuss and if the retailer has more to offer you in the way of distributing ability he is in a better bargaining position.

Q. And that is one way by which the ultimate consumer may perhaps get a good price; is that correct?—A. Undoubtedly. It might be.

The CHAIRMAN: That was not your answer, you said "undoubtedly". The record will show.

The WITNESS: Let it stand.

By Mr. Boucher:

Q. Have you any brand of lines which are not price maintained?—A. We have lines that have been on the market for many years and which carry our name. For example, we have Eureka galvanized ware, Regent enamel ware, Jewell aluminum ware, and so on.

Q. How often are those used as loss-leaders?—A. To the best of our knowledge we have never noticed those lines being used as loss-leaders.

Mr. HEES: Mr. Chairman, first of all I would like to ask you a brief question. Can you explain to me, and I ask this in all sincerity, what is the purpose of counsel for this committee? Is it to be an impartial questioner to bring out points for members of the committee or is his purpose to sell the government's case?

The CHAIRMAN: Mr. Hees, counsel was hired, as in other committees, to give a general line of questioning and to save time by asking questions which will be in the minds of most members. Counsel has an opportunity of doing much more study of the briefs and of the subject than the members of the Committee who have their duties as Members of Parliament. Not all of us have had time to study the reports of the Dominion Bureau of Statistics on variation of efficiency of retail outlets.

Mr. HEES: That was my impression that that is what he was supposed to do, but I do not think anybody doubts he has been here selling the government's case.

The CHAIRMAN: That is your opinion, Mr. Hees.

Mr. HEES: I always want to be fair.

The CHAIRMAN: You are entitled to your opinion and also other members of the committee have an opinion of your tactics and are too polite to express it.

Mr. HEES: That is what we are here for and it is all very pleasant.

By Mr. Hees:

Q. Now, Mr. Taylor, I have been on this committee every time it has met and to bring you up to date on it, to me it has been obvious from the start that the proceedings here have been simply eye-wash and the government decided long before the committee was set up that they would put through their legislation no matter what evidence was heard at these hearings.

The CHAIRMAN: That again is your opinion. You are supposed to be questioning the witness on his brief, not on a speech you are going to make in the House.

Mr. HEES: It is to enable Mr. Taylor to get a little background to answer the question I wish to ask.

The CHAIRMAN: I know Mr. Taylor has been following our proceedings very carefully; the comments he has made on other briefs shows that; so perhaps it is not as necessary as you think to refresh his mind.

Hon. Mr. BEAUBIEN: (Joint Chairman): Are you asking Mr. Taylor if he agrees with you?

Mr. HEES: No, I am giving him the background. Now, realizing this is the case—

The CHAIRMAN: Who realizes it is the case?

Mr. HEES: I do.

The CHAIRMAN: So long as it is clear that it is you, not the rest of us, who realizes it.

By Mr. Hees:

Q. Realizing this is the case and this legislation will be put through by the government's large majority next week, can your association suggest in the next few days practical legislation against loss-leaders to protect the smaller retailers?

The CHAIRMAN: I might point out you do not have to answer Mr. Hees' premise.

Mr. HEES: Quite. I was asking him if he could or could not.

The WITNESS: Mr. Hees, that question has worried us a great deal. I am very much afraid that we cannot suggest legislation within a short period of time. We think that the need for such legislation is greater today.

By Mr. Hees:

Q. This is loss-leaders.—A. Loss-leader legislation is needed more today than it was six months ago or a year ago. As far as we can see, the only practical defence for the small retailer is resale price maintenance.

By Mr. MacInnis:

Q. Mr. Taylor, you referred to present conditions as being chaotic; am I correct in that observation?—A. Present conditions in the electrical appliance industry are chaotic.

Q. You are limiting the term chaotic to the situation in the electrical appliance field?—A. Yes, sir.

Q. I wanted to make that clear because I think the impression was given, in fact the statement was made before this committee, that retail conditions were chaotic some months back but resale price maintenance has overcome that and we now have an orderly market. There is resale price maintenance in the electrical equipment business, is there not?—A. Yes, sir, but unfortunately there are some other conditions in that business too which destroyed all the benefits of resale price maintenance and a great many other benefits besides.

Q. My opinion for what it is worth is this, that those who were advocating resale price maintenance were attributing to that method virtues which it did not have?—A. Well, sir, a virtue may be a virtue, but it may not be able to prevail against an overwhelming evil.

Q. I am merely making the observation that we were told here that resale price maintenance had overcome chaotic conditions that had prevailed under the old system.—A. It no doubt overcame certain chaotic conditions, but it has not been sufficient to overcome conditions caused by excessive excise taxes and credit restrictions.

Q. If we go into a period that is sometimes referred to as "overproduction" or a buyer's market, resale price maintenance would have a strain put on it that it couldn't resist?—A. Sir, I think that would depend on how great the strain was.

Q. Well, for instance, the 1930 strain?—A. You may succeed in getting business into such a condition that the sole concern of anyone will be to turn goods into cash.

Q. I am not trying to get business into that condition, I am trying to prevent it without a great deal of assistance. Mr. Boucher asked a question I intended to ask, and I think I will ask it again and perhaps get a clearer answer. He asked if you had branded goods that were not price maintained, and I think he also asked if these were used as loss-leaders and your answer was as far as you know they weren't?—A. That is right, sir.

Q. Why wouldn't these branded goods be used as loss-leaders while other branded goods would be?—A. I think the answer to that is, the potential sale of any of those goods is too small to make them worth while as loss-leaders. We have, for example, in one of our lines a double boiler and there is no sense in the retailer making a loss-leader out of that because he couldn't attract enough customers.

Q. Isn't there a considerable sale for double boilers?—A. It depends on what you mean.

Q. I thought every family that does any cooking would have a double boiler; you would have to have one to make your porridge.—A. A point you may not be familiar with is that we alone offer at least twenty double boilers of various sizes, quality, material and so on.

Q. I think in reply to a question by Mr. Garson you said that the retailer was interested in a profit; is that correct?—A. That is only a surmise.

Q. The reason I ask the question is that you said right after that the manufacturer was interested in sales. Am I to understand the manufacturer is not interested in profits?—A. Oh, no, sir, I would not say that.

Q. Then you said in answer to some question that if a large number of retailers were forced out of business by lower prices and more efficient retail organizations, prices would tend to rise after that?—A. Pardon me, sir, I did not say they would be forced out of business by more efficient retailers. What I intended to say was they would be forced out of business by bigger retailers of greater financial strength.

Q. Isn't that the general economic tendency that the powerful are always displacing the weaker; isn't that the inevitable consequence of the competitive system?—A. I think you are quite correct, that was originally the way the competitive system worked; but I think there has been a large growth of the belief that to a great extent at least the weaker members of the community should be protected from the harsher effects of the competitive system.

Q. I think everyone is trying to protect themselves from the competitive system, no sensible person would want competition; but unless you have some other means of protecting society, competition is necessary?—A. Yes, sir, and our point is: When you have twenty manufacturers or even a less number competing for the public's business, the consumers' business, you have competition.

Q. But wouldn't there be a tendency for that competition to diminish if these manufacturers also want to overcome the discomfort of competition? Will they not be either openly or underhandedly associating to lessen the competition?—A. Well, sir, it is very hard for me to express an opinion at what point someone might succumb to the temptation to commit a crime, but I would like to suggest to you, sir, that there would be less likelihood of such a situation arising if there are many retailers than if there are a few.

Q. And you would include in that many manufacturers?—A. Yes, I would.

Q. You say that 37 per cent of your manufactured goods were price maintained?—A. That is about right, sir.

Q. Is it the tendency for the price of price maintained goods to increase or remain stationary?—A. I did answer a previous question by saying that there has been no shift from one category to another in our business in the past twenty years. From observations myself I have not noticed any shift.

Q. Have you had all these lines of goods that are now price maintained manufactured by you for the past twenty years? Are all the lines included in these 37 per cent lines you have been manufacturing for the past twenty years? —A. Not all of them, we are manufacturing lines we did not manufacture twenty years ago.

By Hon. Mr. Golding:

Q. In the first place what has been the experience of manufacturers in trying to merchandise any article where in one particular town two or three merchants are handling that article and one sells it for one price and another for another price and so on? Has your experience in trying to merchandise under those conditions brought about a wide sale of your products?—A. No, sir. We have never felt that it did have that result. We have never felt where we had a situation as we have for example in the city of Toronto, with some retailers selling at one price and other retailers at another, we never thought that was helping our volume of business one bit.

Q. I have been told it was a detriment to the merchandising of a particular product if that happened. I presume the manufacturer is trying to protect himself against that. Now, you have been questioned in regard to the efficient merchant and what happens to him under a system of resale price maintenance. I would like to ask your opinion on the opposite position to that. What happens to the consumer with inefficient merchandising of goods on which prices are not maintained at all?—A. Well, the inefficient retailer, if the price is not maintained, is quite free to try to overcome his losses by increasing his prices, and on price maintained goods he cannot do that.

Q. You wouldn't think the consumer was going to benefit in the case of an inefficient merchant with no price maintenance?—A. No, sir, I do not think he would.

By Mr. Carroll:

Q. Do all or most of the manufacturers of your products have price maintenance on those products?—A. As far as I know the manufacturers of the class of product on which we have resale price maintenance have it to a large extent. We, of course, have to depend on observation and we are told as to what our competitors do, but our observations would suggest that they, like us, have list prices or suggested resale prices in the main.

Q. Thirty-seven per cent of your output is under price maintenance as it is understood by the committee. Now, why not place all your products under price maintenance if it is good for yourselves, the retailers and the consumers? —A. The reason for that is that these lines that are not price maintained do not lend themselves to loss-leader selling. They are lines of considerable variety, and I mention, for example, in double boilers alone I think we have at least

twenty varieties in sizes and quality and the like. We do not think it would be practical to build up in the minds of the public an established value for each one of those twenty on which sales would average from a few hundred dollars a year to a few thousand dollars a year.

Q. You mentioned a variety of other manufactured goods you produce outside of boilers altogether. Now, leaving boilers out for a moment, you have a large sale of other commodities on which there is no price maintenance?—A. Generally the same considerations apply to them.

Q. Would you mention again some of the products on which you have no price maintenance?—A. All varieties of household cooking utensils, which cover several thousand items, garbage cans, pails, tubs, stove pipes and stove pipe elbows.

Q. They would not be in the same category as you mentioned a moment ago?—A. They would be in very much the same category.

Q. Isn't there a tremendous sale by you of your household utensils?—A. I don't know what would be tremendous, but we sell several million dollars worth a year. The point I want to make is that it is divided over three thousand or more individual items.

Q. Take these items; is it not because you have so much competition that you do not price maintain those?—A. No, sir, it is not. For example, on one line of household utensils we have, as far as I know, only one Canadian competitor and on others we have three or four, and others ten or twelve. We certainly have more competitors in the manufacturing of gas ranges than we have on many of the non-price maintained lines.

By Mr. Stuart:

Q. I was out of the committee for quite some time this morning, but do I understand you correctly to say that you do not have knowledge of resale price maintenance ever being abandoned in any part of the world?—A. That is right.

Q. Isn't it a fact that in several states of the union resale price maintenance is prohibited?—A. No, sir, in fact quite the contrary; in forty-five states of the union they have passed legislation compelling retailers who do not themselves wish to agree to resale price maintenance to do so, because those states felt so strongly that it was a good thing.

Q. And you have not any knowledge of any states in the union prohibiting resale price maintenance?—A. No, sir, I never heard that and I thought the contrary was the case.

Q. Well, this statement I will make may not be correct, but I have seen comparisons of prices of exactly the same articles in states where price maintenance was prohibited and in states where it was the usual practice.—A. The only comparison that could be made between states would be between the forty-five where they had what was called fair trade laws which required retailers to maintain prices whether they would agree to it themselves or not, and the other three states who did not have these compulsory laws.

Q. One other question along that line: Do you know or do you believe that resale price maintenance is enforced as rigidly in the United States as it is in Canada?—A. I would have no way of knowing.

Q. The reason I ask that question is that I have seen articles in the United States where they were allowed to have resale price maintenance and it was not enforced rigidly.—A. I would like to clear up a misconception in your mind there and it may be in the minds of others; it has not been a question in the United States of prohibiting resale price maintenance, the question has been, was it right for a state by legislation to compel a retailer to observe resale price maintenance against his wishes.

Q. And for that reason there are states that do not comply with that?—A. In every state of the United States if the retailer agrees with the manufacturer to maintain prices, then he must keep his agreement.

Q. What is the agreement; would that be verbal or written or what?—A. If it is a question of enforcement I guess it would have to be a provable agreement.

Q. I presume you mean a written agreement?—A. I am sorry I cannot answer that, I do not know if a verbal agreement can ever be proved in court.

Q. There is one other question and I am just asking your opinion. There have been several suggested percentages regarding price maintained articles that are sold in grocery stores. Now, I realize you would not know the percentages perhaps, but I want to ask you this: do you know of a more competitive business today than the grocery business?—A. I wonder if I can ask Mr. Bradley to answer your question. He is the director of merchandising of Peek Frean of Canada Limited and his business is with the grocery trade.

The CHAIRMAN: Yes.

Mr. BRADLEY: Could I have the question again?

Mr. STUART: During our discussions here we have had two or three different suggestions as to the percentage of resale price maintained goods that would be handled in grocery stores. I do not know what the percentage is, but it is a small percentage?

Mr. BRADLEY: That is right.

Mr. STUART: In your opinion would there be a more competitive business today in the grocery business?

Mr. BRADLEY: There certainly would not.

Mr. STUART: Would you suggest there had been any more failures in the grocery business in the last five years than there have been in other lines of business?

Mr. BRADLEY: There have been less failures in the grocery business since the war years when the Wartime Prices and Trade Board imposed a considerable degree of price maintenance. There have been less grocery stores fail because of the very training which they received through the Wartime Prices and Trade Board. Retailers have been taught to figure margins and how to stay in business. Resale price maintenance has saved several manufacturers who are in business and who previous to that time had to introduce and maintain a resale price to save their own business.

Mr. STUART: After the war pressure was put on the government to do away with price controls and it did not come from the consumer, so why was it they were clamouring to do away with price controls immediately after the war?

Mr. BRADLEY: For this reason: in addition to price controls they also were controlled as to how much of each commodity they could buy and their purchases were governed by what they had been in the habit of buying from their source of supply previous to the war.

Mr. STUART: After these restrictions were lifted they could buy in quantities, so who would be in a better position to purchase enormous quantities, the little or big merchant?

Mr. BRADLEY: The big merchant.

Mr. STUART: Again wouldn't that put more pressure on the little fellow?

Mr. BRADLEY: That is true, that is why manufacturers who are dependent on a large number of retailers for their output have been compelled to introduce price maintenance. I went through it myself and I am speaking from personal experience in introducing this line to the Canadian markets. Our line under price control has brought to Canada an investment by a British company of approximately $2 million; we are giving employment to 140 Canadians at top

wages, and we are giving the consumer British quality biscuits made in Canada at six cents a package cheaper than they would be if the factory had not been brought to this country under price maintenance.

Mr. STUART: I think you will agree with me that you haven't any competition in Canada?

Mr. BRADLEY: We have over forty biscuit manufacturers in Canada.

By Mr. Stuart:

Q. There is one question here in connection with loss-leaders and again I am asking you for an opinion. Would you express an opinion regarding the one cent sales that are carried on by the Rexall stores and others?—A. I think, sir, I should defer entirely to the answers you got from witnesses who are acquainted with the drug business.

Q. Yes, but I was asking your opinion. Loss-leaders are apparently your big worry should this legislation be put into effect. Of course, if you would rather not reply it is perfectly all right, but I would like to have your opinion as to the one cent sales?—A. I do not believe I can add anything to what has already been told you.

By Hon. Mr. Horner:

Q. You have been questioned on loss-leaders, and I can give you an example you will have in the future—the nation to nation loss-leader in western wheat which is being sold at $1 a bushel at the present date. Now, committee counsel was questioning witnesses and pointing out statistics of the 11 per cent and 19 per cent variation, and they might have both been equally efficient but one might have had a large consumer market. It seems we cannot all live in the confines of Toronto and shop at Eaton's store, and I think that anywhere where governments are engaged, provincially or federally or otherwise, they adopt the argument for a set price that consumers would share alike. I am particularly interested in that and I have letters from little villages throughout western Canada telling me that is their only hope of surviving.—A. As I said before, it is not a question of the efficient retailer against the inefficient retailer at all. It is a question of the large, powerful retailer against the smaller shop. He may be just as efficient, and in many cases the small man may have a lower expense ratio, or he may be just starting in business and operating in a very small way and cannot stand a price war.

Q. But in rendering a service to a group of consumers he is very necessary? —A. I think he is.

Q. And the same applies to the government in regard to getting prices which are equal in all parts of the country, even away up north where they have to fly goods in. These letters I have indicate that rather than lose price maintenance we should have more of it. It is the only protection for the consumer in small outside points. Any person who wishes to prove a combine can use the prerogative of the government to use the combines legislation, but I claim this is a benefit to the community in outlying and sparsely settled districts.

By Hon. Mr. Burchill:

Q. I was a bit interested in the question Mr. Stuart asked regarding legislation in the United States. I was under the impression that some of the states in the union had this legislation in force. I take it from your reply that is not the case?—A. That is right.

Q. And Canada would be pioneering?—A. That is right.

Q. Your reply, if I understood you correctly, was there was legislation in some of the states which protected the retailer from being compelled to sign

an agreement with a manufacturer?—A. No, sir. The situation in Canada is that no retailer anywhere in Canada is required to maintain a price unless he himself voluntarily agrees with the manufacturer to do so. It is not a matter of law, it is a matter of contract between the manufacturer and the retailer. The manufacturer establishes various terms of sale, his price, when he will be paid, what he will do about service, and so on, and amongst these terms there may be a stipulation that the retailer is to resell at a certain price. The retailer looks at that contract and says he likes it and will sign it, or says he doesn't like it. Now, that form of resale price maintenance is legal throughout the whole of the United States. In forty-five states the legislatures passed a law to the effect that if the manufacturer could get one retailer in a state to agree to resale at a certain price, then all other retailers in the state, whether they agreed or not, would have to sell at that price, and a recent decision of the Supreme Court said, "We do not think that is right, we do not think a man should be compelled to maintain a resale price unless he himself agrees to do so."

By Hon. Mr. Beaubien (Joint Chairman):

Q. You just mentioned that in Canada the manufacturer has a contract with the retailer?—A. In the main there is no contract in existence.

Q. You mentioned a contract; that is why I am asking you the question. —A. How it works is this, list prices are shown and there is simply a general understanding in the trade that the retailer will sell at those list prices. If he does not do so, at that point the manufacturer may go to the retailer and say, "In future will you agree or won't you?"

Q. If you went to him and said that and he violates the verbal contract and continues to do certain things which are against the verbal contract, then what do you do?—A. Well, sir, the next thing we would do would be to reason with him again and endeavour to explain to him that he was acting in a way unprofitable to himself. I do not think we have ever had a case when the conversation ended up with "We won't sell you any more."

Q. It could happen?—A. It could, yes.

By Hon. Mr. Garson:

Q. You said there were forty-five states in the United States in which these fair trade laws prevailed. The other ones, I suggest, are Texas, Missouri, Vermont and the District of Columbia?—A. I do not know which they are.

Q. I suppose you do not hold yourself up as any authority upon this law in the United States?—A. No, sir.

Q. I put it to you that in these other states, regardless of whether or not they can maintain resale price maintenance, they do not in fact maintain it; is that right?—A. I have no idea, sir.

By Mr. Phelan:

Q. I wonder if I might make a short statement about this United States law and ask Mr. Taylor if he agrees with it. In the United States they have somewhat the same constitution which we have here, that is, two jurisdictions, the federal and state jurisdiction. Are you aware of that fact?—A. Yes.

Q. May I suggest this to you, that the whole problem started with the passing of the Sherman Act somewhere about 1890, and the Sherman Act provided that all agreements which had the effect or tended to have the effect of restraining trade or commerce were illegal. Do you follow me?—A. I think that was the general effect.

Q. That in so many words made this vertical arrangement between the manufacturer and the dealer also illegal. Do you agree with that?—A. No, sir.

Q. Illegal under federal law?—A. No, sir.

Q. That was before 1900, and in the early 1900's the Propriety Drug Association in California got the first law passed legalizing vertical agreements between manufacturers and distributors. Do you follow that?—A. Well, sir, your description would not fit in with the so-called fair trade law.

Q. I have not come to that yet. That is where price maintenance started, in California?—A. I don't know.

Q. Following that several other states adopted that and to meet that situation the Millard-Tydings amendment to the Sherman Act was introduced into the federal courts?—A. Yes, sir, I think the purpose of that was to make it clear that the Sherman Act was not intended to apply to resale price maintenance.

Q. That is correct, the Millard-Tydings amendment made exceptions to the Sherman Act. Following that the fair trade laws extended from one state to the other until they covered all states except three, and the District of Columbia?—A. So I understand.

Q. Now then, in the District of Columbia and these three states the practice of price maintenance was never recognized by law but it was tolerated in those states; am I correct in that?—A. I don't know, sir. I do not think that is the correct description; the law that existed in the forty-five states was a very different sort of resale price maintenance from anything suggested for Canada.

Q. I think I have in mind what you are trying to tell me. It progressed from the point where the first agreement between the manufacturer and the distributor was made to a point where if the manufacturer made an agreement with one dealer or distributor in the state, that was binding on all other dealers or distributors, whether they were parties to the agreement or not? —A. I know that was the way it was in the end.

Q. Now, are you familiar with the recent decision of the Supreme Court of the United States in the case of Schwegman vs. Calvert's Distillery, 1950, S.C.R.? Do you agree with me in the Schwegman case the decision is that in the fair trade states, where they have a law such as we have been describing, no person is bound to observe the manufacturer's fixed price except a dealer or distributor who has entered into a definite agreement with a manufacturer? —A. That is right.

Q. So that has left a situation now whereby any person in these fair trade states who can get possesison of price maintained products to sell, can sell at any price he wants to?—A. Yes, sir, and the manufacturer can go to the retailer and say that one of the conditions if he is going to buy his goods is that he will sell them at a resale maintained price.

Q. So far as the law is concerned, resale price maintenance has no government sanction or approval to apply to any person except the man with whom the manufacturer has an express agreement?—A. I do not think so. The Millard Tidings amendment which is an enactment of the federal government gives legal sanction to resale price maintenance.

Q. Only between the manufacturer and the dealer with whom he has a definite agreement?—A. Certainly.

Q. It does not protect the manufacturer against the dealer who can get his commodities and sell them on a free market?—A. It does not.

Q. That is what Macy's did with many products in New York last year. —A. It is now quite free to the retailer who has not agreed to maintain prices to sell at any price he likes.

Q. I suggest to you that with the Schwegman case resale price maintenance has received a very vital blow. Would you agree with that statement?—A. No, sir, I would not agree with that at all.

The CHAIRMAN: You are aware one of the provinces of Canada has a law very similar to the law in the so-called fair trade states?

The WITNESS: No, sir.

The CHAIRMAN: It is my home province of British Columbia.

Thank you, gentlemen, for a very full morning.

The Committee adjourned to meet at 3.30 o'clock p.m.

AFTERNOON SESSION

Committee resumed at 3.30 p.m.

The CHAIRMAN: Will the meeting come to order. Before we proceed I would again remind members that we have a file of correspondence of all the wires and letters received. They have all been acknowledged from the office of the clerk of the Committee. The second matter is: Members will recall that the last report of the steering committee suggested that the next meeting of the steering committee would be held on Tuesday or Wednesday to consider such amendments or resolutions as members put forward with a view to getting them in shape to pass on to the main committee on Thursday or Friday. So far we have received only two, and one is the suggested amendment of Mr. Croll on loss-leaders, and the other in the briefs, which have been received and circulated of the Co-operative Unions. They have made specific suggestions as far as legislation is concerned. Have any other members any suggestions they would like the steering committee to consider, remembering that the steering committee will meet tomorrow at three o'clock before the meeting of the main committee, and this will be the principal order of business before the steering committee?

Now we are going to resume with the testimony of Mr. McGregor. Mr. McGregor himself has one or two points he would like to clarify as far as his evidence is concerned.

The point was raised by Mr. Thatcher this morning as to whether the members were to proceed with the questioning of the witness, or whether the questioning was to be by committee counsel; and a request was made to me by Mr. Beaudry through Mr. Burgess, our committee clerk, for one hour's questioning. That was a written request, was it not, Mr. Beaudry?

Mr. BEAUDRY: In private conversation with the clerk I told him I thought I would want at least one hour.

The CHAIRMAN: So far as the questioning of Mr. McGregor is concerned, Mr. Beaudry has already had 25 minutes, although we had agreed to a limit of 10 minutes.

Mr. BEAUDRY: May I speak to that on a point of order? I would refer you to page 402 of our Minutes of Proceedings. During that period Mr. Thatcher asked for an opportunity to study the brief. Following that Mr. Thatcher put forward a motion, and the motion was defeated. It is my suggestion that the committee should acknowledge that I should be given the time, and I still think it is in keeping with your own decision.

The CHAIRMAN: That point was whether we should adjourn immediately and I said "no, let us start the questioning immediately" and you had 25 minutes questioning at that time.

Mr. BEAUDRY: May I quote further from the record?

The CHAIRMAN: Surely.

Mr. BEAUDRY: "Mr. Hees declines." Evidently the chairman having then seen Mr. Hees first, to which Mr. Hees replied "I think Mr. McGregor has answered all my questions" and the chairman said "Mr. Hees declines", and

then follows what I take to be a list of speakers in order and then your observation as to the way you thought it would be well done. Mr. Croll states "As far as I am concerned Mr. McGregor 'has spoken', and I have enjoyed every moment of it" and you, Mr. Chairman, understood from that that Mr. Croll did not intend to question and passed on to Mr. MacInnis, who stated "I did not ask for any time". You passed on then to Mr. Shaw, who said "I am pleased that you observed a nod, but you misinterpreted this time. I did not have a question", and then that leaves Mr. Beaudry, Mr. Fulton and Mr. Thatcher. Mr. Hees stood down, which left again Mr. Beaudry, Mr. Fulton and Mr. Thatcher. There was a lot of conversation between Mr. Croll, Mr. MacInnis and others, following which you stated: "I would suggest that perhaps both groups would be pleased if we gave Mr. Beaudry whatever time he wants and during that period Mr. Thatcher can study the brief", and at that point Mr. Thatcher moved that Mr. McGregor be called back tomorrow and that motion was defeated. I stated on page 402, following your statement that Mr. Hees stood down: "If the ten minute rule applies I would rather someone else question." By that I thought I made myself clear, but eventually I did question for what you say was 25 minutes. We had recess because of a vote, and when I came back you told me that Mr. Fulton was just filling in until I returned. At page 411 you stated "Three people around me have reminded me about the 10 minute rule" which, I believe, we had slightly overlooked in view of my statement on page 402. At page 411 I said: If that is the case, following your other remark, I will gladly interrupt my questioning at this stage, but not stop it, and I pointed out why I would rather interrupt and not stop. I said: "I will state so, Mr. Chairman, I would submit that I am under some handicap, as all the other members are, by having this brief read without having a chance to study it. I would like to question on the brief and I will leave it entirely in your hands whether somebody else proceeds now." And then Mr. Croll said "I can exhaust my questions in three minutes" and I said: "I will defer, then", presumably for three minutes, and I contend today it is my right as a member of the committee to start questioning this witness again.

Mr. MACINNIS: Mr. Chairman, I am sorry I was not in at the moment when this started. Do I understand that the position Mr. Beaudry takes is that he has unlimited time for questioning?

The CHAIRMAN: That is the way I understand it.

Mr. MACINNIS: Regardless of what was said the other day, I think it was said for that day, and this is a new day; certainly we cannot allow one person to have all the time he wants, which may mean that other members may not get any time at all.

Mr. BEAUDRY: You stated very clearly Mr. MacInnis you had no questions to ask.

Mr. MACINNIS: That was for the day Mr. McGregor appeared. I may be like you and have changed my mind. But this is a new day. We have to run this committee with some degree of impartiality as to the time that members of the committee will have for questioning, and that is what we ought to do now. I for one would suggest that Mr. Beaudry has the same rights as other members of this committee.

Mr. BEAUDRY: I suggest that I have at least the same rights as the witness. I am a member of the House of Commons, a member of this committee. The witness spoke for quite some time and, in terms of some newspapers, made a fighting speech for 1½ hours. I consider I have the right to question for an hour at least.

Mr. SHAW: On a point of order, Mr. Chairman. I want to make it perfectly clear that when I said I had no questions last day it was for that day, for that time, that I had no questions. I certainly did not commit myself for

the remainder of our deliberations. Secondly, I would like to make it very clear that as far as I am concerned the rules are going to apply to all. I have never exhausted my questioning in ten minutes and I could go on for an hour, too.

Mr. BEAUDRY: Mr. Chairman, on the same point of order, I am pleased that Mr. Shaw states that the rules will apply for everybody, because then I will quote from page 6 of our record, which states, reading from the report of the subcommittee on agenda and procedure, which recommended, among others: "(3) That the committee insist that all briefs be filed in advance of the appearance of the witnesses and that copies be distributed to members of the committee" and "(4) That the brief be not read in committee but that examination be confined to a short statement by the witness, and questioning." I think we have overlooked both: firstly, that it be not read and, secondly, that it be confined to a short statement, and yet the submission made by this witness took 1½ hours.

The CHAIRMAN: If I may, as chairman, have a word in here. Mr. McGregor was the first witness that the committee called, and it was on Mr. Hees' suggestion—an excellent suggestion—confirmed by the steering committee and confirmed by the main committee. We asked Mr. McGregor to appear, which puts his appearance in a little different category than the appearances of the other witnesses.

Mr. BEAUDRY: Still on the point of order, Mr. Chairman—

The CHAIRMAN: Just a moment, Mr. Beaudry. You will be taking the full hour before we even get started. This is the first time that I have been a chairman of a committee, but I have been a member of many committees during the past ten years, and it is the first committee in my experience whose members have very strong views on the subject under discussion and in which every member wanted to ask questions. In most committees, the questioning is confined to three or four members, but here almost every member has been keen and eager to ask questions. In view of that, the committee, with a single exception, has certainly co-operated, and the 10 minute first round rule and the 10 minute second round rule has been a fair one. I have had the co-operation of the members of the committee and I want to express my appreciation. On the point that Mr. Shaw raises, that members should be confined to a 10 minute period: we have been able to provide an opportunity for every member to ask some of the questions in his mind. I am quite sure that Mr. Beaudry thinks his questioning is tremendously important, but I would like to tell him that other members of the committee think their points are also important. I will accept a motion that the 10 minute rule be waived or adhered to this afternoon.

Mr. BEAUDRY: Still on a point of order, Mr. Chairman, I do not think my questions are tremendously important, but my responsibility is strictly my own and no one else's on this committee. If we are dealing with what I would call slightly garbled procedure, then I would refer you to pages 3, 4 and 6 of our record. Who is the member of the committee who requested the attendance of Mr. McGregor? Who signed the certificate required?

The CHAIRMAN: The clerk tells me that there is no regulation of that sort unless expenses of the witness are to be paid.

Mr. BEAUDRY: I would like to read you standing order No. 67:

> "No witness shall be summoned to attend before any committee of the House unless a certificate shall first have been filed with the chairman of such committee, by some member thereof, stating that the evidence to be obtained from such witness is, in his opinion, material and important."

This is from the 1943 edition of Beauchesne. I only came here in 1945 and it has not been revised since.

The CHAIRMAN: Mr. McGregor was called at the request of the committee.

Mr. BEAUDRY: I do not think you can set aside an order of the House of Commons in that way.

Mr. MACINNIS: I move that the 10 minute rule be adhered to.

The CHAIRMAN: All those in favour? Opposed?

Carried.

Mr. McGregor, will you proceed.

F. A. McGregor, C.B.E., recalled:

Mr. BEAUDRY: Mr. Chairman, on a point of order. I am still quoting standing order 67 of the rules of the House of Commons. I do not need to repeat it, but no one shall be summoned to appear as a witness unless there has been a certificate filed to the effect that the evidence of such witness is material and important. If we have no such certificate filed with the committee I do not think we should have heard the witness in the first instance, but if we have, and have disregarded the procedure to that extent, I think we can disregard the clock.

Mr. MACINNIS: I think Mr. Beaudry is out of order as far as making that point of order is concerned now; he should have protested Mr. McGregor's appearance in the first instance, at the time of the event and not at some other future time. If it is out of order to have Mr. McGregor here, it is rather strange Mr. Beaudry is anxious to have him questioned, and I would remark that it was not out of order until the time he requested for questioning was refused.

Hon. Mr. FOGO: Mr. Chairman, the rule quoted by Mr. Beaudry has no application to a witness before a special committee.

The CHAIRMAN: My understanding of the rule is that where it is necessary to use a subpoena to compel the witness to attend, and only in such cases it is necessary to pay the witness's expenses. You will remember that point was raised in the steering committee. One member thought that it might be of some embarrassment to Mr. McGregor to appear and it was decided against sending him a subpoena. It was decided we would not have him here under a subpoena. Most members of the committee, and those who followed the proceedings think that Mr. McGregor's evidence was as valuable to this committee as any of the other witnesses we have had before us. Those witnesses, too, have not been summoned in the way Mr. Beaudry mentions, again for the reason that they are coming here at their own expense. We divided the witnesses very early in the category of those who would appear voluntarily and those who would have to be subpoenaed.

Mr. BEAUDRY: Has the chairman any authority to interpret standing order No. 67?

The CHAIRMAN: Only the fact that I have been attending committees for 12 years and attending them very regularly.

Mr. MACGREGOR: I think we will proceed.

The WITNESS: I would appreciate it if the members of the committee would permit me to amplify my answer to a question which Mr. Thatcher put to me on Wednesday last. He asked what kind of dealers would be eliminated if their number were reduced by the elimination of resale price maintenance. My answer was: the ones that are not providing the service, in price and everything else, that the community needs. It is hardly a sufficient answer and I would like to add something to it.

The decision as to which dealers will stay and which will go should be made, and is being made, from day to day, by the popular vote of the consumers of the country. In every community in Canada, tomorrow, consumers will have the opportunity of casting their votes for or against the long list of candidates who offer their services. They may decide to retain nearly all of them, by distributing patronage across the board, a large vote to some and a small vote to others. Some dealers, though, may poll such an exceedingly small vote, in other words may get so very little of the consumers' business, that it would seem to be the part of wisdom to withdraw from the field, at least as proprietors of stores, which in the end consumers have to maintain and pay for indirectly. Our sympathies are usually with unsuccessful candidates, whether in politics or business. But all of them cannot be successful. I think war veterans now in business in a small way (Mr. Thatcher referred to them particularly) would be among the first to insist that they should not be kept on in jobs where their services are not needed or wanted, and cannot be adequately paid for. They want to stand on their own feet and make their way in business on their own merits.

Mr. BEAUDRY: On a point of order, Mr. Chairman, is this an answer to a question or does it qualify an answer previously given?

The CHAIRMAN: This is the same sort of clarification we permitted other witnesses when they returned a second time, both Mr. Harris and Mr. Preston. We are prepared to extend the same courtesies to Mr. MacGregor. Mr. Thatcher is grateful for this clarification.

Mr. THATCHER: I would be glad to hear it.

The WITNESS: "Free entry" into any field of business is a cardinal principle in our kind of economy. But "free exit" is a necessary part of the system too. Resale price maintenance encourages entry by guaranteeing margins, but apparently its proponents would like to have those margins high enough to enable those whose services are least required to continue in office, or rather in business, even though the community, through its lack of patronage, has clearly indicated that it would be as well off without them.

To deal more specifically with Mr. Thatcher's very specific question, who will go, I might use the drug trade by way of illustration. I use it because there is no branch of business in Canada which is relying more heavily on resale price maintenance, none more vocal in support of the practice. These dealers have established conditions which encourage free entry on the part of graduates of the pharmacy schools. But they are vigorously opposed, and their opposition is a natural one, to the free entry of others into their field. Witness the strong pressure they have brought to bear on their principals, the manufacturers, to induce them not to sell to grocery stores any of the lines which they refer to as drugstore products. This, even though they have created conditions which invite the encroachment of lower-cost operators into their protected field.

Who will go? I should think that a few druggists might decide to go if present guaranteed margins were eliminated and they had to meet competition, as most other dealers do, in an unprotected market. The number would be much fewer than one would judge from the representations that have been made. Many of them, I should think, would be spurred to an efficiency they have not had to exercise, and would find ways and means of increasing their volume of sales and therefore their usefulness to the community. If some druggists disappear because of changed conditions, I should think they would be the ones whose sales are lowest, the ones that consumers have decided, by their votes if you will, are not providing services that consumers need. In 1941 the Dominion Census (Volume X, p. 456) reported that 236 independent druggists were selling less than $5,000 worth of goods a year. (Incidentally,

the record shows that 21 per cent were selling less than $10,000 and 50 per cent less than $20,000 a year). But take the group whose sales were less than $5,000 a year. If they got a net profit of 10 per cent on sales their yearly income would be only $500. If by taking thought they could add another 10 per cent to their net profit, even 20 per cent would yield only $1,000 a year. Hardly a sufficient return to justify their continuance, hardly an indication that their services are required by the community, particularly a community which is already well served by their competitors.

Probably some of the 236 are still in business—1941 may have been their first year and sales of $5,000 or less may have increased now to $50,000—more power to them! I imagine that in 1951 there would be much fewer than 236 in the category of $5,000 or less. If some of their stores disappear in 1952, I don't think the proposed legislation should be held responsible for their disappearance.

Mr. BEAUDRY: Do you still think that is in order as a clarification of the answer?

The CHAIRMAN: Go ahead, Mr. McGregor.

Mr. BEAUDRY: Call me when the second brief is read, will you?

The WITNESS: With volume of business exceedingly low, operating costs per unit of sales must be exceedingly high. No conceivable increase in the rate of net profit would enable such stores to be operated successfully as separate establishments. They would be unprofitable to the dealer, and also a financial burden on the public if you agree with me that, eventually, consumers have to pay the shot even for services that they don't want.

But it is not all a dark picture for those now engaged in the business. If I may use the simile of the ballot box once more, I would say that some other candidates may withdraw from the field. In spite of the efforts of the druggists to prevent grocery stores handling their lines, they have not been too successful. The brief of the Consumers Association describes the success that did attend their efforts in keeping such items as Pablum off the grocery shelves. I happen to have inside information about their efforts to keep other items in their hands exclusively and the pressure that was applied to several manufacturers, because we in the Combines Commission took our part in preventing the preventions. Today you have only to look at the shelves of many grocery stores to see a growing series of products which were at one time sold exclusively in drugstores. The attractive margins, guaranteed margins, were responsible for the grocery trade reaching out to include such goods in their stock-in-trade. That does not mean an increase in the number of drugstores because of resale price maintenance. It does mean an increase in outlets for drugstore products. We have no figures in Canada that would indicate how greatly these outlets have increased in number. But figures quoted in the Canadian Pharmaceutical Journal of September 15, 1951, indicate the enormous increase in such outlets in the United States, where the so-called "Fair Trade" laws have been operating to prevent price reductions at wholesale and retail levels. The statement in the Pharmaceutical Journal is a quotation from an American trade paper, "Drug Topics," issue of May 21, 1951. It says:

> Between 1946 and 1950, the number of food stores carrying more than 20 drug store products increased from approximately 25,000 to more than 100,000.

Another article published in the Canadian Pharmaceutical Journal, on January 15, 1951 (this one a reprint from "Business Week") confirms the trend:

> While the retailers' sales volume has held even, wholesale drug firms have chalked up gains. During the first nine months of 1950, sales at wholesale increased 7 per cent as against no gain at the drugstore level.
>
> Wholesalers have a ready explanation for this seeming paradox. Their increase in sales is a result of the growing business they are now doing with other sources. . .

An increase in wholesale sales would not tell the whole story because chain stores don't buy much from the wholesalers; they buy direct from the manufacturers.

In the United Kingdom the druggists and others have had the same experience of encroachments on their hitherto exclusive territory, and they have made similar efforts to recover lost ground. I refer you to pages 9 and 10 of the excellent brief presented to you by the Canadian Association of Consumers. I hope that brief will be included in the printed documents that will be available to the public as well as to the Committee.

To get back to my point, and to Mr. Thatcher's question, Who will go? I may be wrong, but in my opinion many of these outlets will "go" if the practice of resale price maintenance is prohibited. Grocery stores have reached out for these price-maintained goods because the margin on them is guaranteed and on most of them is enormously higher than anything they get on their own competitive lines. When you eliminate the guarantee provided by resale price maintenance, these goods will lose much of their attractiveness as unusually profitable lines. Of course they won't give them up if, on their own, individually, druggists persist, as some of your witnesses have said they would, in demanding the full list price that the manufacturers have suggested or insisted upon. In the face of grocery store competition, based on much lower margins, I doubt if they will be able to get such prices.

Much has been said in these hearings about the prospect of bankruptcies on a large scale. I don't propose to discuss that now, but I would suggest that some light is thrown on this aspect by the actual number of bankruptcies as reported from year to year in the Canada Year Book. In the five year period 1945-1949 only 142 commercial failures were reported in retail food stores, out of a total, to take the 1941 Census figure, of 48,468. This means an average of less than 30 a year, which is about one-sixteenth of one per cent of all retail grocery stores in Canada. And this is a field of trade in which price-maintained goods represented only a small percentage of the total. I would like also to refer to the latest in a series of tables which Dun-Bradstreet's have been publishing for years showing what they believe to be the underlying causes and the apparent causes of business failures in the United States. The latest table I have seen was published on page 22 of Dun's Review of June 1951. One very striking feature of the analysis is that "incompetence" is recorded as being the underlying cause of 43 per cent of the failures reported for the 12-months period, and "lack of experience" and "unbalanced experience" the underlying cause of another 41 per cent. I see nothing in the table to indicate that so-called "loss-leaders" or, more accurately, "selling below cost" by competitors had anything to do with any of the reported failures.

By Mr. Fulton:

Q. Last Wednesday I asked you two questions before Mr. Beaudry came back and to summarize so we may follow from there up, I think you will agree with me that your answers established that, although you say you had been concerned for some time about resale price maintenance you had never instituted an inquiry exclusively towards preventing that practice, or recommended any legislation to deal with price maintenance, although you state that in your view the existing combines legislation is not satisfactory in that

respect.—A. Yes, we were still hoping even in 1948 that the Combines Act as it was might be sufficient to deal with it. I indicated that in my 1948 evidence. We were still hoping the existing remedies might be made to apply. That is a condition I do not think exists now. My own opinion is that as of December, 1951, it is not possible under the existing Act to deal with an individual manufacturer fixing resale prices.

Q. You have seen the draft legislation that was presented to the committee by Mr. MacDonald, the present Combines Commissioner?—A. Yes, I have seen it; I have not made a close study of it.

Q. Would you agree with me that this draft bill simply establishes it is an offence to fix retail prices but does not constitute in any way as an element of that offence the question of whether or not the particular circumstances worked against the public interest?—A. I think the passage of that bill would mean that parliament was declaring it to be an offence in itself.

Q. In your view should the prosecution in the case of an alleged offence of resale price maintenance have to establish that the particular practice or combination of practices was operating against public interest?—A. I think where the evidence is as clear as it is now that the practice unduly lessens competition, it is desirable for parliament to say so definitely instead of having to go a long roundabout way of proving undueness. I indicated the difficulties under the existing Act of proving that a single manufacturer's action was against the public interest or was unduly lessening competition.

Q. You take the position that parliament should say resale price maintenance as such is against the public interest, and that from there on anyone who in any way maintains prices or requires anyone else to maintain prices is committing an offence?—A. Yes.

Q. You said: "When the evidence is as clear as it is that the practice is against the public interest . . ."; then do I take it that in arriving at your conclusion that it is against the public interest you divorce from your mind any consideration of whether or not in the long run it operates to reduce prices to the consumer? Do I understand you are simply saying that because it restricts competition it is adverse to the public interest?—A. That is pretty much the basis of my own thinking on it, except that I would add that not every restriction of competition should be regarded as offensive; it must be an undue restriction.

Q. Your opposition to price maintenance as set forth in your brief proceeds entirely from your proposition that it is a restriction of competition, and not at all from the basis that it affects the public adversely from the point of view of the ultimate price to the consumer?—A. Correct, undue restriction of competition is the basis in my opinion.

Q. You have also I think referred to the desire of the manufacturers to have their prices maintained. Now, as between the manufacturer and the retailer, who benefits most, who wants it most?—A. Unquestionably the retailers.

Q. Would you then make any comment on evidence such as we have had from Mr. Swenson, president of the Allied Beauty Equipment Manufacturers' and Jobbers' Association? I think it is at page 98 of the record and it shows very definitely that he, as a manufacturer, was vitally concerned with this question. I refer to his answer on page 98, where Mr. Thatcher was questioning him with respect to his practice in cutting off supplies and he was asked:—

> Q. Would not that be a little rough sometimes on the individual dealer, to lose the whole line?—A. I do not think it would be rough at all. Imagine one of my customers, one of my fifty customers starting to get rough with me and I have been working with him on that for thirty years. Do you think that is being rough? He, without any thought, proceeds to cut my business in half, wreck it, and I have worked thirty years for it.

There is a case where a manufacturer says it is against his interest if retail price maintenance was not followed and he feels obviously very deeply about it. What would you say as to his argument?—A. I think this particular group is one again you would classify as one of the "peculiar" industries. It is not selling its goods to the public through retailers to any extent, most of their sales are made to beauty parlours and barber shops.

Q. You do not go so far as to say that a witness in the position of Mr. Swenson has no justification for concern as to the future success of his business, such as he indicates he very definitely does feel if price maintenance is to be eliminated?—A. Yes, just as retailers have certain rights to do what they can to protect themselves from competition, but I do not think they should have the right to go so far as resale price maintenance goes and I do not think the manufacturer should have that right either.

Q. Following up your answer to my last question but one, let me ask: would you be prepared to recognize the desirability of working out different provisions to apply to different types of trade or manufacturers in this respect? —A. I have not given thought to such a possibility. I would think a law of this kind affecting trade should apply right across the board. If you put in any provision that parliament or the government would grant exemptions I would be afraid that considerations would be given weight other than the ones that should be taken into account.

Q. You are prepared to stand or fall by a blanket form of legislation such as this before the committee?—A. Yes.

Q. Now, I want to ask you a question or two with regard to the possibility of enforcing this particular draft bill we have before us. Am I not correct in saying what this amounts to is a prohibition on the manufacturer's attaching any conditions to the resale of his goods?—A. I believe he can suggest resale prices even under this bill.

Q. Under this bill you think he can suggest resale prices?—A. I believe so.

Q. Then what chance of success do you see in enforcing this measure so as really to stop price maintenance?—A. I think the mere existence of the law in the statute books will have a very salutary effect in ensuring compliance. Most business men in Canada observe the law and they will observe this. You must have some machinery for its enforcement and you have that in the Combines Investigation Commission. An investigation of an offence of this kind is just the same as an investigation conducted in any of the alleged combine cases.

Q. Well, let me put to you a hypothetical case of a manufacturer of shoes who has in the past been insisting his retailers sell them at a certain maintained price. Now he finds he still desires to maintain the price at which his goods are sold. How are you going to prevent him from doing so if he finds that the retailer is not selling them at the suggested price and stops supplying him? There are hundreds of reasons which could be given; how are you going to enforce the law in that regard?—A. By an examination of his records, for one thing, to determine what is the real reason. We have had many cases of refusal to sell where it was quite clear that the manufacturers had very good reasons for not continuing to sell. It may have been bad credit, the man may not have been paying his bills. It may have been, as in one case in Montreal, that new goods were sold on the same floor as second-hand goods; the merchant who was refused supply complained to us and we made an investigation and came to the conclusion that the manufacturer was within his rights in refusing to have his goods sold along with second-hand goods, sometimes interchanged.

Q. Then you think it is all right for manufacturers to insist on some conditions to be complied with by those who are reselling their goods?—A. If goods were refused because a dealer sold below the suggested resale price I think action should be taken.

The CHAIRMAN: Thank you, Mr. Fulton. Mr. Thatcher is next.

By Mr. Thatcher:

Q. Mr. McGregor, this morning one of the witnesses made a statement which rather surprised me. I wonder if you could either confirm or deny it? He suggested that the legislation which is now proposed, exists nowhere else in the world today?—A. It is proposed, of course, in the United Kingdom.

Q. But it is not in effect?—A. It has been proposed. I think you have me stumped and I cannot give you an instance.

Q. In other words, Canada would be the first country in the world to bring in legislation of this kind?—A. I would not like you to take that as an answer that there is not any.

Q. But as far as you know?—A. That is the answer.

Q. Can you tell the committee, Mr. McGregor, if this legislation goes through, whether in your opinion it would help reduce prices to the consumer? —A. I certainly think it would, and that it will. May I just mention the instances I have already given of many drugstore items that are carried in grocery stores. If grocers are not under any requirement to maintain resale prices I am quite satisfied that they will not continue to take the very large margins they are taking on drug store products that are price maintained now.

Q. Can you give the committee any tangible figures to back that opinion up? I suppose you would have them in files somewhere?—A. You are asking me to prophesy in detail what will happen.

Q. Have you no figures to back up your opinion that the abolition of price maintenance would bring prices down?—A. I have referred to the difficulty of comparing what the situation would be under resale price maintenance and what it would be under a free price system. We cannot compare them in Canada. Comparisons have been made in several states in the United States where "fair trade" laws are in effect, and in other adjacent states where they are not. It is perfectly clear from those comparisons that the prices of goods which are price-maintenance in the one state are very much higher than prices of the same goods, not maintained.

Q. I wonder if you would refer to your brief Mr. McGregor, where you mentioned the match prosecution? On page 390 of the evidence you say: "None of these inquiries, however, clearly involved the fixing of prices by a single manufacturer, except in the case of matches, in which industry the single manufacturer was in the end the only producer of wooden matches."

Do I take it from that statement that the only prosecution the Combines Branch has had along these lines, is the match case?—A. The only one on resale price maintenance alone?

Q. Yes, were you able to win your case in that particular instance?—A. Again it is confusing because resale price maintenance was only one element in the case. Other methods were used to drive out competitors, including selling at exceedingly low prices. There were many factors that entered into that decision.

Q. In any event, the match company was ordered to discontinue resale price maintenance?—A. No, the match company was convicted of an offence under the Combines Investigation Act.

Q. As a result of which they stopped fixing the resale price of matches?— A. That I do not know. That has been since my time. I might refer to the optical case...

Q. Excuse me, Mr. McGregor, I have only ten minutes and I would like to clear up this point. If I understand the case correctly, one of the results of the decision, was that the company decided not to fix the price of matches in the future.

The CHAIRMAN: In fairness to Mr. McGregor, Mr. Thatcher, the prosecution occured since Mr. McGregor left the branch, and, secondly, if you would, when you are speaking about the judgment, indicate where it is pointed out that they had to discontinue resale price maintenance, that would be helpful?

Mr. THATCHER: I referred to Mr. McGregor's statement that the match case was the only one that had been prosecuted by his department, which involved the fixing of prices by a single manufacturer. I think the trend of match prices since the prosecution is significant. Perhaps I could place on the record a letter written to the Ottawa Citizen, last week in this connection.

The CHAIRMAN: But you are saying that price fixing was abolished. Mr. McGregor answered categorically "no". It is your opinion that price fixing was abolished.

Mr. THATCHER: May I put this on the record?

The CHAIRMAN: As long as it is your opinion.

Mr. THATCHER: This is a part of the letter.

> "Editor, Citizen: A purchase of matches made today has led me to wonder about the value of the Combines Investigation Act and prosecutions (even successful) under it.
>
> For some months, while the trial was in progress and judgment reserved, 'National Grocers Company Limited' matches made by 'Eddy Match Company Limited,' sold at 25 cents for a package of three boxes of household matches.
>
> Today I bought these matches and found the price to be 32 cents."

The point I am wondering about is simply this? Is it not possible that if price maintenance comes off, many prices will, instead of going down, go up?—A. I do not think that is what will happen.

Q. But in the only case the department prosecuted, prices did go up sharply.—A. There has been no indication that it was the dealer's margin that was responsible for the increase. Resale price maintenance provides a certain margin for the dealer. I should think in this particular case it would be due to an increase in the manufacturer's selling price.

Q. But the fact remains, Mr. McGregor, that the only case that has been prosecuted along these lines by the department, is the match case. Since the company removed price maintenance the price of matches has gone up very, very substantially. I suggest there is a danger that the same might happen in other lines.

Did you hear Mr. Harris give his evidence, where he suggested that mark-ups on non-price maintained goods were higher than those on price maintained goods?A. Mr. Harris mentioned at one time that generalizations are unsafe, and that you should refer to specific cases. In this case I think using the specific instance is very unsafe, particularly when you do not know all the facts. I am not suggesting that you do not know all of them but the facts are not known. What is responsible for that? There may be a host of other conditions that are responsible. You cannot blame the Combines Act for that particular result.

The CHAIRMAN: Mr. Thatcher, I will give you a minute but it occurs to me that one of the reasons we hired our very successful counsel was that they had some experience in this matter. While Mr. McGregor does not know of the case Mr. Favreau was junior counsel for the Combines prosecution and perhaps he could tell us whether resale price maintenance was abolished.

Mr. THATCHER: As long as you are not taking it out of my time.

The CHAIRMAN: Tell us, Mr. Favreau?

Mr. FAVREAU: There were four counts in that case and only one has been prosecuted to date. The others are still pending and will probably go on in January or February. The count on which we prosecuted was under Section 2 (4) (*b*) of the Act—that is substantial control of the industry, and the resale price maintenance angle was brought out in the evidence as one of the different modes or methods used to bring about the combine. There was no prosecution as such based on resale price fixing by the manufacturer. There were agreements between the manufacturers and the distributors and those agreements were used as one of the methods to finally assert substantial and full control over the whole field.

Mr. THATCHER: I do not know what the reason was but the fact remains, does it not, that this company is no longer practicing price maintenance and I suggest it is because of the recent prosecution.

Mr. FAVREAU: I am not speaking of my own factual knowledge of the thing but they might not be practicing resale price maintenance contractually, that is by the strict arrangements with dealers as they used to do; but they might be fixing them directly in the exercise of their monopolistic control. That is just one of the things which is foreseen by the legislation Mr. McGregor is speaking about.

The CHAIRMAN: You have two more minutes, Mr. Thatcher.

By Mr. Thatcher:

Q. This morning, one of the witnesses said that the abolition of resale price maintenance might force manufacturers to go more and more into the retail field directly. He mentioned some companies which have their own outlets—at present—Singer Sewing Machine, Laura Secord, certain shoe stores, and others. If more manufacturers did adopt such a course do you not think it might tend to put quite a few retailers out of business?—A. Yes, I think it would.

Q. Well, in fairness to the small retailers, how would you regulate prices in stores of that kind?—A. There is no proposal to regulate prices.

Q. In other words such manufacturers would not be affected by the proposed legislation because they are selling right from the manufacturing level to the consumer?—A. Just as the chain stores have an advantage now, since they buy direct from the manufacturer and eliminate one factor—the wholesaler. However, independent retailers can meet that competition and are meeting it. Their operating costs in many instances are lower. In many ways they can meet that competition—and they are doing it.

Q. What about manufacturers that sell from door to door? Would you say the same was true of them? I refer to firms like Rawleighs, Fuller Brush, and companies of that kind? Would there be a danger of more companies selling in this manner to get around the legislation?—A. I cannot answer that.

Q. There would be a possibility, I think you would agree?—A. I do not think there is a likelihood of it.

The CHAIRMAN: One more question, Mr. Thatcher.

By Mr. Thatcher:

Q. If resale price maintenance is abolished would you not think that mail order houses would obtain additional sales on former price-maintained?—A. It depends on what consumers want. Consumers may decide that they like to buy their goods by the mail order system and they should not be interfered with.

Q. Would that not mean a greater concentration of retail selling in centres like Winnipeg, Toronto and Montreal where these mail order houses are located, at the expenses of the little dealer in the smaller centres?—A. If that is what the consumer wants.

Mr. FULTON: Do the consumers ever conscientiously want to think of them?

The WITNESS: I think they look at the price in the catalogue and the price on the shelves.

Mr. FULTON: But they do not want the other result?

The WITNESS: No.

The CHAIRMAN: Mr. Hees?

By Mr. Hees:

Q. Mr. McGregor, since this came up I have talked to a great many small retailers in my own riding. I have between 500 and 600 and they are almost all small men selling every type and size of goods. I have found that all of them—and I was quite surprised at this as I would have thought only those who sold under price maintenance would be particularly upset about this legislation—but I found that was not the case, and that all of them are worried, for this reason. They are afraid that the chain stores and the big departmental stores will use branded lines as loss leaders day by day, to draw customers from their stores. As you know, a loss leader is offered by a store to get people to come in and buy something at a bargain and they stay to buy other kinds of goods.

These people that are afraid, even though they might not sell those standard lines themselves, that their customers will be drawn off to the big chain stores and departmental stores who will be using branded lines as loss leaders. For that reason I have come to the conclusion, and I wonder whether you have, that if this legislation goes through—and it looks as though it will—is it not desirable that we work out some kind of workable legislation—it has got to be workable or it is no good—to make loss leaders illegal. I think if that could be done a great deal of the objection and the fear which these very sincere small dealers have would be removed. Unless it is done I think their fears are very well founded.

What do you think about the possibility of legislation of that kind, Mr. McGregor?—A. Well, you have given me a pretty big order in asking me to answer such a question, but it is a very important one I agree.

I have given some thought to that since Wednesday last—and you will recall that I had a talk with you after the Wednesday session.—Having that in mind I drafted the kind of answer I would like to give to the question. I am accustomed to think with pen rather than with my tongue, and the committee might prefer that I should let them have what I have prepared on this particular subject. Perhaps my answer might not be taken out of your time.

Mr. HEES: That is the only question I have to ask?

The WITNESS: It is a question I think many members would like to have answered. I wish we could get away from the use of that unfortunate word "loss-leader", because it has been given so many meanings that it no longer has any. As it has been used, even in these hearings it can mean anything from giving the goods away to selling them for a cent below full list price. I am as guilty as anyone in using the term, even in these hearings. But I have always thought of it as a practice of selling goods below invoice cost with the object in view of driving competitors out of business. I have no sympathy with such a practice, as I said in my evidence on Wednesday last (p. 413). But I went on to condemn selling below invoice cost if it was "for the purpose of enticing people into the store". Of all things to say! "Enticing" has a rather sinister sound, it is usually sinners who entice, but it could have the same meaning as "attracting". And surely it should not be a criminal offence

for a dealer to attract people, or entice them, into his store even by offering them some of his goods below invoice cost. I wasn't misreported—I just didn't express myself fully enough or accurately enough. Of course in using "enticing" instead of "attracting" it is clear enough, to me at any rate, that I had in mind the sinfulness of the motive.

The CHAIRMAN: I hear our division bell. Mr. McGregor may mark his place and we will continue after the vote.

The CHAIRMAN: Mr. McGregor will continue from the point where he was interrupted in answering Mr. Hees's question.

The WITNESS: Not that it matters so much what I thought or said last Wednesday or in 1948 or now. But I would like to make the record clear now that the kind of selling below cost that I am against is the kind that is designed to injure competitors and drive them out of business in order to secure the whole market for themselves. For lack of a better descriptive phrase may I refer to that as "predatory price-cutting"? We have found such a policy adopted by some groups and we have reported against it. I have not found evidence of a single dealer adopting the practice except in one instance and that was by a single firm that achieved monopoly by several devious methods including this one. We had clear documentary evidence of the purpose. We reported against the practice, the court convicted and the case is now in appeal.

In that particular instance Section 498A of the Criminal Code would have been applicable, but the Combines Act was applicable also, to that and to much more. The Combines Act as it is now can deal with "predatory price-cutting" by combinations or single-firm monopolies. I think it would be desirable to have other legislation to deal with individuals adopting the same practice if there were sufficient evidence to show that it is an evil serious enough to call for legislation to prevent it. Frankly I don't think it is such a menace. Certainly no evidence has been brought before this committee that at the present time any individuals are indulging in "predatory price-cutting". You have been told what happened years ago and what will happen if resale price maintenance is outlawed. You have been told that dealers are selling below full list prices and selling below prices which their competitors consider are reasonable prices.

Mr. BEAUDRY: Mr. Chairman, I would like to raise the same point of order as earlier, please, and I would point out, to support my point of order, that we have recalled the witness to question him on his brief after we had time to read his brief. Now he is submitting a very considerable addition to that.

The CHAIRMAN: Mr. Hees asked Mr. McGregor a question. Mr. McGregor said "I have the answer to that question in writing because I think it is quite an important question and because I think better if I write than if I speak, and I would like to have the permission of the committee to read it." Mr. Hees was willing and the committee was willing. It was Mr. Hees who asked the question and the answer is being given on his time. You might continue, Mr. McGregor.

The WITNESS: But what evidence has been presented to show that any one of the 140,000 retailers in the country has been selling goods below his own invoice cost for the purpose of driving competitors out of business in order that he may acquire a monopoly over any line of goods or over any single commodity?

This cry of "predatory price-cutting" harks back to a day when there may have been some justification for some action. It was on that excuse that the whole system of resale price maintenance was founded. I am thinking of the days when the chain stores entered the field and made changes which revolutionized our whole retail distributive system. But the chain store is not what

it used to be. In order to establish itself in the market, spectacular devices were employed, such as deep price-cutting on a few articles. Examine the advertising of the chains today and you will find that "extreme reductions of price upon particular items appear to have been replaced by shallower price reductions upon larger numbers of items". The chains started off as revolutionaries. In their mature years they have become, like many individuals, rather orthodox—I won't say reactionary. Perhaps "reactionary" is the word to describe an attitude that is reflected in the position which many American chains are taking on the subject of resale price maintenance. Some of them are now among its strongest proponents. If Canadian chains follow their example —I question if they will—the day may come when another merchandising revolution will be needed—it might take the form of a really widespread co-operative movement that would be as efficient as the best of the local co-operatives, or it might be something else that no one has dreamed of yet.

By Mr. Hees:

Q. This is all very interesting, but I am afraid at the end I might not have enough time to clarify the points I was really asking about. Mr. McGregor, you pointed out that at the present time, in your opinion there has not been much loss-leader operation?—A. Loss-leader within the definition that I have given.

Q. I think that is quite true, Mr. McGregor, because price maintenance has made loss-leadership pretty well impossible, because people cannot use branded goods as a loss-leader under present price maintenance, and for that reason retailers think it is a good thing, but what I am asking is that if resale price maintenance is abolished do you not think it would be desirable and necessary to have legislation dealing with the loss-leader, practice, too?—A. But there is very little in the way of predatory price cutting in the grocery trade, where resale price maintenance is a very inconsiderable factor.

Q. Well, branded lines which are price maintained are the easiest things to use as loss-leaders, because everybody understands a certain type of soap, a certain refrigerator, and they might fear that the abolition of price maintenance is going to make loss-leader practice infinitely more likely and easy when price maintenance is taken off. That is the thing that I am worried about as well as many of the retailers in my riding, who are very worried about that practice.

Mr. CROLL: Should we not get the complete answer on this very important subject?

Mr. HEES: As long as Mr. McGregor will deal with that point at the end I will be very happy to hear what he says, but I wanted to get that clarified.

The CHAIRMAN: It was in Mr. Hees's question time.

The WITNESS: I have very little more to say:

No, I don't think "predatory price-cutting" is practised to any considerable extent in Canada today or will be in the immediately foreseeable future. When there is some definite evidence that it is widespread and serious in its effects, then will be the time to draft and pass legislation. Those who have made any effort to shape such legislation realize how exceedingly difficult it is to provide against an occasional damage to one group in the community without doing much more serious and permanent damage to the community as a whole.

Much of the legislation which has been enacted to prevent "predatory price-cutting" strikes at the roots of competition, not merely at one offshoot of it". But even when it is passed it provides the dealers with nothing like the protection on which they have built their hopes. Indeed it would in many instances work against their interests. In British Columbia they have minimum

price legislation, but even the Secretary of the Canadian Pharmaceutical Association told you (p. 159) that he did not know anything about it. And that was from the full-time representative of a group that is pleading to be protected from "predatory price-cutting". That legislation has been part of the British Columbia statutes since 1937. My own opinion of the reason for its not being used to prevent "predatory price-cutting" is that there has been nothing of the kind to prevent. If there were, why have those who have been suffering from the practice not invoked its provisions?

By Mr. Fulton:

Q. It does not work.—A. It has been in effect since 1937.

Q. It just does not work. It had to be made so full of holes it just does not work.—A. That is the difficulty of producing any bill that will work, and that is the point I am stressing here. It is exceedingly difficult to draft legislation that will prevent these practices we have in mind and still not injure the public in a serious way.

Q. You said on Wednesday, in answer to a question from me, that it could be done. You are not now going back on that, are you?—A. I said that lawyers should be able to produce something. I still think they may. We were not able to do it in our struggles with the problem.

By Mr. Hees:

Q. Mr. McGregor, you think that when price maintenance is removed there will not be much loss-leader trouble. I think, and a great majority of the small dealers think, there will be, and for very good reasons. They think it would be very desirable to draft such legislation, and you say it would be desirable if it could be done.

A. It would be desirable if we had evidence that such a serious condition exists or is threatening.—Q. Well, I think that the conditions will exist immediately that price maintenance is removed, and it does not take very long to put small dealers out of business. In fact, by the time we realize it is bad, call together a committee, hear witnesses and draft legislation, it is going to take a long time. Do you not think it would be a good time, before this legislation is passed, to see if we could not work out some legislation mitigating against loss-leaders?—A. If all this is going to happen, why has it not happened in the grocery trade?

Q. I would like to answer that, Mr. McGregor; because it is a lot easier, as you know, to advertise a branded article as a loss-leader. Everybody knows what they are going to get, but they do not know what they are going to get when they get carrots or potatoes or steaks, advertised at a certain price. It is far easier to bring people in for a branded line.—A. But there are plenty of branded lines in the grocery stores.

Mrs. FAIRCLOUGH: There is quite a bit being made on this point, but anybody in the food distribution business knows that there are no loss-leaders there because the margins in the grocery trade are so very narrow there is no room for loss-leaders.

The CHAIRMAN: I think it is just about the end of your time, Mr. Hees.

By Mr. Hees:

Q. I still think, Mr. McGregor, that it would be a very desirable thing, and all the small dealers that I have come in contact with—and I have come in contact with a lot—are all very anxious that this thing should be given very serious consideration; I do not think it would be a good thing to wait till the thing develops. I think we would be well advised to spend some time to find out if we could not work out some workable legislation, and if we could,

I think it would take a lot of sting out of this forthcoming legislation that is going to go through.

The CHAIRMAN: Mr. Jutras.

Mr. CROLL: Is the witness not going to finish his answer?

Mr. JUTRAS: If he is not through with his statement, he can use my time to finish it.

The WITNESS: I should like to conclude my comment on Mr. Hees' question by saying that it is surprising that trade officials who are anxious to prevent "predatory price-cutting" do not even know of the existence of the British Columbia legislation? It all goes to strengthen the position I have taken that the benefits of this kind of legislation to the retail trade are illusory. They look promising on paper, but they just don't work.

Mr. JUTRAS: That is all, thank you.

The CHAIRMAN: Mr. Boucher? He must be still away. Mr. Shaw.

By Mr. Shaw:

Q. Mr. Chairman, it has been argued before our committee that the prestige of the manufacturer is adversely affected by reductions in the prices that he has set for his products under resale price maintenance. Would you give the committee your opinion on that?—A. One comment I would like to make on it is this, if the prestige of a manufacturer is maintained by maintenance of the price, presumably an increase in the price would increase his prestige. Then if his competitors find that their prestige is less because someone else's price is very much higher, they might be tempted to increase their prestige by increasing their prices. It then becomes competition for prestige, a kind of competition that increases cost. I think consumers might be interested in knowing how much prestige they are paying for in the price they pay for their goods. I should think some competitive pressure would squeeze out a lot of the prestige that is included in such prices. One thing that the manufacturer who is interested in maintaining his prestige must have in mind when he increases his price: he must not increase it to such an extent that he will "prestige" his goods out of the market. I referred to this in my evidence in 1948. That is not the only or the principal reason why the manufacturer is adopting the practice of resale price maintenance; in many instances it is because of pressure brought to bear on him by retailers. He may yield to it with the idea of receiving the good-will of the retailers. That leads at once to competition amongst manufacturers for the good-will of the retailers. One manufacturer gives a retailer a 25 per cent margin when another is giving only a 20 per cent margin, if he does not come up to the higher level retailers will not have the same interest in pushing his line.

Q. Trade associations in practically all cases when referring to resale price maintenance refer to suggested list prices. As they have appeared before us this picture has unfolded itself; on the one hand the manufacturer says the word "suggested" is very mild and they admit under questioning they would withdraw their goods from him if he cut the price and possibly put him out of business. Others, as the Canadian Manufacturers' Association this morning said, have no enforcement and if the retailer wants to sell at a lower price he can do it. Now, what have you to say about enforcement of manufacturers of the list price under resale price maintenance?—A. Many manufacturers are not keen on adopting the policy in the first place. Very considerable pressure is frequently brought to bear on them and some of them go so far as to agree that they will suggest a price. In some cases that is sufficient where the dealers in the particular trade are not of a mind to compete. You cannot make men compete but you can make conditions that will make it very difficult for them not to compete. There may be some within the group who will

compete; it may be only one, but even one can upset the apple cart by starting to quote lower prices. A suggested resale price is not condemned under the draft bill here. I think there will be a lot of dealers who will take that as their cue and will follow the suggested resale price, but they won't be able to hold it if any active price competition develops within the trade.

Q. Referring to what has already occurred, would you say there has been a rather rigid form of enforcement of resale price maintenance by manufacturers generally?—A. I probably know more about the drug trade than the others. I have had to do with it since 1925 and from time to time in my experience it was very rigidly enforced, but in some cases even within that trade they were very lax in their enforcement measures. Generally speaking there is a great deal of difficulty enforcing action within the trade. If there is laxity and prices are not holding, then pressure comes from the trade on the manufacturer to get him to do something about it.

Q. In pursuing this I may suggest to you this is one aspect of the whole thing that bothers me very greatly, this private law enforcement. Now, you indicated in the course of your previous evidence that in 1925 you observed the practice of resale price maintenance.—A. That is in the drug trade.

Q. You were combines commissioner, I believe, for twenty-three years?—A. Registrar first and commissioner later.

Q. Did you observe a progressive increase over those years in the expansion of resale price maintenance, was there more or less a regular increase from year to year, was it a growing thing?—A. I do not think I can say it was an increase was observed from year to year. We thought we recognized some recession in the practice after the P.A.T.A. case, but we did see the movement develop as fixing of prices by individual manufacturers succeeded the overall arrangement that was found under P.A.T.A. where manufacturers, retailers and wholesalers were all in the same association. It was not a case of year to year—decade to decade, if you like.

Q. A progressive trend in that direction?—A. Yes.

Q. Did you at any time feel sufficiently concerned about it that you had occasion to recommand legislation?—A. No, we gave it a lot of thought but never came to the point of recommending legislation.

Q. Would that possibly result from the fact that under the Combines Act as it stands today you couldn't do anything about it if you wanted to?—A. I thought we could do something under the Act as it was, and in the years following the war we were faced with a number of very serious cases of other types. We had specific cases that were demanding attention and you will remember the several cases that were developed in 1947, 1948 and 1949. In that period we did give thought to resale price maintenance but it was always in the in-between moments of a pretty busy life.

Q. But you did feel that a sufficiently serious situation had developed so that action should be taken.—A. Very definitely in our thinking in 1948, and if we had had nothing else to do but work on resale price maintenance we would have come through with the kind of recommendation you have here.

By Mr. Murray:

Q. Were you ever in the retail drug business?—A. No, sir.

Q. I want to say while you have not been very friendly to us and our position I am not going to speak the same of you. I want to say to you first of all the public will justify the position of the retail druggist in the economy of Canada today, and notwithstanding what you have said we are performing a professional service for the health and well-being of the people of this nation.

Now, I want to say, Mr. McGregor, this quotation, "eliminating price maintenance is expected to have little effect on cost of living." This view is credited to our Prime Minister as quoted in the Globe and Mail of November 21, 1951.

Do you agree with that statement?—A. Mr. St. Laurent had in mind, I presume, that a very inconsiderable number of items that are included in the cost-of-living index are in the price maintained area. After all, resale price maintenance does affect only one segment of all retail selling.

Q. What percentage?—A. I have heard estimates from 10 to 15 to 30 per cent.

Q. You don't know definitely?—A. No, I don't.

Q. Do you still agree there is an honoured place for the small business man in the community, the grocer, the baker and even the druggist?—A. As the son of a retail grocer, and I am very proud of it, I have a lot of sympathy, not sympathy in the sense of pity, but a lot of fellow feeling for the people who are in the distributive trades, and a real appreciation of the kind of necessary work they are doing in that field. I do feel they are doing much for the community, but I do feel those whose volume of business is exceedingly small are not getting a living out of it anyway and it is no kindness to them to encourage them, by restrictive measures, to carry on. Even a man doing a $20,000 business a year and fifty per cent of the druggists were doing less than that in 1941, have not much of a living from it.

Q. I notice a statement on page 10 of your brief in which it says that for years grocery stores and independent retail groceries were not eliminated, they are still going strong. I find it hard to believe that, sir. In my own city today—formerly there were nine independent retail grocers who were in the business section of my city, and there are now but two. In view of that it is hard to believe the statement you have given.—A. I have a record here that appears in the Canada Year Book as to the number of commercial failures in the food trade. In the year 1949 there were sixty, and that is out of 48,468 retailers across Canada. There were forty-five in 1948, twenty-five in 1947, five in 1946 and seven in 1945. In that same period the commercial failures reported in the same pages of the Canada Year Book show one commercial failure in the drug trade in 1949, one in 1948, one in 1947, one in 1946, none in 1945 and two in 1944. In view of that I do not see why one is not justified in saying they are still carrying on. It may be going too far to say they are still going strong, but they are still carrying on business.

Q. I have not a keen scintillating mind like members of the legal profession such as Mr. Phelan and Mr. Favreau, but take an elementary proposition. Supposing you are a clerk of mine and supposing this predatory price cutting has reached serious proportions, suppose you come into the store and I have two types of tooth paste, one a nationally advertised, well known, consumer accepted, but by reason of this predatory price cutting it has reached the stage where there is no money in it. What are you going to do when a customer comes in your store, will you just show that and display it, or are you going to show him this tooth paste on which you make a greater percentage of profit? Which one are you going after if you are in my position?—A. I should think I would go after the one I was getting the most out of.

Q. You might even go to the extent of not displaying this article, not even merchandising it or showing it?—A. No, not that far.

By Mr. Murray:

Q. I suggest to you that has happened and it could happen again?—A. Well, if there is evidence that predatory price cutting has reached that stage, or when there is evidence it is likely to happen, that is the time, I suggest, to consider shaping legislation; but I think you should have in mind the difficulty of producing legislation that will prevent that and that alone—and not do a lot of harm in other directions.

With respect to the practice of selling below cost, right here in Ottawa, on December 4, retail grocers are selling some of their lines at less than cost plus 5 per cent and it is a regular practice.

Hon. Mr. HORNER: Turnover is the answer there.

Mr. BEAUDRY: On which lines?

Mr. CROLL: If you are losing on all lines or on a great number of lines how do you make up on turnover?

The CHAIRMAN: Mr. Murray, will you continue, you have two minutes.

By Mr. Murray:

Q. Mr. McGregor, then I take it you do not think it right or fair to jeopardize this manufacturer who has built up a quality line, has advertised it, and has given it consumer acceptance over the years?—A. I do not think there are any special provisions which should be made for the protection of the manufacturer. In putting out his lines he takes his chances with everybody else in the market.

Q. But if I in turn do not show it and display it, am I holding good faith with him?—A. I did not say I would do that if I were a clerk in your store.

Q. Well, we are in business to make a profit and if this item is not going to make me a profit I am going to feature one that does.

Mr. CROLL: Hurrah for private enterprise.

By Mr. Murray:

Q. Let me put it another way. Supposing I hired you to manage my store—and I may have to if this thing goes through— —A. I am not available, sir.

Q. Well, supposing you were available and supposing I did hire you, you are going to have to handle cigarettes in my store at 10 per cent; you are going to have to handle a lot of medical supplies for the doctors of my community at 15 per cent; you are going to have to handle a lot of these patent medicines, cosmetics, face powders, and all the rest of it—at I do not know what price. Today, the present rate is approximately 33½ per cent but if this obsession of yours is given sway that percentage will be considerably cut. It is true that you are going to sell a lot of pharmaceutical specialities at a little higher percentage but the whole thing adds up that you are going to have to have a gross margin, taking the year 1950 figures as compiled by the Dominion Bureau of Statistics, of 28·9 per cent?—T. To cover your costs?

Q. That is gross margin.

Mr. HEES: With that you would just break even?

Mr. MURRAY: No, that is gross margin. Operating expenses according to the bureau were roughly 17 per cent last year.

The CHAIRMAN: Your last question Mr. Murray.

By Mr. Murray:

Q. Well, my question is if you are going to take this great percentage off these items where are you going to make it up? We handle over 10,000 articles in a drug store today. It has been said that 60 per cent of that number is in the price maintained field. I cannot see any other alternative but that you are going to have to put up the price on the other 40 per cent in order to stay in business?—A. If you can put them up in the face of the competition you have from your competitors? But you spoke of 28·1 as representing your gross margin. Your operating costs are what part of that?

Q. 17 per cent?—A. 17 per cent. Well, does that mean a net of 11·1 per cent?

Q. No, the net would be 11·9 per cent, not including proprietor's salary, and not including income tax.—A. Yes. Well, I would look at it this way. You say that you must get your costs out of the business. Costs are one thing

under one set of circumstances and another thing under another. If there is pressure to bear on your prices, downward, you may find you will have to trim your costs somehow or other. That is done.

If a person's income were $4,000, his cost of living would probably come close to that figure. Then, Mr. Abbott comes along—

Mr. CROLL: And Mr. Sinclair. Do not forget Mr. Sinclair.

The CHAIRMAN: Just a loyal follower.

The WITNESS: Let us go back to the days when income tax was increasing. In those days your income was just about equal to your costs and you did not know how you could get along with less. Mr. Ilsley came along and said, in effect: your income is reduced by $500—the tax you are going to pay. Because there was irresistible pressure from some other direction on my income I found ways and means of bringing my cost of living down to the lower level—just as the business man must find similar ways when the competitive pressure is brought to bear on his costs.

In the coal enquiry we made in 1933, we employed accountants and we spent about $25,000 to find out the cost of importing and distributing a ton of coal. The profits were recorded as about 59 cents a ton—the price being about $14.50 a ton. A couple of years later another investigation was made, by Dr. Tory. He made an investigation with his accountants and it was shown that while costs had increased by nearly $2 a ton, and the price had declined about $1.50—from $15 to $13.50—there was still a net profit in the business of 25 cents a ton.

What happened was that pressure was brought to bear on the cost; and one thing that happened was that suppliers in England cabled to the importers in Canada to say: Now, since you have not got the control of the market you used to have, now that these agreements to control prices are no longer effective, we will give you a reduction of two or three shillings a ton. They did—and administrative and other costs were cut.

Until that pressure of competition is applied to prices, the costs are likely to remain the same.

Q. I appreciate your comment, Mr. McGregor, but I think as a merchant today we are all fighting two forces—higher costs on the one hand, and also a diminishing spread on the other. That is why I cannot see where your theory is going to be compatible with still carrying on.

The CHAIRMAN: Dr. Blair.

By Mr. Blair:

Q. Mr. McGregor, when you were talking about the drug trade you made reference to the wiping out of the small inefficient drug store. I judged, after some of your remarks, that some of these drug stores have not had a large volume of business over the years. I suggest to you that some of these smaller stores are in the outlying districts where it is necessary to have drug stores; and some of the drug stores may have had to go into other lines of business such as selling magazines, and other things that do not appear in some of the larger drug stores. Would it be wise and in the interests of the public if these small and so-called inefficient drug stores were wiped out?—A. I might point out that I did not use the word "inefficient". I did use the words "small volume".

Q. I got the word "inefficient" somewhere?—A. I may have used it but I try to keep it out of my vocabulary in regard to the trade. "Incompetence" was used in the table I quoted from Dun & Bradstreet, and perhaps that is where it came from.

Q. Yes?—A. It is quite true that in these outlying districts certain drug stores may be very important. Probably they can get along and they will not be one of the low-volume dealers that I referred to. That druggist can get along because he has some other sources of revenue through carrying on another kind of business.

Q. My second question is that there was a time when a drug store was called an apothecary's shop. It dealt mainly in drugs and prescriptions. However, I find a change and the druggist no longer mixes up powders or ointments, and in a great many cases he does not fill liquid prescriptions. Nor does he make pills according to a doctor's prescription. Would it be wise, in your opinion, to have grocery stores handling drugs—even patents or proprietary preparations? I might mention Pablum. Very often a doctor will write a prescription for a certain type of baby food. It may be some form of milk, or it may be Pablum or that sort of thing. Would it be wise if a lot of these things were gradually turned over to the grocery store? I might give you an example. I have always felt that a tablet such as A.B.S. & C. should be sold under direct supervision because every once in a while you will get some child suffering from strychnine poisoning. A lot of these preparations, if they fell into the hands of the grocer, would lead to a more or less dangerous condition. I admit that country stores will have to carry veterinary products, and they also carry some so-called patent or proprietary preparations. But, would it be wise to let grocery stores handle those in competition against the drug store?—A. I think that would be a matter for those who administer the Food and Drug Act. Already the state has prevented, and wisely presented, any other than drug stores carrying certain kinds of drugs. I should think those people would be the proper ones to make a decision as to whether that list should be expanded or not. However, I do not think that many of these items such as are now being carried in the grocery stores should be sold exclusively in drug stores.

Q. Well, some grocery stores, with the exception of the people in country areas, are gradually going in other ways. I call your attention to the fact that a druggist is a man who has had to put in a period of apprenticeship. He has had a four year course at college and is it not reasonable that drugs should be sold by druggists and it gives more efficient protection to the public if a druggist and not a grocery clerk handles those things?—A. I do not think they need to be professional men...

Q. I am comparing the druggist with the grocery clerk. After all, the druggist is a trained man?—A. But you do not need a trained man to sell a package of Kleenex or even a package of Pablum, or a bottle of aspirin if you like. When a person goes into a drug store to buy a bottle of aspirin the drug clerk does not refuse to sell it to him or give him advice as to whether he should have it.

Q. I suggest to you that there are no longer apothecaries and they have had to take on additional lines to make a living. Is that not true?—A. Yes, I agree with that.

Q. There was a suggestion about drug stores demanding full list price, and you are aware that you can have a prescription or medicine of much more value when made by one firm than another. I will cite a case that is common today—vitamin B complex tablets. There are houses who are putting up that preparation and I might mention a few of the ethical houses like Squibbs, Burroughs, Parke-Davis, where the prescription is placed on the label and it is exactly the proper prescription. However, chain stores like Eaton's will sell vitamin B complex pills at a quarter of the price and the public say: Oh, that is vitamin B complex.

That brings us around to the question of standardization of drugs. Let us suppose that we have a heart case—a man who has some form of digitalis. I may, and I very often do, put at the bottom the name of a certain company because I know their product stands for something. I could get digitalis at one-third of the price at some other drug store, or the druggist might substitute some other company's product. I want to be sure that the patient gets the full standardized dose of that drug in order to get the best effect. A tincture of digitalis could be weak as far as this standardization is concerned, and it is a very important thing that the patient gets the proper dose of the medicine. That might apply to other things, like liver extract. The field is full. Many of these companies put these products out with a price on them. For instance, a case of Vitamin B Complex, do you not think it is better that they get a standardized product that has the name of an ethical drug firm on it?—A. The doctor will prescribe Squibbs, and not XYZ.

Q. Yes, but the patient sometimes goes in—and I mentioned Vitamin B Complex—the patient goes into drug store and they will tell you later "Well, I saw this in Eaton's at a quarter of the price". Do you not think that the fixed price there stands for the integrity of the house that made it?—A. I would like to know more about what the cost of production was in the first place, of the cost of the ingredients and just how much the element of prestige is included in it; many, many people buy Bayer's aspirin just because it is 79 cents and will not buy any other at a lower price.

Q. We won't enter into a question of Bayer's aspirin and spend 20 minutes on that. That was a matter of trade mark; the Bayer people let the public use their aspirin for 20 or 25 years and suddenly closed down on their trade mark, so other firms had to put theirs up with a different name on it. It might be called A.S.A. tablets or Acetyl-salicylicate, grains 5. That was a matter of trade mark.

The CHAIRMAN: This is your last question.

Mr. BLAIR: I come back to this one.

Mr. FULTON: Mr. McGregor has agreed that it would be better to have facts and figures on costs.

The CHAIRMAN: On the cost of aspirin, or certain products.

By Mr. Blair:

Q. My last question is on this matter of pharmaceutical specialties apart from proprietary or patent medicines. Now, there are many good ethical firms who put up what they call their own specialty, and the prescription is on that, and I suggest to you that I know some of these; I know of one firm in particular where they have not changed the price of their product in 25 years. It is a fixed price, but they have not changed it, and in the matter of proprietary medicine—I am not going to talk about proprietary or patent medicine, but one has to admit that sometimes they might have some value and at other times you do not get what you pay for, but in cases of these specialties I checked up and went to the trouble to get some information about these things, and found out that some of these good houses have never changed the price of their specialty, although it sells at a fixed price.—A. You say that is over a period of many years?

Q. I know one firm hasn't changed the price of their product for over a period of twenty years.—A. I would suggest they must have had a healthy margin to start with, considering the costs that have increased over the years for labour and everything else.

By Mr. Fulton:

Q. What about increased turnover due to national advertising, wouldn't that be an equally important factor?—A. It would have its effect.

By Mrs. Fairclough:

Q. I would like to suggest to you, Mr. McGregor, the figure you gave with regard to commercial failures may be augmented to a marked degree by those people who do not go into formal bankruptcy but merely close the door and pay their debts. I think when you get into the field of very small retailers that is a very common occurrence. He sees he is going and he doesn't wait until he sees his debt is so large that he is forced into bankruptcy. You have no records of those so these figures you gave can scarcely be construed as a correct statement of the failures in the country.—A. It doesn't include settlement cases, and there may be many, as you say.

Q. You were speaking of 236 drug stores with a volume of less than $5,000. Would you say all these were self-contained drug stores depending only on the drug trade or would they be departments of large stores?—A. They may be in country areas run in conjunction with some other branch of business and that is the kind of thing that would not disappear.

Q. Nevertheless you made the statement that it may be just as well if these people were out of business because they are not making a living.—A. The ones not making a living are the ones that may have difficulty in carrying on.

Q. But you did speak of these 236, and you mentioned some others with a volume under $10,000, and intimated it would be just as well if these people weren't in the business because they weren't making a living?—A. I said they might decide to get out because the return wasn't sufficient.

Q. The intimation was there however it was worded. I would suggest since there has been a considerable discussion as to the restriction of competition, if you are going to encourage these people to close up you are going to have fewer outlets for goods and if you have fewer outlets you have less competition because the competition centres only in the large centres and in large stores. —A. Of course you have competition between the large stores and the small stores, and between the large and large.

Q. And the tendency then is to concentrate on the large stores?—A. Not all businesses. As far as chains are concerned you would know more than I do about the percentage of business done by chain stores; they have increased gradually from the twenties and I think probably they have reached the peak now.

Q. In following up what has been said by other members of this committee this afternoon, I think the idea is abroad that definitely you would approve of the elimination of these small businesses?—A. Not approve, I am saying automatically they will disappear on their own.

Q. You say automatically they will disappear, but you support this legislation which is going to make them disappear.—A. I think the ones who are going to disappear are the ones who have not been getting sufficient returns. If a man is only getting $1,000 or $2,000 he may be induced because of the small return to withdraw from that field.

The CHAIRMAN: One of the members points out the figures given by Mr. McGregor earlier were the 1941 figures on the number of drug stores which had a volume smaller than $5,000 and $10,000.

The WITNESS: It was from the last census, which we had in 1941.

By Mrs. Fairclough:

Q. This wouldn't obtain today because 1941 was an entirely different period. Proceeding along the same line, what is going to happen to these people who close up? I think all of us have within memory the period we went through between 1941 and 1946. In that period the consumer was the victim of short supply in many lines of goods and we had an elaborate association set up to ensure an equitable distribution of goods. Now, if these small people are

thrown out of business, and we once again get into a period of short supply, it will mean that the people who live in remote areas and those who live in small communities would have a far less chance to receiving their proper proportion of goods.—A. The period 1941 to 1946 was a period of emergency that was created because of war conditions. If that occurs again I think you will have to change the whole type of control, as we did in 1941, from a competitive economy to one of direct government price control and control not only prices but rationing of goods.

Q. You cannot very well set up the stores that have gone out of business in the meantime to handle goods that are in short supply. One of the highlights in the last war was the very efficient manner in which goods were handled and distributed to all parts of Canada, and they could not have reached the consumers save through the hands of the small business man who himself performed a service in that community by saying, "I am going to make sure that Mrs. Jones gets her share and Mrs. Smith gets her share." They made sure people did not go from store to store and take articles home and store them in the cellar. There were a great many goods in short supply at that time that were not rationed. I think there is more to this problem than whether or not the manufacturer is allowed to protect his profit by naming the price.

The next question I would like to come to is this: if I am not mistaken you alluded to it being an offence, or the legislature would make it an offence to maintain the price on an article. What would you do in the case of a manufacturer who is his own distributor, and I cannot think of any specific example that is better than that of a large department store which has its own brands and its own manufacturing facilities. If it is an offence under this proposed legislation to name the price, how are you going to handle the manufacturer who manufactures the article and sells it in his own store and undoubtedly names his own price and figures his own spread?—A. He is not fixing resale price, he is fixing his own sale price, The manufacturer has the right to fix his own selling price, and a manufacturer who has his own distributive outlets has the right to fix his selling price.

Q. Mr. McGregor, I suggest the ultimate aim of both manufacturers, whether they have a retail outlet or not, is the same? That is to sell their article, and, if to sell that article it is to their advantage to put upon it a brand name, or advertise that brand name and to set an end price, then who shall say the manufacturer who has no retail outlet is less than the manufacturer who has a retail outlet?—A. You are setting up another series—you are setting up for one thing the wholesaler in between, and the retail establishment. Now, the manufacturer who fixes his own resale price right through is taking the responsibility for the distributors' cost of operating. He determines what this margin should be.

Q. I suggest that he takes them just the same. He has his own warehousing facilities and he can deliver his article directly from the machine that manufactures it to the counter that sells it. He has to have his own warehouse and his own distribution pattern regardless of whether he puts it through a wholesaler or retailer or not?—A. Yes.

The CHAIRMAN: This is your last question, Mrs. Fairclough.

By Mrs. Fairclough:

Q. All right. You mentioned a while ago that you were not opposed—I think you said you were not opposed, or I guess the report was not opposed—to "suggested resale prices". There was some discussion as between suggested resale prices and strictly maintained resale prices. Some prices which are suggested may be rather rigidly maintained, and we know there are a number

of prices which are merely suggestions on behalf of the manufacturer and the retailer is not forced or protected by the manufacturer, but those will not be covered by the proposed legislation.

Now, to what extent would you think control of suggested resale prices might go? To the extent of placing a price on a product?—A. It might be, yes.

Q. Would you think it would not be illegal under the proposed legislation to put a price on a label or a bottle or a shirt?—A. No, under this particular proposal it does not seem that it would. This bill does not go the whole hog but it may be that it would prevent the enforced price. There is still a lot going on in suggested prices where really competition is not working and you might later, in a few years hence, find it is doing damage and have to deal with it.

Q. You say that the next step may be the abolition of the suggested price? —A. It may be that a situation will develop where competition is not working. Perhaps not, and if not I think it should be left free. As long as a man is free and does not have to adopt the suggestion of the manufacturer, then I think probably it is better to have the form of the bill as it is here.

The CHAIRMAN: Mr. Croll?

Mr. CROLL: Mr. McGregor, will you for a moment enlarge on your definition of "predatory price cutting"?

Hon. Mr. HORNER: We had that over at great length.

The CHAIRMAN: Senator Horner, Mr. Croll is entitled to his five minutes or ten minutes just as is any other member. He may ask a question if something is not clear to him. There have been many questions that needed elaboration.

Hon. Mr. HORNER: I suggest that the witness is taking up too great a length of time. We had an investigation this morning where the witness was directed to say yes or no.

The CHAIRMAN: I had the peculiar idea that the witness was before us to give us information. He is here for the purpose of being questioned in that sense; we are to elicit information from him.

Hon. Mr. HORNER: This conversation is very interesting but it is not getting on with the work. He might answer the questions more quickly.

The CHAIRMAN: Will you continue your questioning, Mr. Croll?

The WITNESS: I did refer to predatory price cutting as any selling below invoice cost for the purpose of—

By Mr. Croll:

Q. Achieving monopoly?—A. Achieving monopoly in the end, or driving out competitors and achieving monopoly.

Q. Well, following some of the questions put by other members—you have read the minutes I presume? You have been following the committee reports? —A. Not all of the evidence. I have not been able to keep up with it.

Q. One of the things that worries me and worries some of the members of the committee is the statement that the brief presented by Eaton's; and the statements in the telegrams—correct me if I am wrong Mr. Chairman, if I have not the right names: Eaton's, Morgans, Hughes in Hamilton, and was it Murphy-Gamble in Ottawa? And one other?

The CHAIRMAN: Calps, in St. John.

Mr. CROLL: Those are five large departmental stores who took it upon themselves to wire this committee indicating that they were in favour of the legislation.

The CHAIRMAN: Excuse me, they did not wire the committee but they wired the president of their association.

Mr. CROLL: Yes, and he conveyed that to the committee. Would you comment on that, Mr. McGregor? It is a worrisome matter to us?

Mr. FULTON: Why does it worry you?

The WITNESS: They are only half a dozen of the members of the Retail Trade Federation but they are very important members. Their volume of business is very considerable but there are a lot of others—Hudson's Bay, David Spencer—

Mr. FULTON: David Spencer is Eaton's now.

Mr. CROLL: Yes, and the Simpson Company. Let us assume for the moment that they were not bold enough to wire or to instruct their association—

Mr. HEES: There were two whose names were not mentioned.

Mr. CROLL: I am assuming—

Mr. BEAUDRY: Why assume?

Mr. CROLL: Just let me put the question.

The CHAIRMAN: They said that was their view but they did not want their names—

Mr. CROLL: Do you remember Mr. Harris' evidence. I think he said he would liked to have commented but he did not feel that he should.

The CHAIRMAN: Let us have Mr. McGregor's evidence, and not Mr. Harris'.

By Mr. Croll:

Q. I am assuming for the moment that the others were bashful about informing their organization?—A. I would not know.

Q. No, no, but I am assuming that for the moment. These are five or six firms which have expressed that view and it is a worrisome matter for the committee—that these large departmental stores should be in favour of this legislation. They feel that there is something—'sinister' is the word in the sense I am using it, about this legislation.—A. The question?

Q. I am asking for your comment.—A. They are expressing their view, as any other large concern would, or any other small concern would.

Q. You presume it would be in their own interest?—A. Yes.

Q. Then we come back to the question—some of us cannot reconcile the interests of this very large group as against the interests of the small retailer. Now, we fear, as between the two, that your definition of achieving monopoly will likely bring that unless we give them some safeguards.—A. Such as preventing this type of practice?

Q. Yes, such as preventing this type of practice, exactly, that is my point. —A. Is it not a matter of determining what evidence there is that such a practice has been engaged in?

Q. You see, we have great deference for your views, Mr. McGregor, because for 23 years you were in all this. Do you agree with me on this—it is my view that the grocery chain has brought down the cost of living in that line.—A. It is my opinion, too. The chain method of distribution has eliminated a great deal of waste, and it has also increased the efficiency of many of the independent stores which are not chains.

Q. It is also my view that with respect to the department stores—and you know what I mean by department stores—that their mark-up in the main is larger than that of the ordinary store, and that they take it out of the manufacturer.—A. I have heard that said; I have no evidence.

Q. Well, did you ever come across it?—A. No. I am recalling the Price Spreads Inquiry of 1934-35, where there was evidence of this kind of thing.

Q. To that extent?—A. To?

Q. You say there was evidence before that committee at that time, that that was being done.—A. Yes.

Q. My suggestion to you, Mr. McGregor, is that the department store serves an entirely different purpose that the chain grocery does in the community.—A. Different, yes.

Q. Yes, and a less social purpose.

Mr. FULTON: What you mean, Mr. Croll, is the mail order department store.

The CHAIRMAN: It might be helpful if you emphasized the difference.

Mr. BEAUDRY: I hate to bring up a point of order, Mr. Chairman, but is that referring to anything in the brief originally submitted? It is also six o'clock.

The CHAIRMAN: I am glad you raised that. One speaker has indicated that he would like to ask a question and he has promised that he will not cover any questions that have been asked before. Is it agreeable to the committee that even though it is six o'clock Senator Horner can ask his question?

Agreed.

By Hon. Mr. Horner:

Q. Thank you very much, Mr. Chairman. Mr. McGregor, you have lived in a city all your life?—A. I was born in Ottawa.

Q. And you have never lived in a small community during an epidemic such as the flu?—A. No.

Q. I thought so, or you would never have suggested putting a small druggist with a small turnover out of business. I have seen places where a doctor was not available and the druggist was on the go day and night in many of the sparsely settled villages in Saskatchewan. There the druggist is very much in the forefront of things. Now, you have heard evidence from a druggist and a doctor. I am a person who raised a family and have always been able to secure from a qualified druggist medicine that was not available, only through a doctor who was not there. I would like you to consider these druggists in a different light. They are only existing now because of this resale price maintenance that you wish to abolish.

Another thing: What action would be taken, for instance, where a manufacturer who establishes a set price for his product under resale price maintenance, and if that is abolished and the retailer refuses to sell at that price, what action could be taken to force that manufacturer to continue to sell if that retailer had sold at a price at which the manufacturer did not believe he could make enough money to cover his invoice. Now, most business is done on a 30 day basis. You are going to call it a free economy where a manufacturer would be forced to supply a merchant who he knows is selling his goods at a price that would never enable him to pay him for his goods. Do you call that free economy?

The CHAIRMAN: I am just waiting for your question, Senator.

By Hon. Mr. Horner:

Q. Does he think it is a light matter to have a druggist put out of business in these small communities; and could he tell us how, in a free economy he would punish this manufacturer who refuses to sell to a man who in turn sells at a price that he cannot make a living at? Those are my two questions.—A. I would like to say for one thing that I did not treat it in a light way and I have never thought of it in a light way. The public may decide that they are not performing the service that is required. I did not suggest that I would put them out. It is not a matter of any government organization putting them out of business, it is the community deciding that the particular

services are not required, and the decision in the end is for the man himself. If he is not getting a sufficient return for his services perhaps he may do better to accept such a position as was offered to me a little while ago as a clerk in a Woodstock drug store. It may be they can better serve the public and themselves by engaging in some other occupation.

Q. I am speaking of the people to be served in the community; what about consumers, those in need of a druggist?—A. They are being served in every community in Canada and this is not eliminating them.

Q. I beg your pardon, they are not being served in every community in Canada. —A. Even under resale price maintenance?

Q. No, there would be many, many more out of business without this.

The CHAIRMAN: Now, are we going to start on the second round or stick to the 6 o'clock rule?

Mr. BEAUDRY: I appreciate your difficult position, but I also know your fairness and I have not had a chance to question this witness since I read his brief. Furthermore, through circumstances entirely beyond your control we lost approximately fifty minutes of this witness by reason of the fact the two votes happened on the two occasions he has been here, and I submit that normally we would have had the witness with us for an hour longer. I think we should have the witness before us again.

The CHAIRMAN: This point arises, as with every committee, as to how long we will go with any witness and I think the committee feels we have had two goods rounds with Mr. McGregor. My own feeling as chairman is we have had two adequate days with Mr. McGregor, who came voluntarily as a witness, and we should now proceed.

Mr. BEAUDRY: May I refer you to a citation, I think it is at page 557, referring to standing orders of the House which says any member of a committee may question any witness.

The CHAIRMAN: If you had attended as many committee meetings as many of us have you would know this.

Mr. BEAUDRY: I know, I have been an unfortunate person all my life.

The CHAIRMAN: After all, in this country we go by majority rule.

Mr. BEAUDRY: Yes, but also House rules.

The CHAIRMAN: I certainly feel a reasonable examination has been had of Mr. McGregor. If the steering committee which meets tomorrow at 3 o'clock feels it is in the interest of all parties of the committee and both Houses that Mr. McGregor be asked again to come forward, it will be so asked.

Mr. BEAUDRY: On a point of privilege, I am definitely not willing to defer to any member of the committee, steering or otherwise. It is my privilege as a member of the House of Commons to question a witness. It says so in the book.

The CHAIRMAN: It also says in Beauchesne, the book to which you have devoted so much study recently, that the chairman or the speaker has the right to put a cessation on—

Mr. BEAUDRY: Would you quote the citation?

The CHAIRMAN: I would have to get it—

Mr. BEAUDRY: I would be quite willing to take it from Mr. Burgess.

The CHAIRMAN: More than that, the chairman has a right to put an end to repetitive questions—as Mr. Burgess showed me this afternoon. I will also leave it up to members who have listened to your line of questioning—

Mr. BEAUDRY: Which ones? I have not put any questions since I have seen the brief.

The CHAIRMAN: I do not want to get into a hassle like this but the members will remember that Mr. Beaudry repeated one question three times.

Mr. BEAUDRY: And Mr. McGregor evaded the answer three times.

The CHAIRMAN: No; he said he did not understand it and no member of the committee understood it either, even after three repetitions.

However, tomorrow at 3 o'clock, the steering committee will consider your request that Mr. McGregor be recalled and we will report accordingly to the whole committee and the majority will decide. The meeting is adjourned.

The meeting adjourned.

APPENDIX A

The Joint Senate—House of Commons Committee to consider the Interim Report of the MacQuarrie Committee appointed to study Combines Legislation.
Gentlemen,

Resale Price Maintenance

The Canadian Manufacturers' Association welcomes the opportunity of endeavouring to refute the arguments and conclusions on the basis of which the MacQuarrie Committee recommended "that suppliers of goods should be prohibited from requiring or inducing distributors to sell such goods at fixed or minimum resale prices".

Resale Price Maintenance Does Not Make Prices Higher

The first of these conclusions was that resale price maintenance has the effect of making prices higher than they would be otherwise, because it requires the efficient retailer to sell at the same price as the inefficient retailer. If there were no resale price maintenance, so the argument runs, the efficient retailer would pass on to the consumer in the form of reduced prices the economies he has effected in handling the goods. In other words, resale price maintenance denies the efficient retailer the advantage to which he is entitled over the less efficient retailer of getting more business, and denies the consumer the advantage of lower prices.

This argument seems clearly based on an assumption that the manufacturer fixes the resale price at a level which will enable the inefficient retailer to stay in business, at the expense of the consumer. The fact is, it is submitted, that the manufacturer in setting the resale price is not thinking in terms of providing an adequate margin for the retailer either efficient or inefficient; his problem is to set a price at which consumers will buy his product.

He knows only too well that if he sets the price too high, from a desire to protect the retailer or otherwise, his sales will suffer. There is a definite price at which consumers will buy a satisfactory volume of any article. That is the primary "fact of life" the manufacturer must face. The consumer's price, then, is something standing by itself depending on the price of competitive products and the willingness of consumers to pay. It has nothing to do with the relations between the manufacturer and the retailers. So far as that relationship is concerned, the manufacturer's objective is obviously to allow a margin for the retailer or wholesaler just sufficient to provide an inducement for enough of them to handle his product to provide a satisfactory volume of sales. All he wants to do is to sell his goods and if he can get sufficient retailers to handle his goods on a 25 per cent margin, he is not willingly going to pay a 30 per cent margin. For the retailer's margin is something that comes out of what the consumer is willing to pay, so that the larger the retailer's margin the less the manufacturer gets. In these circumstances, it is clear that the manufacturer will not allow any larger margin than is necessary. What the MacQuarrie Committee failed to realize, it is submitted with great respect, is that where the real difference in selling costs is found is between different types of goods rather than between different classes of retailers for the same goods.

If the governing consideration in determining the resale price is what the consumer will pay, and the manufacturer has no interest in protecting the inefficient retailer, it is difficult to see how resale price maintenance can have any appreciable effect in the way of making prices higher than they would be otherwise.

The MacQuarrie Committee's contrary conclusion that resale price maintenance raises prices and harmfully curtails competition at the retail level is based, it is submitted, on the assumption that the large volume retailer is necessarily more efficient than the small volume retailer. "The cost of distribution", it observes, "is a very substantial part of the price which the consumer pays, and changes which remove that part of the consumer price from the influence of competition seriously restrict the working of a competitive system". But the fact is that the large departmental or chain store, instead of operating at a lower cost per dollar of sales than the small retailer, requires as a general rule, more margin than the small retailer. The large retailer's method of operation is generally to buy at an appreciably lower price and sell at a slightly lower price, than the small retailer. Therefore the small retailer can compete on an operating cost basis with the large retailer and still be quite unable to sell at the same price as the large retailer.

Resale Price Maintenance Does Not Improperly Restrict Competition

A second major conclusion of the MacQuarrie Committee is that resale price maintenance "represents a real and undesirable restriction on competition by private agreement or 'law' ". "When measures of enforcement are involved", it states, "resale price maintenance establishes a private system of law allowing no appeal to the courts of justice". In support of this view, reference is made to a statement in a recent British White Paper to the effect that while a trader who charges too much and is proceeded against by the State under price-control laws, can always appeal to a higher court, the penal proceedings under resale price maintenance which may have the effect of driving a shopkeeper out of his trade,—"take place behind closed doors and without any supervision by the courts or by Parliament".

As to this, it is submitted that there is no parallel between the enforcement of price-control laws passed by Parliament, which necessarily carry with them an appeal to the courts, and the enforcement of a contract by one party to it. The manufacturer who practises resale price maintenance agrees to let the retailer handle his goods on condition that he resells them at the price set by the manufacturer. Both parties are entirely free to enter into the agreement or not as they please. The manufacturer does not enjoy any public franchise, as does a common carrier for instance, which carries with it the duty to supply his goods to anyone who wishes to take them. Similarly, the retailer is not tied down in any way to the particular goods in question; it is not a question of the manufacturer concerned having a monopoly. What he has got is an article in the resale price of which he is vitally interested because it bears his name, and the manner in which the article is sold can seriously affect his reputation and the actual volume of sales. He wants to guard against two things: first, if a retailer offers the article for sale at a reduced price it disturbs public confidence in the article at any price; second, the manufacturer will not be able to find a sufficient number of retailers to buy the article if they have no assurance of being able to resell at a reasonable margin of profit.

In these circumstances, it is difficult to see why the manufacturer should not have the right to make it a condition of any dealer's handling his goods that he resell at the price set by him. This is not to claim the right to "establish a private system of law"; it is simply to assert the principle of freedom of contract. To revert to the British White Paper parallel between a breach of price-control laws where there is an appeal to a higher court and the enforcement of a resale price maintenance agreement where there is no such appeal, it would be interesting to know on what principles the courts or Parliament would pass judgment on a resale price maintenance agreement. If the terms laid down by the manufacturer and accepted by the retailer are to be rejected,

does it mean that the retailer is to be entitled to buy on the terms which he considers fair regardless of his motives or his competence? Or is it to be something between the two, and if so, how and by whom is it to be determined? It is submitted that there is no way of doing it short of the State itself undertaking the task which would indeed be a reductio ad absurdum—state regulation in the interests of freer competition.

It is submitted further that the application of the word "law" to resale price maintenance is obviously incorrect because resale price maintenance lacks the two essentials of "law" viz. establishment by public authority and application to everyone. Even if it could be claimed that resale price maintenance was an attempt to usurp the functions of public authority, it would have to be admitted that no one becomes subject to this "law" unless he voluntarily contracts to do so. What "law" is there that a person needs to specifically agree to before he becomes subject to it?

Private "law" in the same sense could be applied to thousands of situations, e.g., the hour at which a storekeeper instructs his staff to report for work, what salaries he pays, whether pay days shall be weekly, bi-weekly, half-monthly or monthly, whether he will sell his goods only for cash or, if on credit, when his accounts are to be paid, the conditions under which he will make refunds, etc., etc. The point about all these "laws" is that no one becomes subject to them unless he voluntarily contracts to do so.

This important point applies to resale price maintenance viz., that no one is required to buy the goods. If a dealer does not like the resale price maintenance terms of one manufacturer, there are always other manufacturers who would welcome his business. The dealer may equally dislike the price he is to pay, the payment terms, etc., of one manufacturer and he has the same alternative.

The fact is, it is submitted, that rather than the use of resale price maintenance constituting a usurpation by the individual manufacturer of the right to enact law, the proposed prohibition of resale price maintenance constitutes an absolutely unwarranted denial of the long-recognized common-law right of the individual to sell his goods to whomever he pleases.

It remains to add that there is reason to believe the MacQuarrie Committee did not really mean that "resale price maintenance establishes a private system of law". The Committee must have been aware that resale price maintenance necessarily involves a contract between two parties, and what the Committee objected to was that in some cases at least, the enforcement of the contract appeared unduly harsh. As to this, it is to be pointed out that the retailer has the remedy in his own hands,—i.e. he is under no compulsion to enter into the contract, and if he does not like one manufacturer's terms, he can always deal with another.

Extent of Resale Price Maintenance

The MacQuarrie Committee refer several times to resale price maintenance as being "extensively applied" and "of significant and growing proportions" in Canada. The only evidence cited was "estimates from private sources", of "12 to 15 percent of department store sales" which the Report added were "obviously not based on accurate or comparable definitions". No evidence was adduced that the practice was growing. Resale price maintenance is only applicable or in any way desirable in respect of branded products of absolute uniformity. As most manufacturers and retailers of such goods are in favour of resale price maintenance, it is fair to assume it is already in effect to whatever extent is practicable, wherever it is considered applicable. Consequently, it is submitted, with great respect to the MacQuarrie Committee, no extension of the practice is at all likely except for suitable new products that come on the market.

Resale Price Maintenance Does Not Create Undesirable Rigidity in Prices

The MacQuarrie Committee observes that "it should not be forgetten that to the extent that resale price maintenance brings more rigid and higher prices it contributes to the instability of production and the reduction of sales". It appears that the Committee had in mind, particularly, times of overproduction or unemployment. The fact is, it is submitted, that few, if any, manufacturers ever dramatize themselves as King Canutes out to hold back economic tides. When sales slump the manufacturer either reduces prices or otherwise makes it possible for the retailers to adapt themselves to the changed business conditions. Thus, if a retailer found himself in difficulties and had to liquidate stock, the manufacturer who practised resale price maintenance would seldom, if ever, interfere with the retailer holding a bargain sale. In the overwhelming majority of cases, the manufacturers would carry on with the retailer if he thought his difficulties were only temporary; he would only look for another retailer to handle his product if he thought the first retailer was going to be in continuous trouble.

Resale Price Maintenance Is the Best if Not the Only Method of Curbing the Use of the "Loss-Leader" Device

The MacQuarrie Committee states that it believes the "loss-leader" device is a monopolistic practice which does not promote general welfare and is not compatible with the public interest". The Committee goes on to say that it is "convinced that there can be found other effective and more desirable methods of controlling the "loss-leader" than minimum resale price maintenance". Again, the Committee states that "resale price maintenance no doubt helps to protect the reputation of branded goods and facilitates advertising and sales promotion", but goes on to say it "is not convinced by the argument that the reputation of branded goods greatly suffers from normal price variations and that people will think quality has deteriorated if prices are allowed to vary". "If the "loss-leader" is taken care of", the Committee concludes, "normal price reductions will not cause serious problems to the manufacturer".

From this, it is clear that the Committee realizes the necessity of taking care of the use of the "loss-leader" device, if resale price maintenance is to be prohibited. The Committee recommends, however, that resale price maintenance should be prohibited without waiting for the discovery of some new method of taking care of the "loss-leader" device, because it does not believe that the "loss-leader" device presents any immediate danger, as "extreme forms of price cutting are not very likely in this period of inflation and relative scarcity".

As to this, it is submitted that during recent weeks, not a few price-maintained articles, including motor cars and television sets, have been sold below cost. In these circumstances it is submitted, with great respect to the MacQuarrie Committee, that it would be most unsound to proceed to prohibit resale price maintenance without providing any substitute method for the control of a device which the Committee itself finds "is not compatible with the public interest". In the view of the Canadian Manufacturers' Association, there is no method of controlling the use of the "loss-leader" device that compares in effectiveness and fairness with resale price maintenance.

Resale Price Maintenance and Inflation

In conclusion, it is submitted that there is a strong case for refraining from dealing finally with one of the questions referred to the MacQuarrie Committee until the Committee's full report is available recommending "what amendments, if any, should be made to our Canadian legislation in order to make it a more

effective instrument for the encouraging and safeguarding of our free economy". It is understood that one of the principal reasons for not waiting for the full report but proceeding at once to legislate with respect to resale price maintenance is that the abolition of resale price maintenance will have an appreciable effect on the cost of living. As to this, the Prime Minister in the House of Commons on October 15th, doubted whether the effect on the cost of living would be "very substantial". In view of the small percentage of goods which are affected by resale price maintenance, it is submitted that the Prime Minister's doubt was well-founded. It is not too much to say that the disturbance and dislocation caused to business by the abolition of resale price maintenance will be out of all proportion to any effect such abolition will have on prices, and indeed it is arguable that the disturbance and dislocation involved may have the effect not of reducing but raising prices.

Respectfully submitted,

CANADIAN MANUFACTURERS' ASSOCIATION,

R. B. TAYLOR,

Chairman, Legislation Committee.

Ottawa, November 23rd, 1951.

APPENDIX B

Presentation by the

CANADIAN FEDERATION OF AGRICULTURE

to the

Joint Committee

of the

SENATE AND HOUSE OF COMMONS

on

COMBINES LEGISLATION

Ottawa, November 23, 1951

Hon. Senators and Members:—

The Canadian Federation of Agriculture welcomes this opportunity of presenting the views of organized agriculture to the joint House Committee on the proposed amendment to the Combines Investigation Act to outlaw the restrictive trade practice known as, "resale price maintenance".

Our views on this matter are likely already known to this Committee. In our brief presented to the Special Committee to Study Combines Legislation, known as the MacQuarrie Committee, in August of 1950, we recommended that: "The Combines Investigation Act should be amended to provide that resale price maintenance shall be an illegal practice when resorted to by a single individual or corporation". The reasons we advanced in that brief for our opposition to resale price maintenance were of necessity not presented very fully. In this statement we shall elaborate and further extend our reasons for supporting the proposed legislation.

Importance of the Legislation

Firstly may we emphasize our concern in this matter. We consider that the proposed bill outlawing the practice of resale price maintenance is one of the most important pieces of legislation ever to come before Parliament.

The Government of Canada for many years has recognized that modern industry has produced a set of conditions which are radically different from, let us say, a hundred years ago, when economic activity was based largely on relatively small industrial units in active competition with one another. The steady growth of large scale business concerns has tended to create concentrations of economic power which fosters the growth of monopolistic competition or imperfect competition rather than the simple competition of classical economic theory.

The only justification for the existence of any business, large or small, is for the purpose of producing goods and service for consumers. Profits in business are an end in themselves for the firms concerned, but for society as a whole profits are only a means to an end. For society profits are only useful as an incentive and as a regulator of production. In other words, if profits are based on free competition in a reasonably flexible price economy then our resources will be used to the best advantage for the nation as a whole.

If profits, however, are based on monopoly or even conditions of semi-monopoly then it cannot be said that the resources of the nation are being used to the best advantage of all the people. It is a recognition of this fact that brought about the original Combines Investigation Act and its successive amendments.

Time has proved the difficulties in the way of curbing or destroying combines in restraint of trade in spite of the present legislation. Today combines in restraint of trade, and innocent appearing associations of many business groups exist for and actively do participate in actions which result in the stifling of competition.

We are definitely of the opinion that the fact that such combines can exist in spite of the existing legislation is because individual resale price maintenance, and the practices which are used to enforce this system, have not been prohibited by law.

The proposed legislation, we are convinced, therefore, is one of the most important steps to be taken by Parliament to break up the power of combines in restraint of trade. The passing of this amendment would greatly increase the power of the Combines Investigation Act to break the power of combines and restore a measure of healthy competition where it is lacking and bring more flexibility to the price system.

Resale Price Maintenance is Private Price Fixing

Parliament may have wondered why the general public does not appear to be greatly aroused yet about the present dispute with respect to resale price maintenance. The main reason for this is that the general public does not know what the expression "resale price maintenance" means. If this technical or academic expression were dropped and "private price fixing", substituted the public would soon realize just what is involved in this restrictive trade practice. If the public were fully informed of the fact that resale price maintenance means the private fixing of minimum prices for certain goods and the enforcement of these prices by a private system of law and punishment, allowing no appeal to established courts of justice, then they would be aroused and surely demand that such practices be banned.

Price Floors for Farm Products and Resale Price Maintenance

Those who advocate the practice of private resale price fixing have cited the example of Federal Government policy of price floors for farm products and Provincial Government policy of milk boards which establish the price

of fluid milk in city markets. They ask the question, "if the government protects the farmers by price fixing why will it not allow the small merchants to protect themselves by private price fixing?".

This kind of propaganda is simply drawing a red herring across the trail of private resale price fixing. Government price floors for farm products and private resale price fixing are as far apart as the poles.

Price floors for farm products are established by the government, according to the law of the land, and only after very careful consideration of all the facts. The government always takes into careful consideration the position of the producers and the effect on consumers of any price floor decision.

Retail prices for fluid milk in cities are fixed by legally established Provincial Milk Control Boards, which function strictly according to Provincial law. Milk prices are only established after a public hearing in which the Board hears evidence from producers, distributors and consumers.

In this connection we note the following quotation from the brief submitted to this Committee by the Pharmaceutical Association:

> The popular notion is that resale price maintenance is 'price-fixing'. Such is not the case. The prices established by the Milk Control Board of Ontario is an illustration of price fixing. The Board fixes the price of all milk regardless of the producer or the distributor. No distributor can deviate from the established price without the penalty of the law.

This quotation is both incorrect and misleading. The Ontario Milk Board does not fix prices of all milk regardless of producer and distributor. Producers and distributors in city milk areas negotiate under public legislation for a producer price, and in case of disagreement, the board is the arbitrator. The board also establishes the maximum retail price, generally after public hearings, such as was recently held in Ottawa.

On the other hand minimum resale prices for certain goods are fixed by private business firms, not according to any law of the land, but according to private "law" and agreeement and enforcement by fear of boycott and a variety of penalties. The public has no recourse to this process, though the public is the group most vitally concerned.

When price floors for farm products have been established by the Federal Government they have never been set at a level calculated to return interest on the average farmers' investment, let alone profit. This applies to floor price for wheat, oats, barley, potatoes, honey, apples, cheese, butter and bacon hogs.

Private resale fixed prices are never set at the "no profit" level. They are always set at a level which protects the profit of even the inefficient operator. If private resale prices were fixed at levels comparable to floor prices for farm products the competition would require a great many retailers to improve the efficiency of their operations.

It is abundantly clear that the practice of private resale price fixing is in no way comparable to the policy of floor price protection for farmers through price floor legislation. Nor is it comparable to the fixing of milk prices by a government appointed Milk Control Board, with public hearings.

The farmers of Canada have never obtained any protection which was not established within the law of the land and considered to be in the public interest. The advocates of private resale price fixing may be able to prove that this restrictive trade practice benefits an individual firm but it does not logically follow what is good for one firm must of necessity be good for all firms together, and even if it could be proved that the practice benefits a group of firms, this does not prove that the practice is in the public interest.

Why The Canadian Federation of Agriculture is Opposed to Private Resale Price Fixing

Farmers are directly affected by private resale price fixing probably more than any other group in society. As purchasers of consumption goods they are affected by private resale price fixing at the consumer level. As producers they have to purchase all their tools, supplies and instruments of production also at the retail level. Thus they are more likely to feel the harmful effects of this restrictive trade practice than any other group.

We are opposed to the practice of private resale price fixing because:

1. It restricts or eliminates competition at the wholesale and particularly the retail level of a wide range of goods; i.e., increased cost to the ultimate consumer.
2. It operates within the private "laws" with no appeal to established courts of justice, and is all too often enforced by threats and fear of denial of supplies.
3. It results in excessive, unnecessary and wasteful advertising and fancy services.
4. Its logical consequence is the extension of vertical private price fixing into the broader field of horizontal private price fixing; in other words it fosters combines.
5. Supported by imperfect competition or semi-monopolistic competition of manufacturers it is one of the more important causes of inflexible prices of many manufactured goods which hinder automatic adjustments in the economic system.

1 *Restriction of Competition*

We have pointed out that profit may be an end in itself for an individual firm or a group of firms but for society as a whole it is just a means to an end. So in the same manner competition is not an end in itself but only a means to an end—the end being the ultimate protection of the purchaser of goods against exploitation by the supplier.

Without some profits the private enterprise system ultimately collapses. Without competition the private enterprise system ultimately develops into a system of special privilege. Private resale price fixing very definitely reduces or eliminates competition at the distributive level and therefore is a form of special privilege.

Why so many retailers support the practice of private resale price fixing? They support it first because they consider they can make larger profits under such a system than under a free competitive price system. Secondly, many of them support it because under such a system of private price fixing they can avoid the trials and tribulations of free and rigorous competition. Thirdly, many of them support it because they believe that private resale price fixing must of necessity be part and parcel of a system of high quality branded goods and national advertising from which they as individuals receive much of the benefits but pay none of its costs.

If retailers did not consider that private resale price fixing increased their margins of profit they surely would not support this practice so vehemently. There is plenty of evidence that such is the case. An editorial in the November 1, 1951, issue of the Canadian Pharmaceutical Journal, entitled, "We Will Fight with Everything we Have", states:

> Not at any time during the last twenty-five years has the drug industry been so fighting mad, so disgusted with the inane political manoeuvring which has taken place in Ottawa since the announcement

was made that legislation to prohibit price maintenance was to be introduced. . . . Thanks to the government's intention to make the retailers of Canada the goats in its political squirming, we may be hurt and hurt badly. (1)

The editorial ends with the sentence, "a principle of democracy is at stake and we must not let the government ignore it or trample on us". We fail to see where any democratic principle lies in the system under which manufacturers and organized distributors, behind closed doors, and without access by the public in any way, decide what the retailers shall charge the public for their goods, and enforce those prices by coercion, and threat of loss of supply.

It seems to us inescapable that articles sold under private resale fixed prices would sell over a period of time at higher average levels than they would without price fixing.

The Royal Commission on the Cost of Living in Newfoundland in 1950 studied the effects of private resale price fixing in that Province. Their general conclusions with respect to this practice were as follows:

> Resale price maintenance since Confederation has had a marked effect. It has brought many prices in line with national prices. At the same time, it has tended to place prices of drugs, some women's and other clothing, and many hardware and electrical goods above the levels they might have reached if no resale prices had been suggested after Confederation. In some cases, such as automotive supplies, it has lowered prices slightly below such levels. The effect on prices of batteries and paint brushes is especially serious; the comments and recommendations made above need not be repeated here.[2]

Under so-called Fair Trade Laws in the United States private resale price fixing has become a legal practice in forty-five states since the middle 1930's. Only in Vermont, Texas, Missouri and Washington, D.C., is this restrictive trade practice illegal?

The magazine, *Fortune*, in the January 1949 issue, had a leading article entitled "The Not-So-Fair-Trade-Laws". The writer of the article made a number of comparisons between prices of drug store articles in States where private resale price fixing was legal and in states where it was not legal. This is what the writer had to say about the comparison:—

> Perhaps Washington's exemption from fair-trade price regulation is explained by the benevolent interest that Congress has always taken in the cost of living in the capital. Be that as it may, Congressmen and lesser residents of the District of Columbia can lather up with a big tube of Barbasol bought for 29 cents; in fair-trade Maryland, the same tube would cost 39 cents. The Congressmen can regenerate the blood cells with Lilly's Lextron Pulvules (84's) for $2.29, instead of the fair-trade price of $3.15. A bottle of Old Grand-dad is $5.45 in Washington, $6.65 (before state tax) across the line. BC headache powders are a dime instead of 19 cents.
>
> A recent study of 117 branded drug items showed that thirty-five cost about a third less in Washington than in Maryland; thirty-eight about a quarter less; and twenty-nine about a seventh less. A comparison of free-trade Missouri and fair-trade Illinois turns up much the same story. The St. Louis *Star-Times* figures out that fifty-four fair-trade drug items cost an average of 16·2 per cent more on the east bank of the Mississippi than on the St. Louis side.[3]

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[1] Canadian Pharmaceutical Journal, November, 1951.
[2] Report of the Royal Commission on the Cost of Living in Newfoundland—1950, Chapter 10, Page 79.
[3] *Fortune*, January 1949.

While this is an example of the effect of private price-fixing in the United States, there is every reason to believe that a similar situation would be noticeable in Canada if we had, let us say, legalied private resale price fixing in Ontario but a free retail market in Quebec.

Many retailers themselves know that if this practice were outlawed, prices for branded goods would be reduced. They have not hesitated to express these views to some people. In the October 26 issue of *The Canadian Textile Journal* appears an article entitled, "Re-Sale Price Maintenance and Inflation". The writer of the article reports on a survey of many retailers, including a number of departmental stores. While he met those who were in favour of private resale price fixing, as we expect, yet he found many who were not. We quote from the article as follows:—

> A survey of many retailers, including a number of department stores, shows that many of them feel that a ban on price fixing at the retail level has been long needed and they are happy that the force of supply and demand will again be operative after the legislation is passed. Many retailers expect price reductions on many lines including a number of textile products, such as hats, gloves, hosiery, etc.
>
> One prominent retailer states that "reductions can be expected in many lines of price-controlled merchandise" following passage of the legislation. Retailers, however, state that they have no intention of price cutting to the point where it would cause a price war and they maintained further that a drop in price, particularly by small retailers, represents a necessary move to reduce inventories during this period of restricted credit and slow business. With higher down payments on installment buying and credit restrictions many retailers are finding it increasingly difficult to carry large stocks.
>
> There are ample stocks of merchandise on the shelves at present and it is felt that price drops are indicated. A considerable number of retailers pointed out that profit margins on certain lines of price controlled goods are extremely high and retailers are in a position to accept a smaller profit margin than some manufacturers allow.
>
> *Small Retailers*
>
> Banning controlled prices would not be apt to cause serious business failures, according to these same sources, who maintain that while controlled prices are in some instances beneficial to the small retailer, by making it impossible for him to be undersold, many of the large retail outlets have long felt that the economy as a whole would benefit by an end to price fixing.
>
> One retailer pointed out that in a democratic country a business-man like himself should be able to sell goods at a price he considers fair and should not be forced to adhere to set prices. The legislation, he contended, would definitely increase competition and reduce retail prices. In some cases price wars, like the recent one in Hamilton, could be expected. But in the long run, he said, the law of supply and demand would have a stabilizing effect on the price structure generally and give the consumer better value for his purchasing dollar".

More than half of all the purchases made by farmers for productive purposes come directly under some form of private resale price fixing. This list would include the following tools and supplies:

Farm machinery and parts
Most items of general hardware such as small tools
Many construction and building materials
Fertilizer

Truck and auto tires
Gasoline and oil
Milking machines and parts
Milk coolers
Electric motors
All barn fixtures such as steel stanchions, water bowls, etc.
Some brands of paint
Woven wire, wire gates and barbed wire
Veterinary supplies and drugs for livestock.

In some of the above cases the entire sales come under private resale price fixing. In other cases a portion of the sales come under private resale price fixing.

In addition to the above list of production goods the farmer has to buy many articles for personal consumption which are sold under private resale price fixing laws. Detailed research, we are sure, would indicate that about half of the total expenditures of the farmer are for goods coming under the protective umbrella of this restrictive trade practice.

With rare exceptions the farmer has to face the open competitive market from day to day when making his sales. But he has practically no opportunity of bargaining in a free market for his purchases. Is it any wonder that he frequently grumbles? He feels that the dice are loaded against him, as indeed they are when you compare his bargaining position with the great measure of security provided for the dealers who sell at privately determined fixed prices.

We are convinced that private resale price fixing establishes fixed margins between the consumer and the manufacturer at higher average levels than they would be under a free system whereby margins would be determined by open competition. This must necessarily be so because privately fixed margins are set high enough to maintain a wide retail outlet with scant consideration of efficiency of operation.

11 *Private Resale Price Fixing Operates Within Private Laws and is Enforced by Threats and Fear of Denial of Supplies*

Whenever any individual or body has made a detailed study of the operations of monopolies, combines or private resale price fixing they have established the fact that price structures are maintained and enforced by a wide variety of private "laws". Very often the private policing of these restrictive trade practices is carried out by trade associations.

The Report of the Royal Commission on Price Spreads (1935) has numerous examples of private policing of private price fixing. One example is their discussion on the policy of the Imperial Tobacco Company with respect to pricing policies:

> "The Imperial Tobacco Company in attempting to put into effect a system of resale price maintenance is adopting a policy which in principle meets with the general approval of the trade, and in the operation of which they have received co-operation from other manufacturers, jobbers and retailers. Their method of enforcement is simple. The Imperial Tobacco Company merely removes from its lists dealers and jobbers who cut prices, either of their own or competitors' products, with the jobbers' associations assisting by bringing the names of offenders to the notice of the company. "Cutting off the list" in this case is no mere gesture. When a company which produces nearly three-quarters of the supply refuses to sell a wholesaler or retailer, the effect on that dealer is too obvious to need comment". (1)

(1) Report of the Royal Commission on Price Spreads (1935) Page 53.

Situation in Great Britain

The practice of private resale price fixing is quite widespread in Great Britain. The recent Labour Government undertook a study of this practice and the report was presented to the British Parliament in June of this year. The sections of the report dealing with methods of enforcement of fixed resale prices are in part as follows:

> "7. The salient feature of most of these arrangements is the power of the associations to organize a boycott against a trader who reduces any of the prices which they seek to enforce. If a trader reduces the price of one line of one manufacturer, his name may be placed on a "stop list" and he may thereupon be unable to obtain supplies of a wide range of goods made by other manufacturers, even though he may have scrupulously observed their resale prices. It will be evident that where the goods covered by the association's activities form a large part of a trade, this type of boycott is equivalent to putting the victim of it out of business".
>
> 9. If a trader fails to observe any of these rules and regulations by which the associations seek to close any loophole in the operation of resale price maintenance, he may suffer penalties ranging in severity from fines (in some cases involving substantial sums) up to the boycott. (It is worth noting, too, that a trader who by charging too little for his goods incurs these penalties at the hands of a trade association has no recourse to any higher authority; by contrast, a trader, who charges too much and is proceeded against by the State under price-control laws, can always appeal to a higher court.) These penal proceedings, which may have the effect of driving a shopkeeper out of his trade and which are directed not to the maintenance of a recognized standard or code of behaviour, generally accepted as necessary in the public interest, but solely to the enforcement of a particular trade policy of questionable merit, take place behind closed doors and without any supervision by the courts of Parliament.([1])

We are quite convinced that the same type of practices quoted above are widely prevalent in Canada, unknown to the great majority of Canadian consumers. To throw a person out of business unless he toes the line of private coercive law is the very negation of modern democracy. In these days we are prone to brag about the freedom of the individual in our modern democracy in contrast to the position of the individual in totalitarian countries. We are continually being told that our freedom is based on the Rule of Law and yet we have allowed a restrictice trade practice to develop and flourish to the point where men can be forced out of legitimate business because they do not conform to a private law whose rules are unknown to the public and in fact whose secret agreements are withheld from the public. If private signed agreements could stand the full glare of public approval, infringements would be taken to the Courts of Justice for decision. But the fact that this is not done can surely be taken as proof that one or both parties to the agreement know full well that policies which arise from these restrictive agreements are not in the public interest. Again may we repeat that a practice which may be in the interests of a single individual or even quite a group of individuals is not necessarily in the public interest.

([1]) A Statement on Resale Price Maintenance. Presented by the President of the Board of Trade to Parliament by Command of His Majesty, June 1951, Page 4.

III. *Private Resale Price Fixing Results in Excessive, Unnecessary and Wasteful Advertising and Fancy Services*

It is generally admitted that there is a considerable variation between stores or dealers in the costs of merchandising articles at the retail level. Some stores because of volume, location, types of merchandise carried and managerial ability have distinctly lower costs than those with a more unfavourable combination of factors. But once, let us say, a manufacturer of washing machines has lined up all his distributors or retailers in a private price fixing understanding then this brand of machine will sell for the same price in all the stores of a certain city perhaps at the same price between cities as well.

In Ottawa for instance, there are some eleven different makes of washing machines sold, handled by about 40 retailers. Some of these stores handle as many as three and four different makes.

In instances, such as this, less efficient stores sell the same make or article at the same fixed price as the most efficient store. The greater margin of profit accruing to the most efficient store cannot be passed on to the consumer in the form of lowered prices. Consequently we often see the excess return being expended for expensive advertising features, displays, additional salesmen, and so forth.

In a recent survey we found that five separate firms in Ottawa, handling a particular make of washing machine, quoted the same price in each case, namely, $299.50. When asked if it were possible to get one of these machines at a lower price, one store stated firmly, "no, these prices are all fixed".

With competition between dealers eliminated on a price basis the competition then becomes competition on a brand basis. This type of competition expresses itself in excessive advertising in daily, weekly and monthly journals and in excessive radio and bill board advertising, every penny of which in the long run must be paid by the ultimate consumer. We are not condemning normal advertising necessary in any private enterprise economy. We do feel, however, that the steady growth of the practice of private agreements to fix retail prices and eliminate the most important protection the consumer has, price competition, is leading to a steady growth in excessive advertising costs which is a social waste and not in the public interest.

IV. *The Logical Consequence of Private Resale Price Fixing Between a Manufacturer and a Dealer is the Extension of Price Fixing Between Manufacturers and Between Dealers*

This argument we consider one of the strongest against the present widespread practice of private resale price fixing. It begs the question to say that the Government already has laws to prosecute and break up combines. May we again repeat that in spite of the best efforts of the Combines Investigation Branch, and in spite of repeated amendments to strengthen the Act, it is the opinion of the organized farmers that combines whether by formal or tacit agreement still flourish in Canada.

We look upon private resale price fixing as the front line only of many large scale combines existing in secret behind the lines. Moreover the fact that groups of retailers acting as individuals make private price fixing agreements with a single manufacturer creates a combine in fact but not according to law. When all the retailers of a particular make of washing machine in the City of Ottawa undertake to market this machine under a price fixing agreement which in fact they do, they have in effect formed a combine against the consumers of Ottawa. Further, when we realize that one single retailer handles four different makes of washing machines, all of which are under private price fixing with four different manufacturers, and that most

if not all, makes of washing machines are under the same tight price fixing agreements in all stores, the combine at the retail level in the City of Ottawa is complete and all-embracing.

If these same retailers all got together and through an association agreed to set a schedule of prices, and if proof could be provided of this action, then they could be prosecuted as a combine under the present act. But they do not do this. Each one makes an individual agreement with the manufacturer which in fact creates the combine as we have mentioned.

If it is illegal for combines to exist which restrict production and control prices at the manufacturing level then why is it not reasonable to declare illegal a practice which fixes prices and eliminates or severely restricts competition at the retail level? It is not a sound argument to say that most private resale fixed prices are fair prices to the consumer. This is because under our private enterprise economy we rely upon open competition and the free market to determine what is a fair price in relation to the demand and supply conditions at the time. Who knows what is a fair price for the consumer to pay? Shall the consumer say what it will be—the one most concerned—or shall it be the manufacturer and the retailer working together, who together can decide how much shall be made and fed out to the consumer in order to induce him to pay their ideas of the "fair price"?

In summarizing this section of our brief we are of the opinion that uniform fixed retail prices dictated by manufacturers makes it substantially easier for manufacturers to connive together to control production and prices for the purpose of restricting competition and maximizing profits which is not in the public interest.

V. *Private Resale Price Fixing is Accompanied by Imperfect Competition at the Manufacturing Level. The two, Operating in Unison, are Largely Responsible for the Increasing Inflexibility of the Price Structure*

Our modern economy differs a great deal from that of a hundred years ago. The steady growth of invention and modern technology has resulted in our present type of industrial organization. This modern organization of large scale concentrated units is in sharp contrast to the multitude of independent industrial units of a century ago.

Along with the growth of large scale industrial units has come the power of a few large administrative units operating in one particular field of production to change the nature of competition from unrestricted to limited or restricted competition. It has changed the character of price determination for many products by making it a matter to be determined in the offices of a corporation and held rigid over a period of time, instead of being determined by bargaining in the market. Thus modern industrial organization has largely changed our industrial price structure from free prices to privately administered prices. This is one of the major differences between our modern economy and that of a century ago. Since a private enterprise economy is essentially a market price economy, in our opinion, the problem of inflexible privately administered prices lies at the crux of the problem of how to make our modern economy function.

The front line of privately administered prices for many consumption and production goods is the price at the retail or ultimate consumer level. As long as that line is held the decisions made at the manufacturing level can be maintained. Once having established a system of private fixed prices at the retail level, which traditionally are changed infrequently, so called competing manufacturers know that their own price structure is reasonably safe. Then it is a matter of administrative decision at the top level as to how much to

produce. If demand falls off, and inventories increase, their decision is to maintain the fixed price and reduce production. The lower the demand the less they produce. The laying off of workers reduces still further demand for all industrial products and production is further reduced. All the time through the practice of private resale price fixing the retail price for the product is not lowered, or if at all, very little. The retailer is prohibited from lowering his prices to fit the lowered demand. If he does he is called a "chiseler" and committing an "unfair trade practice". It is considered a business sin and in the opinion of many business men against the public interest and even against the consumers' interest.

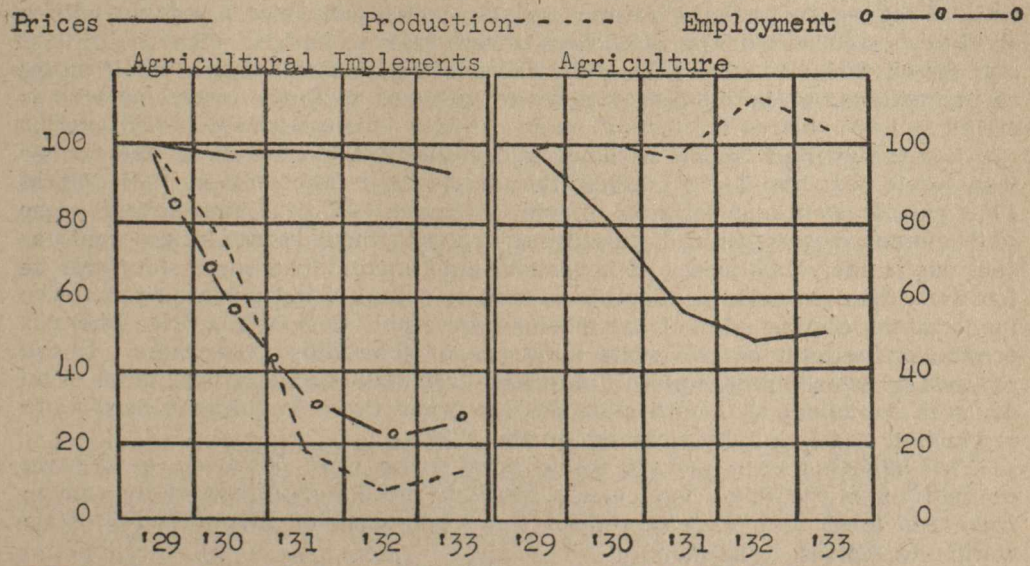
If retailers were allowed freedom to price their products according to their own judgement competition at the retail level between retailers of the same brand and between retailers of different brands would result in falling prices at the retail level, some fall in prices at the manufacturing level, possibly lower profits but more consumption, production and less unemployment.

The production and sale of farm machinery is a typical example of the policy of an industry dominated by a few large producers and using privately administered price fixing as a means to maintain prices at the expense of production and employment in their own industry. This policy is in sharp contrast to the farming industry which, because of its nature, maintains total production at relatively stable levels and feels the full impact of changing demand for its products.

In a period of falling demand, as in the 1930's, farmers, although fully employed, receive very low incomes, because their highly flexible prices fall to low levels, and they cannot buy many of the products of industry which are maintained at relatively inflexible fixed prices. The small number of industrial workers employed under conditions of low industrial production may receive a satisfactory income but when considered against the background of mass unemployment the industrial workers as a whole do not fare any better than the farmer.

The following chart taken from the Report of the Royal Commission on Price Spreads shows this situation very clearly for agriculture and the farm machinery industry.

PRICES, PRODUCTION AND EMPLOYMENT* FOR THE AGRICULTURAL IMPLEMENTS INDUSTRY AND FOR AGRICULTURE, 1929=100



* Employment data in the Agricultural Implements Industry were . . . 17 taken from official sources and added to the above chart appearing in the 1935 Price Spreads Report.

The prices for farm machinery from 1929 to 1933 fell only 7 per cent but production and employment in the industry fell 90 per cent and 73 per cent respectively. During the same period total farm production was stable but prices for farm products fell 50 per cent

Another example of the evil effects of inflexible price is the cement industry. Even although this happens to be an example of a monopoly or near monopoly, it illustrates very vividly the effects of maintaining a rigid price structure at a time of falling demand. Whether there is a complete monopoly, a combine, partial combine or even unrestricted competition at the manufacturers level any practice which results in private resale fixed prices at the retail level brings about rigidity in the price structure and transfers the adjustment in prices to adjustment in production and employment. At a time of falling demand the result is complete disruption of the economy.

Wholesale Prices and Production of Cement in Canada (x)

	Cement Production		Wholesale Price Index of Cement Bbls.
		Index	Index
1929	12,284,000	100	100
1930	11,032,000	90	100
1931	10,162,000	83	102
1932	4,499,000	37	105
1933	3,007,000	24	106
1934	3,783,000	31	106
1935	3,648,000	30	106

(x) Dominion Bureau of Statistics data.

Cement manufacturers increased the wholesale prices of cement six per cent from 1929 to 1933 but reduced production 76 per cent. While we have no available retail prices for cement during this period there is every reason to believe that they would coincide closely with the movement of wholesale prices.

It seems unnecessary to burden the committee with further proof that at a time of falling demand the farmer and the urban consumer are faced with a rigid price structure at the retail level that refuses to budge. What keeps it at such levels when demand falls off? The answer is very plain; a whole series of restrictions on the retailer who is not allowed to lower prices, or who is afraid to lower prices for fear of being called a "price-cutter", or "chiseler".

For the average article of household equipment purchased by the farmer that would cost him $1.04 in 1929, he paid $1.03 in 1930, 99c in 1931, 98c in 1932 and 95c at the lowest level of retail prices in 1933.(1) It took four years of deepening depression and widespread unemployment before he got a 10 per cent cut in his retail prices of household equipment. The same story can be told for urban consumers. Combines, tacit or actual, using private resale price fixing as the cutting edge of the machine were able to hold the price line, cut production and let out of work hundreds of thousands of workers. If the practice of private resale price fixing had been outlawed long ago there is no doubt in our minds that with more flexible prices there would have been more production and less unemployment in the 1930's.

We believe that if private resale price fixing were outlawed, keen price competition at the retail level would result in more competition at the manufacturer's level and thereby reduce the advantages of manufacturers conspiring to restrict production.

(1)—DBS Index of Cost of Living for Farmers' Household Equipment 1935-39=100; 1929=104·4; 1930=103·5; 1931=99·1; 1932=98·3; 1933=94·8.

The committee may ponder why we have stressed the situation of the 1930's so much. We have done this to point out that in periods of low demand, inflexible prices disrupt the entire economy. Nobody can successfully deny that private resale price fixing is one of the most important factors causing this rigidity. Practically every statement made or to be made in support of this restrictive practice has mentioned or will mention the great blessings of stability for the merchant and manufacturer achieved by this device. To discuss the important subject of private resale price fixing in the light of the present only is to blind ourselves to the more fundamental one of its long run evil effects on the entire economy.

Reasons Advanced in Favour of Private Resale Price Fixing

An examination of the statements of those who favour this practice and our rebuttals are as follows:

It is claimed that:

> There is nothing in the practice of private resale price fixing by one manufacturer to prevent other manufacturers from producing similar articles and pricing them as they wish. In other words healthy competition is maintained at the manufacturer's level.

Let us take the example say of the manufacturers of washing machines A, B and C, all of whom practice private resale price fixing. In many cases the same retailer will sell all three makes. Because one retailer handles all three makes the mark up margins allowed by the three manufacturers on their respective machines will be substantially the same. If this were not so the retailer would push the sale of one make more than another.

Each manufacturer now knows that he is freed from the risk that the retailer will cut the price on the product of one of his rivals and thus increase sales of the rival machine resulting in a reduction in sales of his own. This being the case each manufacturer is freed from the necessity of having to lower his price to the retailer in order to stimulate his own sales. Competition at the manufacturer's level is soon reduced.

If retailers were free to vary their prices to move the different grades or styling of each make of machine according to the demand for and supply of machines there would always be the possibility of any manufacturer lowering his price to the retailer in order to maintain the dealer's margin and to compete with his rival. In other words eliminating price competition at the retail level very definitely tends to restrict or reduce price competition at the manufacturer's level.

It may be true a manufacturer is free to produce similar goods but once having done so and established prices for his own product he knows that henceforth the competitive price factor at his level is very definitely reduced because his rivals are working under fixed retail prices and stable margins.

II. It is claimed that:

> Private resale price fixing prevents economic concentration of large scale retailers and helps to maintain the small independent retailer in business.

This is the stock argument which is used so much. The argument certainly implies that the small independent retailer has higher costs and is a more inefficient distributor otherwise he could stand the competition at the retail price level. If he says he cannot then what more proof do we need that private resale price fixing results in higher margins and higher retail

prices than what would obtain under conditions of price competition at the retail level? This argument to a certain extent therefore acts as a boomerang. If as some claim private resale price maintenance does not result in higher retail prices or higher margins then the little independent fellow is not hurt if the practice is outlawed. If on the other hand he would be hurt and "hurt badly", by the outlawing of this practice then private resale price maintenance does raise margins and prices.

The fact of the matter is this argument is grossly exaggerated. There are thousand of independent dealers who have already special advantages over large scale stores, because of location, type of customers, and personal services—advantages which have always been enough to keep them in business. Moreover, there are thousands of independent retailers whose sales of goods coming under this practice are only a relatively small proportion of their total sales. A moderate reduction in the price of branded articles is certainly not going to drive them out of business. We admit there are likely some independent merchants on the margin. There are always some businessmen on the margin. There are thousands of farmers on the margin. Some of them go out of business when prices fall. There is always a certain amount of this going on. If as a direct result of lower margins and lower prices to the consumer a small number of independent merchants were forced out of business these would be the marginal ones.

Once having established a favourable margin by private price fixing the next logical step is for trade associations of independent dealers to try and restrict their numbers from increasing too rapidly. Too many dealers lower the profits of the dealer without any benefit to the consumer because the retail price is fixed.

In the British drug trade restriction by private agreement is well advanced as the following letter written by the secretary of the British National Pharmaceutical Union shows. This letter is quoted in the article appearing in the "Fortune" magazine article previously referred to:

> In our country all proprietory medicine vendors have to be licensed and we woke up to the fact that the number of these vendors was increasing at the rate of eight to nine thousand a year. It is a fact that owing to the success of the price maintenance movement initiated. . . 38 years ago, the price of proprietary medicines are in fact maintained and the 20 to 30 per cent profit which those articles yield has proved a tremendous temptation to other shopkeepers to invade the proprietary medicine business. . . . Hence you will see that the success of our own war to prevent price cutting within our ranks has produced an army of competitors in our own business. . . .
>
> My own organization decided that it would be reasonable to ask manufacturers of proprietary medicinal and surgical goods to restrict their channel of distribution to the chemists' trade. We ask the proprietors of these articles to sign an agreement for seven years undertaking only to sell these goods through chemists. In return we, on behalf of the chemists, undertake to give these goods—the utmost possible sales assistance. . . . On the other side, we ask all our members to refrain from giving window, counter or other displays of any kind to the goods or advertising material of any article within our specification which is not upon our list.

Some electrical appliance dealers in Canada have admitted that large margins have brought in too many dealers. This was referred to at the annual meeting of the Ontario Association of Radio and Appliance Dealers in 1948 as follows:

> On the question of discounts, another man said a large part of bigger prewar discounts were actually given away by dealers in trade-in offers and other business-getting devices. He questioned that the discount loss today is as great as it may appear on the surface. On the same tack, another dealer suggested that the former big discounts had been responsible for luring "a lot of tramps" into the appliance business in the last few years. These, he said, may be sloughed off by lower discounts—"blessings in disguise".

Lower Discounts on Razors

The rejoiner to that one was: "Asking for low discounts is like asking for a lot of razors so we can cut our own throats!"

This Ontario convention passed a resolution asking for some means to be found to confine the sale of electrical appliances to legitimate appliance outlets. (1)

The general public cannot always rely upon the small independent dealer, working through their trade associations, with fixed prices, to protect them against what is called the economic power of large scale retailers. The restrictive practices of combinations of independent dealers can result in practices just as monopolistic as those of large corporations.

We hear frequently the argument that private resale fixed prices are "fair" to the public and therefore that such fixed prices must be for the general good. This is pure humbug, for who is to say what of such prices are fair and what are not fair, to the public, when the prices are privately fixed, with no representative of the public in on the deal.

III. It is claimed that without private resale price fixing in small localities served by a single dealer monopoly would be present and the public would be exploited by the dealer charging high prices.

This argument may have held water 20 years ago but today it is a red herring. The truth of the matter is that with the practically universal use of private automobile, street car service and mail order stores effective competition would prevent any monopolistic exploitation of the consumer.

IV. It is claimed that private resale price fixing produces a stable price structure, preventing excessive fluctuation of prices in both directions, since the prices are usually fixed prices.

We have indicated clearly that private resale price fixing is largely responsible for the rigidly held price line when demand falls off. We have pointed out that this practice destroys balance in the price system, is largely responsible for serious unemployment at certain times and prevents automatic adjustments within the price system.

Now, concerning the argument that this practice prevents some dealers from charging exhorbitant prices during periods of scarcity, we would say that during the last hundred years there have been only two periods when there was a substantial shortage of goods. One was during World War I and for two years in the immediate post-war period. The other period was during the recent war and immediate post-war period. In no other periods have serious shortages of goods developed.

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[1] Hardware and Metal and Electrical Dealers. May 1, 1948.

During the last war the government of Canada, through the Wartime Prices and Trade Board, did what policing was necessary to restrain dealers from charging too much for scarce articles. The government did not leave it to private individuals to do the policing.

Even now, it cannot be claimed that there is any serious shortage of goods in relation to demand. Many dealers tell us that inventories are relatively high. If it becomes necessary to prevent excessively high prices, the government is free to act as it did in 1941. It does not need to rely upon private "law" and private policing to protect the consumer.

V. It is claimed that private resale price fixing creates public confidence in the branded product and thereby enhances the goodwill of the manufacturer.

It is true that the widespread national advertising of a branded article creates consumer interest and if the product is as good as the high pressure advertising claims, the goodwill of the manufacturer is increased.

But we deny that fixed prices at all stores and all over the Dominion of Canada is responsible for the consumer's confidence in the product. At times it works the other way. When a farmer goes to dealer after dealer and finds exactly the same price quoted for a similar make of water-bowls, let us say Beatty water-bowls, he does not necessarly think so highly of Beatty equipment because of the fixed prices. He probably likes Beatty equipment because, in his opinion, it is reliable and good.

The same applies to the housewife and her purchases of household goods. She is not going to lose faith in a well-known national brand just because she sees some price competition at the retail level. All she asks is for the advertising to be honest and the quality maintained. Then the manufacturer need not fear the loss of her goodwill.

VI. It is claimed by manufacturers that the practice of private resale price fixing enables the manufacturer to get a wider distribution of his products and greater sales because he can have more dealer outlets.

When the manufacturer fixes the resale retail price for his product, he sets a retailer's margin wide enough to attract a great many retailers to stock his product. In addition to this, the retailer is protected against price competition at the retail level. This naturally results in many dealer outlets and it is claimed works to the advantage of the manufacturers.

This argument for private resale price fixing backs up our argument against the practice, namely, that the margins are fixed high enough to satisfy the high cost distributors as well as medium to low cost distributors. It is logical that the higher the margin allowed the more dealers will be attracted to stock the goods. The aim of the manufacturer to widen his distribution by having more dealers is only logical to a certain degree. Enticing an unnecessary number of dealers into the field inevitably results in a lessened "turn-over" per dealer; i.e., a lessened net profit, ultimately requiring the fixed high "mark-up" to maintain his business.

Even if this argument were true to the extent of helping one firm (i.e. more agencies) the same argument does not hold water when multiplied on a national scale for all goods coming under price fixing. If the same argument were valid on a national scale we could maintain prosperity on a high level in Canada by simply multiplying the distributing outlets for all goods. Thereby we would all have more goods to consume and everybody would be happy.

High standards of living do not come about as a result of many retail outlets and widespread distribution of goods. High standards of living arise out of high production per capita of goods. We only have so many resources to develop and so much manpower available. These are the basis of our standard of living, not retail outlets. In fact a practice which results in a multiplicity of outlets, excessive highly coloured and high pressure national advertising,

ostentatious showrooms and fancy superfluous service actually tends to slow down the advancement of our standard of living by devoting too much of our manpower and resources on wasteful things.

Summary

The national policy of price floors for farm products, established by Federal legislation, is not comparable in any way with private resale price fixing enforced by "private law". Price floors for farm products are established to take care of exceptional and temporary market situations. These prices have never been established at "incentive" levels.

Fluid milk prices established by Provincial Milk Control Boards in city markets are only set after careful and full enquiry by a competent Board appointed by the Government. The Board takes into consideration the conflicting interests of producers, distributors and consumers and arrives at a decision which in its opinion is in the public interest. This legal "above board", procedure is a far cry from the restrictive and undemocratic procedure of private resale price fixing.

We are firmly convinced that the restrictive trade practice technically called, "resale price maintenance", which we have labelled by its true name, "private resale price fixing", in the long run is not in the interests of labour, business, consumers and farmers; in other words it is not in the public interest.

Our reasons for this opinion are as follows:

Private resale price fixing,

(1) Eliminates price competition at the retail level by the device of each dealer agreeing with the manufacturer to sell at fixed prices. This creates a combine in fact if not in law.

(2) Is often given the sham appearance of legality by agreements which have not as yet stood the test of the laws of the land.

(3) Is privately enforced and policed by intimidation, threats and actual denial of supplies.

(4) Results in a wider margin between the manufacturer and the consumer than would be the case under conditions of a free price system.

(5) Results in excessive retail margins for the most efficient distributors much of which is devoted to excessive high pressure national advertising, which the public indirectly has to pay for.

(6) Is the foster mother of combines at the manufacturing level, for when manufacturers can hold their individual price lines at the retail level they have a stronger urge to make formal or informal agreements amongst themselves.

(7) By the power of its combine in fact at the retail level and its direct aid in the fostering of combines at the manufacturing level, is largely responsible for the inflexibility of the price level which in periods of falling demand, results in deliberately planned restriction of production and heavy unemployment.

Recommendation

The evidence appears so overwhelming against the practice of private resale price fixing that we recommend to this committee the following action:

That the Combines Investigation Act be amended to declare this practice illegal without any qualifying clause as to whether or not it is in the public interest.

APPENDIX C

MEMORANDUM

Submitted to

THE JOINT COMMITTEE OF THE SENATE AND HOUSE OF COMMONS

by

THE CANADIAN ASSOCIATION OF RADIO AND APPLIANCE DEALERS

On behalf of the President and the Board of Directors of the Canadian Association of Radio and Appliance Dealers, may I express our sincere appreciation for the privilege of presenting to the Committee, at this time, this memorandum regarding resale price maintenance.

The Canadian Association of Radio and Appliance Dealers was organized some nine years ago by a group of independent retail radio and appliance dealers to act primarily as liaison between the radio and appliance retailers, other retail groups and the various agencies of the government concerned with the then war economy. The success which this group achieved in this function led to the establishment of the present permanent organization, which has been recognized for the past nine years as the spokesman for some 6,000 independent radio, television and appliance dealers in Canada.

Resale Price Maintenance

On September 16th, 1950 this Association forwarded to the Hon. J. H. MacQuarrie a letter expressing the views of the members of this Association with regard to the proposed amendments to the Combines Legislation insofar as the terms of reference of the MacQuarrie Committee were concerned, namely:

> To study in the light of present day conditions the purposes and methods of the Combines Investigation Act and related Canadian Statutes, and the Legislation of other countries insofar as the latter appeared likely to afford assistance, and to recommend what amendments, if any, should be made to our Canadian Legislation in order to make it a more effective instrument for the encouraging and safe guarding of our free economy.

Our letter at the time, while it did contain some reference to resale price maintenance, dealt generally with the broader aspects of the Combines Legislation then under consideration. Had we realized that resale price maintenance was to have been singled out for special study, we would have certainly dwelt to much greater degree on this subject which is of considerable importance in our industry (80-90 per cent of which is price maintained). In view of this, it is the feeling of the Directors of this Association that the conclusions and recommendations contained in the MacQuarrie report are not based on full and complete facts insofar as our industry is concerned. We therefore cannot agree with the MacQuarrie Committee that in the field of radios and appliances resale price maintenance

> Is a restrictive or monopolistic practice which does not promote the general welfare.

We therefore respectfully request that a further and more complete inquiry be made by either this joint Committee or some other agency with full power to deal with this one particular subject—Resale Price Maintenance and its effect on the consumer.

We would like to point out at this time that there already is Legislation under the Combines Investigation Act affecting resale price maintenance "Chapter 26 of the revised Statutes of Canada, 1927, Section 2, Subsection 1 (C). To our knowledge the question of the mere practice of resale price maintenance has never been decided in a Canadian court, nor has any inquiry under the Combines Investigation Act yet been directed specifically toward the question, even though it is law. If it is felt that resale price maintenance does "operate to the detriment or against the interest of the public", this question should be settled for everyone's benefit by due process of law.

In the meantime, may we submit to this Committee just a few of the reasons why it is felt that in the field of radio and appliance, resale price maintenance does not operate or is likely to operate to the "detriment or against the interest of the public".

Prices

From the following figures showing the average retail discount in the radio and appliance business you will see that in every case, brand names merchandise (which carry a suggested resale price) is less than non-brand lines which are not subject to the same degree of price maintenance.

Washers—Brand names "suggested resale prices"
Average discount 30-35 per cent
Non-brand lines—Average discount 40-46 per cent

Ranges—Brand names "suggested resale prices"
Average discount 33½-37½ per cent
Non-brand lines—Average discount 35-50 per cent

Refrigerators—Brand names "suggested resale prices"
Average discount 30-35 per cent
Non-brand lines—Average discount 35-50 per cent

From the foregoing discounts it will be seen that in the case of brand name lines (suggested resale prices) the margins are considerably less than in the case of non-brand merchandise. These discounts are common to 6,000 radio and appliance dealers across Canada.

Engineering and Research

All of the brand name manufacturers provide adequate engineering, research and service staffs to assure the public of continued high quality and outstanding improvements of design year after year. Non-brand manufacturers do not maintain the same facilities nor are they nearly as stable economically.

Adequate Distribution

The present system of suggested resale prices as practised by the radio and appliance industry assures every consumer in Canada of the opportunity to purchase the same high quality merchandise in any part of the country, no matter how remote, at the same price.

It also assures the public against our retail distribution system, controlling in the hands of a few large department, mail order and chain stores, thereby creating a very dangerous monopoly. At the present time 70% or our retail distribution is through small independent retail outlets, it is easy to see how important this is to our country's economy and to the small independent business man who is the life blood of this country.

The publication of suggested resale prices also prevents the dealer in the smaller communities from increasing his price out of line with prices in the larger communities where there are a number of dealers.

Public Acceptance

We submit to the Committee the fact that the public themselves have already decided this question of whether or not resale price maintenance is "operating for or against their interest".

The consumer has every opportunity to decide, under the present retail practice, whether or not he wishes to purchase a brand name appliance (which usually carries a suggested resale price) or a non-brand line (which usually has no fixed price). The dealer sells the non-brand appliance for what he thinks he can get for it (usually less than the brand lines). The attached figures show that despite this choice, the consumer overwhelmingly prefers brand name merchandise.

These charts show the results of a survey made in 1947. One thousand households across Canada were represented in the survey on the following appliances:

Radios
Refrigerators
Ranges
Washing Machines

In conclusion, it is the opinion of this Association that in the field of radio and appliances, resale price maintenance does not operate "to the detriment or against the interest of the public" because:—

1. It permits the operation of sufficient small independent retail dealers to prevent the centralizing of retail distribution into the hands of a few large chain, mail order and department stores, who might be encouraged into monopolistic practices.
2. It assures the public that in the event the dealer is not able or does not choose to fulfil his obligations, regarding warranty service or general service. Brand line manufacturers will still see that this service is carried out.
3. It enables all consumers no matter how far removed from the large centres to have the same advantage of high quality brand merchandise at the same prices as the consumer in the larger centres.
4. In periods of declining prices it prevents dealers from continuing to sell to the consumer at the former higher prices.

It is also the opinion of this Association that the MacQuarrie Committee, did not obtain sufficient facts and evidence nor conduct a sufficiently thorough investigation into this question of resale price maintenance, particularly in the radio and appliance field, to arrive at the conclusions and recommendations contained in their Interim Report.

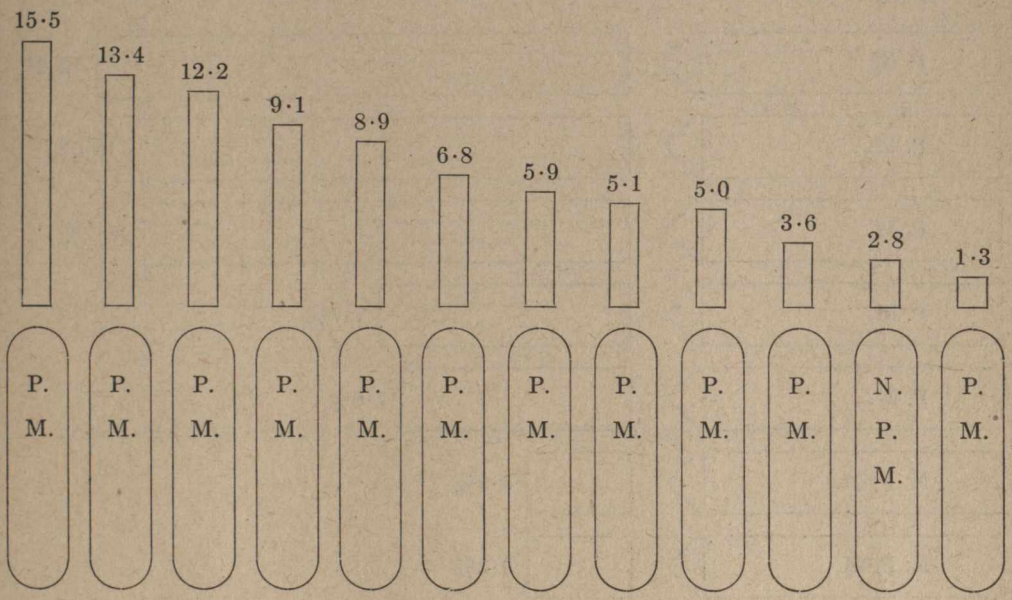
All of which is respectfully submitted,

Yours very truly,

FRANK L. QUARTERMAINE,
General Manager.

RADIOS

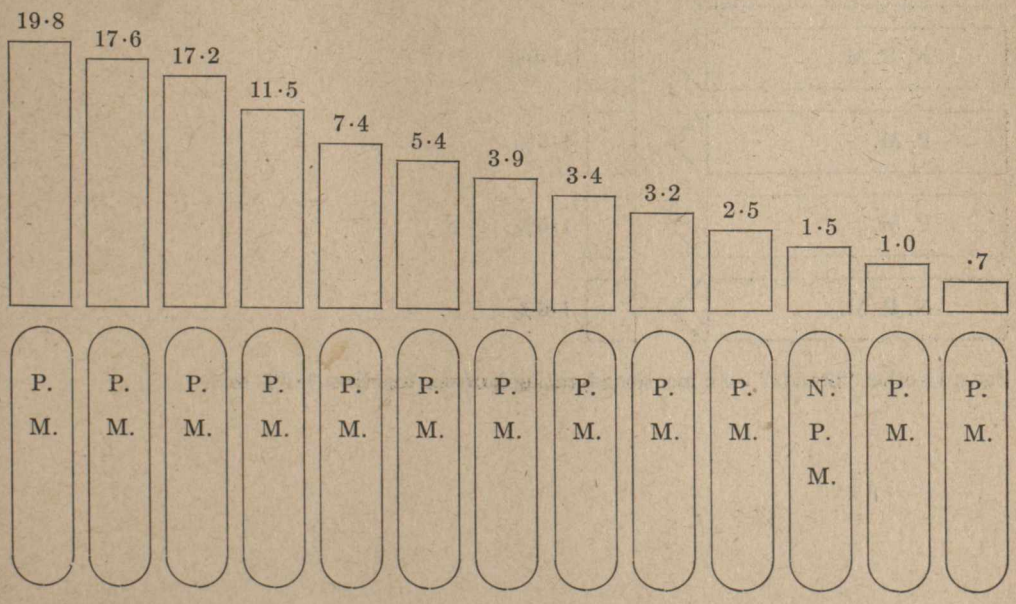
Brand Breakdown of Radios Now in Use



While over 70 different brands in all were mentioned, only those rating more than 1% have been charted above. Many of the remaining brands mentioned have been off the market for years. Car radios not included in above table.

What Brand Will They Select?

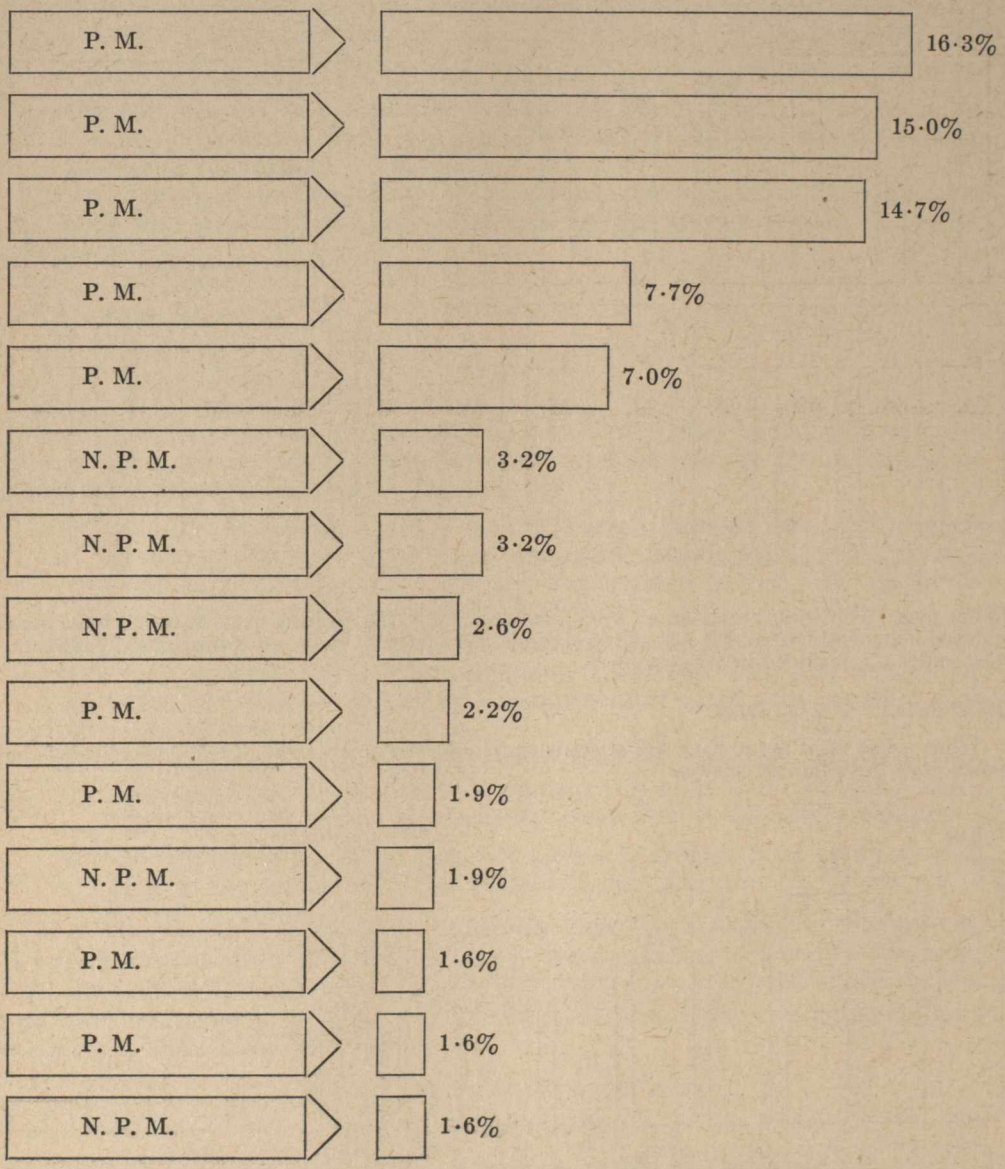
When asked what brand they will select when purchasing a new radio, the 500 members of the panel gave the following answer.



Refrigerators

The Brands in Use

The table below indicates the brands of refrigerators owned by Panel Members as reported in their replies.

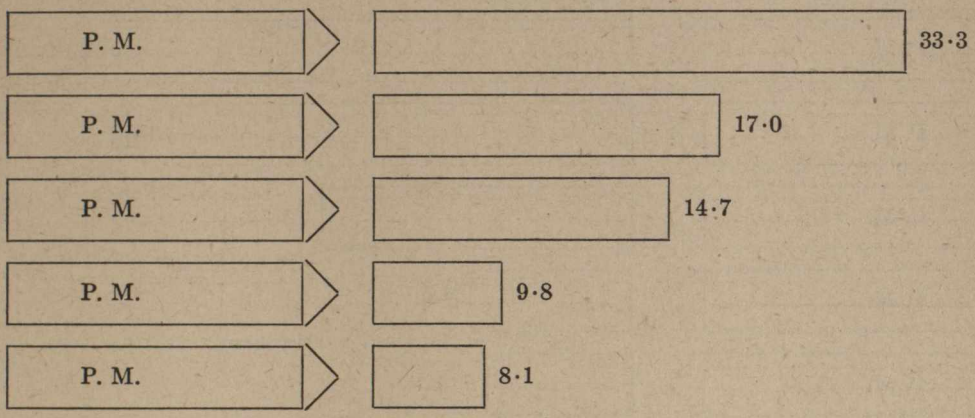


Some 14 other "brands" were mentioned, rating however less than 1·5% each.

REFRIGERATORS

What Brand Will They Select?

Brands preferred by those planning to buy refrigerators within the next 2 years.

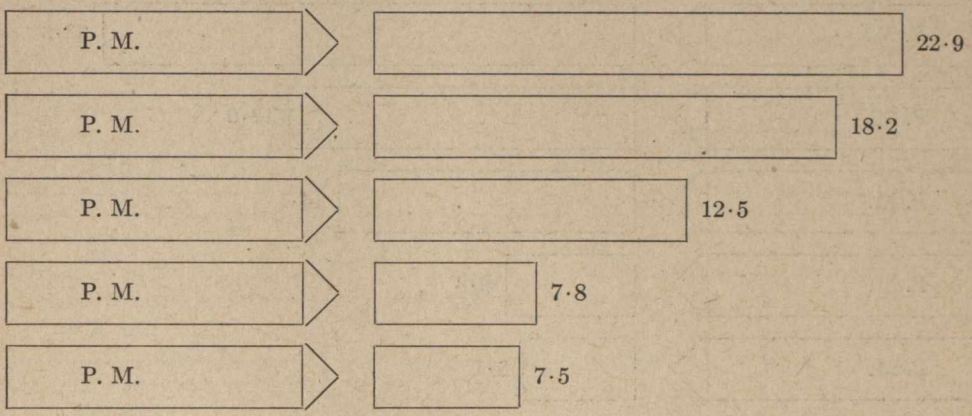


Also mentioned were 10 other makes of refrigerators averaging 1·7% each.

RANGES

Brand Distribution of Ranges

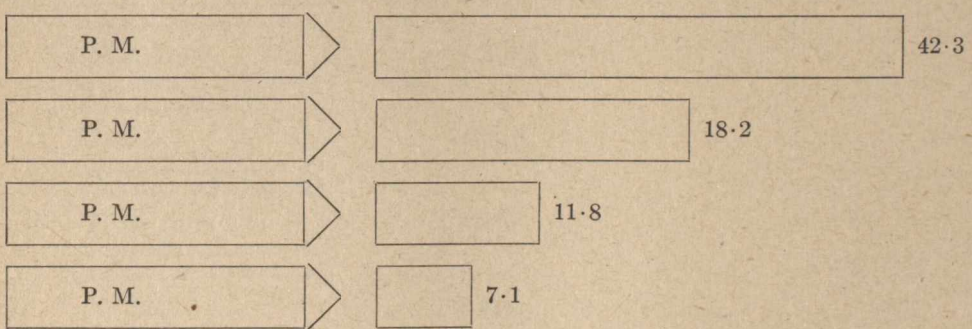
Brand distribution of homes equipped with Electric Ranges to date.



Also mentioned were 18 other makes of ranges averaging 1·7% each.

What Brand Will They Select?

Brands preferred by those planning to buy a range within next two years.

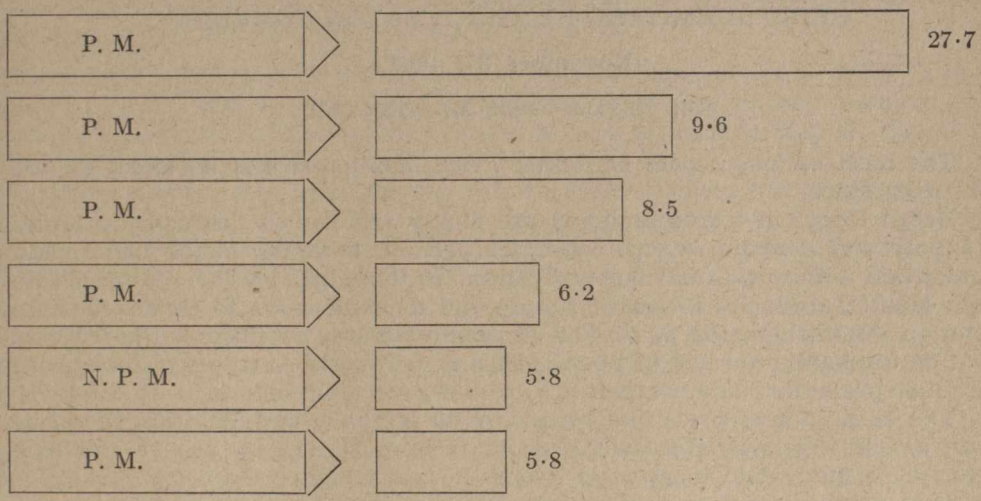


Also mentioned were 8 other makes of ranges averaging 2·6% each.

WASHERS

Brand Distribution of Washers

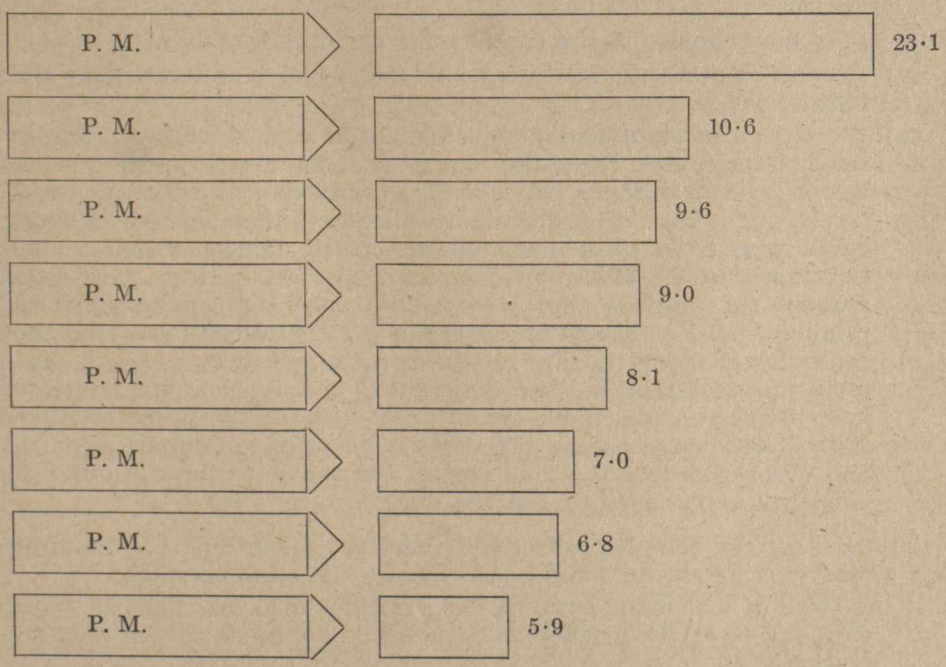
Brand distribution of homes equipped with washers to date.



Also mentioned were 16 other makes of washers averaging 2·2% each, and 53 other brands receiving only 2 mentions or less.

What Brand Will They Select?

Brands preferred by those planning to buy a washer within next two years.



Also mentioned were 11 other makes of washers averaging 1·8% each.

APPENDIX D

BRIEF SUBMITTED BY THE T. EATON COMPANY

November 27, 1951

RE: RESALE PRICE MAINTENANCE

The most serious aspect of Resale Price Maintenance is its effect on the Consumer Price.

Retail Prices in a free economy are finally established through the forces of supply and demand, where consumer preference is the major factor, and competition within the Distributive Trades. In those articles covered by Resale Price Maintenance, the forces of supply and demand cease to be an effective factor in establishing the price, and the manufacturer establishes the price at what he thinks the market will bear. This is not nearly as true a test as where consumer preference and competition are the governing factors.

The basic idea of price maintenance is to establish and maintain the price of an article in a way that will prevent it from finding its proper and true level. This method in most cases keeps the price higher than it would be if the price were allowed to find its own level in open competition.

In those cases where there are many manufacturers of competing products, the controlled price cannot be raised too far above the market, but in those cases where competition between manufacturers is reduced or is non-existent, which is the case in many products where they are only made by one or a closely-knit group of manufacturers, competition ceases to be a factor and prices can be fixed at what the traffic will bear, and the consumer suffers by such higher prices.

The cost of merchandise to the consumer is made up largely of

(*a*) the cost of production, which includes the cost of raw materials and labour, and

(*b*) the cost of distribution, which is mainly the cost of labour. In order for merchandise to reach the consumer at the lowest possible price, we contend that there must be free competition at both of these levels. The cost of distribution of general merchandise in most cases, runs from 25 per cent up to as high as 50 per cent of the Consumer price. Where price-maintained lines are introduced, this reduces substantially and almost eliminates competition amongst retailers for the distributor's share of the Consumer Price, and the consumer is forced to rely solely upon the efficiency of the manufacturing operation and the competition between manufacturers to keep prices at a reasonable level. Competition between the retailers for the distributor's share of the consumer price can do just as much and more to reduce the final cost of the article to the consumer as efficiency and competition at the manufacturer's level.

Retailing is a very complex trade, and there are many different types of retailers giving varying amounts and types of service to customers; e.g.

1. the store in which the customs picks out her own merchandise, pays cash for it at the wicket and carries it home, as in the modern marketeria;
2. the limited service-type store where the customer picks out her own merchandise with some help from clerks, pays cash for it and may have it delivered, as in some of the lower-priced basement stores;

3. the full-type service store, such as department stores with telephone-order service and delivery;
4. the high-style and exclusive-type speciality shop, giving individual attention and service;
5. the credit store where merchandise may be purchased at the same price for long-term credit as for cash.

The service performed by the retailer in each of these stores is different and varies in cost, and the consumer is entitled to expect to buy merchandise cheaper in the store offering the minimum type of service than in the store giving maximum service.

Price maintenance prohibits the retailer from offering the consumer these savings. The retailer should be free to decide for himself what type of service to give and price his goods according to the cost of his operation. The Retailer should also be able to decide for himself whether to operate his store in a high rental location where taxes are high, or whether to operate off the beaten path in a low rental area where taxes are low, and to price his goods lower on this account in order to offer his customers some inducement to shop in the less convenient location.

On price maintained lines the price is the same for all Retailers no matter what type of service and no matter where the store is located. To force all Retailers to sell price maintained articles at the same price is not in the best interest of customers or Retailers. There is room in Canada for all types of retailers. To force such restrictions on two manufacturers of similar articles would be definitely against the best interest of the consumer. Is it any less serious to rule out all competition between the Retailers? To force manufacturers to do so would be to eliminate practically all competition. In price-maintained lines, competition is practically eliminated at the Retail level, without Retailers having any voice in the matter and in many cases against their better judgment.

Retailing is not an exact science, and conditions are always changing. The costs of distribution are high and as wages continue to climb the cost of distribution, which is largely made up of wages, must climb higher. Efficient retailers must continually seek new and more efficient ways of distribution, in order to bring merchandise to the customer at the lowest possible price. On price controlled lines the retailer gains little by reducing his cost of operation as he cannot pass these savings on to his customer, and thus attract more customers. All he can do to attempt to bring in more customers is to give additional services which is no answer to the consumer who wants to buy as cheaply as possible.

In price maintained goods the manufacturer sets the retailer's margin, although he cannot know what the retailer's cost of operation is, and the manufacturer exercises control over the retailer's business in this way, although he has no financial interest in the retailer's business and assumes none of the risks of the retailer's operation.

If the price-maintenance idea continues to grow to the point where it covers the majority of articles on the market, it will have a paralyzing effect on progress in the Retail Trade. If the grocery field had been covered by price maintenance agreements to the same extent as the electrical appliance field is today, the super market development could not have taken place. It is most important for retailers to seek out and introduce new techniques which will lower their costs, and thus enable them to give lower prices to the consumer. Any policy that stands in the way of progress in the important field of distribution should be considered as objectionable on that account alone.

The policy of price maintenance does away with the advantage, to Retailers and Customers alike, of large-volume orders. During the War, it was proven

very conclusively that where a manufacturer can keep his production line full at all times, he can produce more efficiently and at lower cost. Large volume orders enable manufacturers, in many cases, to keep their plants busy during the off season and to maintain full production. This saving, in many cases, is passed on to the Retailer placing large-volume orders. This results in lower prices to the Consuming Public. Price fixing eliminates any advantage to the Retailer in placing large-volume orders as he cannot pass this saving on to the Customer.

Price maintenance has given rise to other practices which are not in the interest of the Consumer. Many credit-type Stores now sell articles at the same price for credit as for cash. To sell for cash is the most efficient way for any Retailer to sell goods, and if the customer wishes to buy for cash, he should be encouraged to do so and obtain the benefit therefrom. In price maintained merchandise, the cash customer is discriminated against as credit stores sell on 18 months terms at the same price as for cash, and the Retailer who wishes to sell these articles for cash at less than credit stores' prices is prevented by price maintenance agreements. This is unfair to the Cash Customer, yet there is no way by which the Retailer who wants to sell at less for Cash can do so on price-maintained lines.

Another development arising out of price-maintained merchandise is the discount house, through which price-maintained merchandise can be purchased at a discount from the price-maintained list. This is another evidence that markups on price-maintained merchandise are higher than necessary for efficient Retail Trade. At the same time as established Retailers are prevented from selling below the price-maintained lines, supplies of the same articles are available to the public through these outlets of uncertain origin. Their business is made possible by the price-maintenance policy, and legitimate Retailers are discriminated against because they are not permitted to meet and undersell this type of competition, which they would do in a normal competitive market.

The real problem in connection with retail price maintenance is very simple. Should Retailers be allowed to operate in the most efficient way possible and pass the savings obtained by efficiency on to the consumer by lower prices? Or, should the prices be kept high in order to make retailing and manufacturing a more comfortable way of life by eliminating competitive prices which tend to keep prices low? In other words, do we believe in the principle of competition, or should competition be eliminated in order to allow inefficient operators to remain in the field of distribution? The consumer would be better off if competition was allowed to have a free rein. This method reduces prices, sells more goods, enlarges the market, increases production and consumption. To restrict competition is merely protecting one part of the economic system at the expense of the consumer, and in the long run, would not be in the interest of Canada. Price maintenance, in effect, subsidizes inefficient operators both retail and producer at the expense of the consuming public. We suggest that, in this particular case, the benefits to the distributive trades and the manufacturers are far outweighed by the increase in price to the Consumer.

The function of both manufacturing and distribution is the supplying of consumer needs. The consumer should be allowed a wide choice in the selection of articles made by manufacturers and also in the choice of services given by the Retailer. The consumer should be allowed to select freely, i.e. whether to buy at the expensive specialty store, or at the super market, at the big store with all its variety, or the small store with its personal service, between the local community store or the downtown store. All operate at different costs and all should be allowed to price their own goods according to their own costs of operation. Customers will in the long run adjust prices

between the various stores according to their own preferences. The Consumer should be the final judge. In price maintained goods the manufacturer sets the price and in effect says to the Consumer, you can buy where you choose but the price is the same at all stores.

To force all Retailers to sell an article at the same price without regard to his cost is much the same as forcing all manufacturers of a product, e.g., refrigerators, to sell all models at one price, i.e., the price of the deluxe refrigerator. It would be an injustice to the consumer to charge the same for a strip model, a standard model and a deluxe model refrigerator. It is similarly an injustice to the consumers to force them to pay the same price for the services of the Retailer whether he operates a self service, standard service, or deluxe service store.

The Consumer gains most and achieves the lowest prices under circumstances where Retailers compete freely for the Consumer's dollar, as then the Consumers are free to shop where they please according to the service that they require.

In conclusion, the most serious aspect of Resale price Maintenance is that it prevents normal competitive factors from performing their proper essential function in the distributive field and thus prevents the consumer price from finding its own level in a free competitive market.

We firmly believe that the customer who buys for Cash should pay less than the Customer who buys on credit with 18 months to pay. Through markups that are over generous, resale price maintenance in many lines enables the Credit Store to sell on credit with 18 months to pay and still maintain an adequate profit, yet prohibits the merchant wishing to sell for cash from underselling that price, although he would be quite willing to sell for less and still be able to make an adequate profit at the lower cash price.

For the reasons herein set forth we, as a Company, are opposed to Retail price fixing by Manufacturers and Suppliers, as we believe that the Consumer should be able to purchase merchandise at the lowest possible price compatible with the service that they obtain from the Retailer from whom they wish to buy. It tends to make Retailing too static and resists, and may prevent, advances in Retailing methods, which will bring new techniques and lower margins and hence lower prices to the Consumer.

Attached hereto is a list of about 500 items on sale in our Toronto Store (which would represent but a proportion of the total in our organization), purchased by us from a great many manufacturers, each of whom has fixed the retail price at which we must sell the goods, and no doubt these manufacturers follow the same practice with other Retailers.

A LIST OF SOME NATIONALLY ADVERTISED TYPES OF MERCHANDISE WHERE THE RETAIL PRICE IS FIXED BY THE SUPPLIER

Men's Gloves
Women's Gloves
Children's Gloves
Hosiery
Umbrellas
Men's Handkerchiefs
Thermos Bottles
Books
Ladies' Fountain Pens
Gentlemen's Fountain Pens
Mechanical Pencils
Fountain Pen and Mechanical Pencil Set
Desk Sets
Playing Cards
Artist Pencils
Greeting Cards
Ink
Typewriters
Wrapping Paper
Seals and Tags
Blank Books
Stationery—Boxed
Wood Pencils
Napkins
Paper Towels
Duplicators
Chair Pads
Ball Point Pens
Writing Sets
Leads and Erasers
Cosmetics, Make-up, etc.
Colognes
Perfumes
Dusting Powders
Facial Tissues
Nail Polishes, Removers, etc.
Manicure Implements
Powder Puffs
Compacts, and Pill Boxes, etc.
Combs
Brushes (all kinds)
Shampoos
Hair Dyes and Tints
Home Permanents
Brilliantines and Hair Fixes
Baby Oils and Creams and Baby Preparations
Talcums
Hand Preparations
Foot Preparations
Tooth Pastes and Powders
Tooth Brushes
Mouth Washes
Depilatories
Deodorants
Suntan Preparations
Bath Brushes
Shaving Brushes
Bathing Caps
Patent Medicines
Pharmaceutical Preparations
Insecticides
First Aid Supplies
Barometers
Thermometers
Surgical Supplies
Trusses
Abdominal Supports
Soda Siphons
Elastic Stockings
Sun Lamps
Heat Bulbs
Bathroom Scales
Feminine Hygiene Products
Rubber Gloves
Heating Pads
Electric Blankets
Nursery Supplies
Deodorizers
Sun Glasses
Hot Water Bottles
Soap—all kinds, natural and synthetic
Cleaners
Toilet Tissue
Cameras—Snapshot
Cameras—Movie
Films
Enlargers
Printing and Developing Equipment and Chemicals
Chocolate Bars
Chewing Gum
Packages Chocolates
Silverplated Flatware
Sterling Silver Flatware
Sterling Silver Toilet Sets
Electric Kitchen Clocks
Electric Desk Clocks
Electric Alarm Clocks
Manual-wind Mantel Clocks
Manual-wind Alarm Clocks
Chime and Strike Mantel Clocks
Electric Shavers
Watches
Cigarette Lighters
Shoe Polish
Bobby Pins
Deco Transfers
Hair Nets
Shoulder Pads
Curlers

Sewing Cotton
Rubber Girdles
Elastics
Hair Pins
Wagons
Pedal Cars
Baby Carriages
Building Sets
Push Toys (metal)
Rubber Building Bricks
Electric Trains

Men's Ties
Suspenders
Belts
Garters
Jewellery
Handkerchiefs
Collars
Shirts
Pyjamas
Underwear
Swim Shorts
Play Shorts
Hose
Windbreakers
Hats
Caps
Sweaters

Boys' Ties
Shirts
Underwear
Sweaters
Overalls
Overcoats (velour)
Slacks

Vyella Material—Cotton and Wool
Tootal Material—Rayon
Patterns
Electric Blankets
Men's Shoes
Women's Shoes
Children's Shoes
Oven Glassware
China Figures
Wedgewood China
Glues and Adhesives
Liquid Solder
Household Cement
Plastic Resin
Wallpaper Remover
Cold Water Paste Powder
Plastic Wood
Solvent
Door Pulls
Door Knobs
Door Hinges
Cupboard Catches
Abrasives
Riding Tractors
Tractors
Sump Pumps
Sprinklers
Nozzles
Hedge Clippers
Cement Mixers
Electric Pumps
Lawn Rakes
Hose Reels
Fertilizer Spreaders
Wheelbarrows
Water Putty
Patching Plaster
Patching Cement
Joint Filler
Plastic Tile
Plastic Squares (decorated)
Strip Seal
Moulding (Metal)
Arborite
Made-to-Measure Sash
Rock Salt
Air Driers
Twist-ems
Gasoline Engines
$\frac{1}{4}$ H.P. Motors (Electric) 25 and 60 cycle
$\frac{1}{3}$ H.P. Motors (Electric) 25 and 60 cycle
$\frac{1}{2}$ H.P. Motors (Electric) 25 and 60 cycle
$\frac{3}{4}$ H.P. Motors (Electric) 25 and 60 cycle
1 H.P. Motors (Electric) 25 and 60 cycle
Jointers
Circular Saws
Scroll Saws
Drill Presses
Lathes
Sanders
Shapers
Electric Drills
Polishing Heads
Multi-Plex Saws
Pulleys
Belts
Metal Lathes
Portable Electric Hand Saws
Saw Blades
Dado Sets
Grinding Wheels
Moulding Heads
Moulding Head Cutters
Mandrels
Bench Legs
Hand Grinders (Electric)
Machine Stands (Steel and Cast)
Mortising Chisels and Bits
Mortising Attachments
Plug Cutters
Spindles
Shaper Cutters
Scroll Saw Blades
Band Saw Blades
Patterns
Machine Stands
Lathe Tools (Metal and Wood)
Drive Centre

Cup Centre
Screw Centre
Work Arbors
Face Plates
Chucks
Machine Vises
Flexible Shafts
Precision Tools
Aluminum Double Boilers
Aluminum Covered Saucepans
Aluminum Open Saucepans
Aluminum Cullenders
Aluminum Percolators
Aluminum Covered Kettles
Aluminum Preserving Kettles
Aluminum Trays
Aluminum Roasters
Aluminum Pudding Pans
Aluminum Frying Pans
Aluminum Cake Pans
Aluminum Pie Plates
Aluminum Potato Pots
Aluminum Dripolators
Aluminum Roast Pans or Bake Pans
Aluminum Pressure Cookers
Aluminum Dishpans
Aluminum Cookie Sheets
Aluminum Egg Poacher
Aluminum Muffin Covers
Aluminum Griddles
Aluminum Filter Coffee Makers
Aluminum Tea Pots
Gasoline Irons
All Pyrex Glass Ware
Picnic Jugs
Stainless Steel Saucepans
Stainless Steel Double Boilers
Stainless Steel Dutch Ovens
Stainless Steel Boiling Kettles
Stainless Steel Tea Pots
Stainless Steel Percolators
Stainless Steel Cullenders
Stainless Steel Pressure Cookers
Stainless Steel Dripolators
Chrome Plated Ware Tea Kettles
Chrome Plated Ware Whistling Kettles
Japanned Tin Ware Bread Boxes
Japanned Tin Ware Cookie Tins
Japanned Tin Ware Sani Boy Cans
Japanned Tin Ware Step On Cans
Japanned Tin Ware Pantry Sets
Japanned Tin Ware Dust Pans
Japanned Tin Ware Waste Paper Basket
Japanned Tin Ware Cleanser Cans
All Plastic Bread Boxes
All Plastic Cannister Sets
Rubber Dish Drainers
Sink Mats
Drainboard Trays
Stove Mat
Plate Racks
Shelf Kushions
Baskets
Mops
Brooms
Brushes
Polishes
Waxes
Kordite Clothes Lines
Kordite Clothes Pegs
Aluminum Clothes Lines
Anodized Clothes Lines
Tables and Stools
Clothes Line Pulleys
Metal Ironing Boards
Ironing Board Pad and Cover
Bundle Buggies
Rotary Clothes Driers
Bathroom Scales
Ice Crushers
Thermos Ice Bucket
Ice Cube Tray
Orange Peeler
Can Opener
Egg Beater
Kitchen Gadget
Cooking Thermometers
Potato Peelers
Pot Cleaners
Steel Wool
Presto Timers
Thermos Bottles
Lunch Pails
Stove Mats
Air Wick
Bird Seed
Electric Stoves
Gas Stoves
Space Heaters
Oil Burners
Furnaces
Washing Machines
Ironers
Dryers
Plumbing Equipment
Kitchen Cabinet Units
Radios
Phonographs
Records
Sheet Music
Musical Instruments
Boys' Bicycles
Girls' Bicycles
Juvenile Bicycles
Golf Balls
Dog Food
Fishing Rods
Fishing Reels
Fishing Lines
Guns
Golf Clubs
Skates
Skating Boots
Outboard Motors
Boats

Roller Skates
Car Washing Brushes
Car Wax
Flashlights
Paint
Automobile Polish
Auto Cleaners
Basketball Shoes
Tennis Balls
Women's Hats
Misses' Hats
Girls' Hats
Panties
Vests
Petticoats
Slips
Night Gowns
Pyjamas
Bed Jackets
Corsets
Corselettes
Girdles
Pantie Girdles
Brassieres
Garter Belts
Sanitary Pads
Baby Shoes
Baby Powder
Baby Oil
Baby Soap
Diapers
Diaper Linings
Baby Nipples
Baby Bottles
Q-Tips
Bottle Warmers
Infant's Bathing Suits
Sleepers
Girls' Dresses
Girls' Bathing Suits
Girls' Shorts
Batteries
Wool
Instruction Books
Crocket Cotton
Embroidery Floss
Women's Dresses
Misses's Dresses
Raincoats
Coats
Suits
Sweaters
Bathing Suits
Shorts
Bra & Short Sets
Shirts
Ski Suits
Ski Pants
Electric Refrigerators
Deep Freeze Units
Home Humidifiers
Electric Vacuum Cleaners
Electric Floor Polishers
Carpet Sweepers
Attachments
Pianos
Maple Dining Room Furniture
Maple Bedroom Furniture
Maple Occasional Pieces
Upholstered Furniture
Electric Grates
Chrome Office Furniture
Rattan Upholstered Furniture
Occasional Tables
Felt and Spring Filled Mattresses
Box Springs
Metal Springs
Pillows
Crib Mattresses
Wallpaper
Wall Coverings
Masonite Wallboard
Sheetrock
Metal Mouldings
Metal and Plastic Wall Tiles
Modernfold Doors
House Paints
Enamels
Varnishes
Special Paints and Finishes
Waxes
Polishes
Cleaners
Pictures
Bulbs
Baby Feeding Dish
Batteries
Broilers
Coffee Percolators
Coffee Makers (Glass)
Coffee Maker Stoves
Coffee Grinders
Coffee Urns
Chimes (Electrical)
Chimes (Mechanical)
Egg Cookers
Egg Cooker Sets
Elements
Fans
Flashlights
Hotplates
Handi-Chefs
Heating Pads
Hair Dryers
Hedge Trimmers
Heaters
Heater Fans
Irons
Iron Stands
Kettles
Liquidizers
Mixers
Ovens
Pressure Cookers
Rangettes

Sandwich Toasters
Sheets (Electric)
Table Cookers
Toasters
Teapots (Glass)
Transformers
Vibrators
Waffle Irons
Lamps
Lamp Shades.

HOUSE OF COMMONS

Fifth Session—Twenty-first Parliament
1951

(Second Session)

JOINT COMMITTEE OF THE SENATE AND THE HOUSE OF COMMONS

ON

COMBINES LEGISLATION

Joint Chairmen—The Honourable Senator A. L. Beaubien
Mr. James Sinclair, M.P.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 13

WEDNESDAY, DECEMBER 5, 1951

WITNESSES:

Mr. R. F. Wilson, K.C., Counsel, and Mr. Norman J. Leach, General Manager, Canadian Jewellers Association.

OTTAWA
EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY
1951

MINUTES OF PROCEEDINGS

DECEMBER 5, 1951

The Joint Committee of The Senate and the House of Commons on Combines Legislation met at 3.30 o'clock p.m., the Joint Chairmen, the Honourable Senator A. L. Beaubien and Mr. James Sinclair, M.P., were present, Mr. Sinclair presiding.

Also present:

For the Senate: The Honourable Senators Aseltine, Burchill, Dupuis, Fogo, Golding, Horner, Vaillancourt.

For the House of Commons: Messrs. Beaudry, Blair, Boucher, Carroll, Carter, Cauchon, Croll, Dickey, Mrs. Fairclough, Messrs. Fulton, Garson, Harrison, Hees, Jutras, MacInnis, Murray *(Oxford)*, McLean *(Huron-Perth)*, Roberge, Shaw, Stuart *(Charlotte)*, Thatcher.

In attendance: Mr. Thos. N. Phelan, K.C., and Mr. Guy Favreau, Counsel for the Committee, Mr. R. F. Wilson, K.C., Counsel, and Mr. Norman J. Leach, General Manager, Canadian Jewellers Association.

The presiding Chairman presented the Fifth Report of the Sub-Committee on Agenda and Procedure which is as follows:

Your Sub-committee on Agenda and Procedure met this afternoon and agreed to recommend:

1. That briefs received from the following organizations be printed as appendices to the Committee's Minutes of Proceedings and Evidence: Bulova Watch Company Limited; Retail Merchants Association of Saskatchewan; Six Provincial Branches of the Canadian Association of Consumers.
2. That at the meeting on Friday, December 7 the first order of business be a discussion of Mr. Croll's notice of motion relating to loss leaders; that the time alloted to each member during this debate be restricted to five minutes; that during this discussion the meeting be open to the public and thereafter the Committee adopt the procedure normally followed when a report to the House is under consideration.

Mr. Croll moved that the Fifth Report of the Sub-Committee on Agenda and Procedure be concurred in.

Mr. Fulton moved in amendment thereto, that Mr. Justice MacQuarrie, Mr. M. A. Robinson, of the T. Eaton Company and Mr. J. R. Thomson, be called before the Committee for examination.

After discussion, and the question having been put on the said amendment, it was negatived on the following division:

Yeas: The Honourable Senator Aseltine. Messrs. Beaudry, Blair, Mrs. Fairclough, Messrs. Fulton, Hees, Murray *(Oxford)*, Thatcher—8

Nays: The Honourable Senators Beaubien, Burchill, Fogo, Golding, Vaillancourt. Messrs. Boucher, Carroll, Carter, Cauchon, Croll, Dickey, Garson, Harrison, Jutras, MacInnis, McLean *(Huron-Perth)*, Roberge, Shaw, Stuart *(Charlotte)*—19

97053—1½

Mr. Beaudry moved, in amendment to Mr. Croll's motion, that Mr. F. A. McGregor be recalled for further questioning.

After discussion, and the question having been put on the said amendment, it was negatived on the following division:

Yeas: The Honourable Senator Aseltine. Messrs. Beaudry, Blair, Carroll, Dickey, Mrs. Fairclough, Messrs. Fulton, Hees, MacInnis, Murray *(Oxford)*, Thatcher—11

Nays: The Honourable Senators Beaubien, Burchill, Fogo, Golding, Vaillancourt. Messrs. Boucher, Carter, Cauchon, Croll, Garson, Harrison, Jutras, McLean *(Huron-Perth)*, Roberge, Shaw, Stuart *(Charlotte)*—16

Mr. Thatcher moved, in amendment to Mr. Croll's motion, that on Friday the Committee continue its public hearings until the end of the session and then make only an interim report to Parliament; and further that the Committee recommend that it be reappointed, to continue its hearings, early in the 1952 session.

And the question having been put on the said amendment, it was negatived.

And the question having been put on Mr. Croll's motion, it was agreed to.

Mr. Beaudry moved.

The consideration by this committee of such evidence as may have been presented to the MacQuarrie committee is precluded by privilege.

That after hearing a number of witnesses in favour of and against price maintenance representing in all a very considerable proportion of the citizens of this country, and since some members of the committee are precluded by time from securing evidence from witnesses heard, this committee comes to the conclusion that the nature of the verbal and written evidence submitted does not allow the committee to give the subject matter serious consideration.

And that this committee report to the House that it has no sufficient grounds for agreeing to or dissenting from the interim report presented by the MacQuarrie Commission.

After discussion, and the question having been put on the said motion, it was negatived on the folowing division:

Yeas: The Honourable Senator Aseltine. Messrs. Beaudry, Blair, Mrs. Fairclough, Messrs. Fulton, Hees, Murray *(Oxford)*, Thatcher—8

Nays: The Honourable Senators Beaubien, Burchill, Fogo, Golding, Vaillancourt. Messrs. Boucher, Carroll, Carter, Cauchon, Croll, Dickey, Garson, Harrison, Jutras, MacInnis, McLean *(Huron-Perth)*, Roberge, Shaw, Stuart *(Charlotte)*—19

Mr. Wilson was called and heard.

Mr. Leach was called, tabled a brief on behalf of the Canadian Jewellers Association, which is printed as Appendix A to this day's Minutes of Proceedings and Evidence, was heard and questioned thereon.

The witnesses retired.

In accordance with the recommendation contained in the Fourth Report of the Sub-Committee on Agenda and Procedure, concurred in on November 30, the following documents are printed as appendices to this day's Minutes of Proceedings and Evidence:

Appendix B: Brief submitted by The Retail Merchants Association of Canada.

Appendix C: Brief submitted by The Co-Operative Union of Canada and Le Conseil Canadien de la Co-operation.

Appendix D: Brief submitted by Interprovincial Co-operatives Limited.

At 5.50 o'clock p.m. the Committee adjourned until Thursday, December 6, at 10.30 o'clock a.m.

A. L. BURGESS,
Clerk of the Committee

EVIDENCE

DECEMBER 4, 1951

3.30 p.m.

The CHAIRMAN: Gentlemen, would you come to order? The first item will be the report of our agenda committee which has just finished its meeting.

(See Minutes of Proceedings).

Mr. BEAUDRY: Mr. Chairman, I would like to raise a point of privilege, and it will probably be the last time I will have anything to say. The chairman stated yesterday on a point of privilege which I raised for the purpose of establishing my right to put questions to the witness, McGregor, that the question of recalling the witness was to be left to the steering committee and the committee as a whole. He further stated that in any case he was well within his rights as chairman of a committee to prevent a member from asking questions. I pointed out that Beauchesne's third edition states clearly:

> 578—In committee of the whole House any member may put questions directly to the witness, and
>
> 547—Generally speaking, the proceedings of a select (special) committee are assimilated, like those of standing committee, to those of a committee of the whole House.

To this the chairman claimed he had authority to substantiate his claim that he is within his rights in preventing a member from asking questions. Since my point of privilege and its further argumentation rests in part on the chairman establishing proof and authority to substantiate his statement, I respectfully submit that he now indicate his sources of reference and quote the citation which upholds his view. There is certainly nothing in Beauchesne to that effect.

The CHAIRMAN: I will not comment on Mr. Beaudry's statement of what I said yesterday when I pointed out the committee is the master of its own fate. A motion was made in the steering committee to have Mr. Fred McGregor recalled and it was defeated, but it is perfectly in order for anyone here to make a motion now to have him recalled.

Mr. BEAUDRY: I resume my point of privilege if I may. My question to the chairman was to request him to procure authorities asserting his right to prevent a member from asking repetitive questions.

The CHAIRMAN: While Mr. Burgess is looking it up, the members will recall we adopted the ten-minute rule and Mr. Beaudry had twenty-five minutes of Mr. McGregor.

Mr. BEAUDRY: After all, the citation was promised last night.

The CHAIRMAN: The clerk is finding it. He actually had it yesterday and gave the citation to me about members asking repetitive questions.

Mr. BEAUDRY: How in the name of Pete can I be repetitive if I haven't asked a question yet? My point of privilege, which is based on the fact that I have not had an opportunity of asking one single question of the witness since the moment we have had his brief in written form, surely I cannot be accused of being repetitive before I have given the Chair a question materially on which it could base its decision. Even then the Chair would be at some difficulty to

establish its rulings since we have no printed record before us as yet, and since the chairman has already ruled twice, on pages 405 and 407, that the reporter may not re-read the record as to questions put.

If the decision of the steering committee is put to a vote of the general committee I would point out that the members are asked to vote on a principle which constitutes the first and most important privilege of parliament, and of the citizens—I refer to citations 210, 211, 212.

And should the decision of the committee be that I be not allowed to question the witness, I would deem it my duty to my constituents, as indicated in 210, to bring the question of my privilege before Mr. Speaker.

Furthermore, the minutes of our meetings should indicate very clearly that a week ago both the chairman and the members supported my view that I should be allowed to question the witness after having had an opportunity of going over his brief. Following the witness' verbal presentation of his brief, in defiance of our permanent decision reported on page 6 of our minutes, but condoned by the committee for the sake of celerity, (page 388) although no vote of the committee authorized this departure from our normal procedure, the chairman dismissed objections most summarily. I refer to page 394 of the minutes when the question was raised by Mr. Fulton.

Once the presentation was terminated—and it had lasted well over an hour—the chairman turned the witness over to Mr. Hees, who declined (page 401), to Mr. Croll, who declined as having no questions, to Mr. MacInnis, who stated he wished for no time, to Mr. Shaw, who said he didn't have a question, and then to myself.

The chairman having stated that the ten-minute rule would apply on the first round of questioning, I in turn declined, and the chairman made the statement that on this point he was in the hands of the committee. Mr. Croll and the chairman suggested that I should then be given whatever time I wanted, and I construed their statement, as I am sure everyone else in the committee did, as a means of perhaps saving some of the committee's time, since no one wished to question before reading the brief which was just being placed in our hands at that moment.

Mr. Thatcher moved for adjournment so that we could study the brief, but the motion was defeated. It was then that I began questioning, without having seen the brief, in order to accelerate proceedings, if possible, and very distinctly with the understanding of the chairman, of Mr. Croll and I am sure of the entire committee, that I would be given—to use the chairman's own words—"whatever time I wanted."

Some minutes later we were called to the chamber for a vote, following which I resumed questioning, but without being able to ascertain what my line of questioning extemporaneously almost an hour earlier had been.

Much to my amazement the chair interrupted me a few minutes later to turn the witness over to Mr. Croll who had already stated he had no questions to ask. Since then, having had an opportunity of reading the brief, I am not to be allowed to put questions to the witness, although Mr. Croll, who had originally declined, has now had two opportunities, and Mr. Hees, who had originally declined, has questioned at least once, although Mr. Shaw, who was in the same position, had a similar privilege.

In view of the chairman's decision last night I am now in this most peculiar position. All those members who were ahead of me on the original list and who declined in order to have an opportunity of seeing the brief first, or who did not qualify their decision, have now questioned, and in some cases questioned twice, and I, a member of the same committee, may not ask a single question since reading the brief in spite of the fact that at our very

first meeting of this committee a rule was made, and never amended by vote or unanimous consent, that no witness be heard and questioned until his brief had been in the hands of the committee.

I insist, sir, on my essential privilege of free speech, basing this on the rules of the House and in respect of the facts.

The CHAIRMAN: I will just summarize this by saying you have had twenty-five minutes with Mr. McGregor. If you will look at the record you will see you asked him the same question three times. He did not understand the question, I myself did not and I don't think any member of the Committee did. Those who have been here for the last few years are delighted to see you have such solicitude for your constituents. As far as Mr. McGregor is concerned, he appeared here in a different category to everyone else.

Mr. BEAUDRY: So I see.

The CHAIRMAN: Mr. McGregor was invited to come before this committee by vote of this committee, and he appeared before us by invitation.

Mr. BEAUDRY: Where is the vote?

The CHAIRMAN: He was not subpœnaed, as we had the right to do, but rather he accepted our invitation.

Mr. BEAUDRY: On a point of order, Mr. Chairman, I would like the chair to substantiate that Mr. McGregor was invited to come before us through a vote.

Mr. CROLL: In the steering committee we voted on it and it was accepted by the main committee.

Mr. THATCHER: On a point of order, Mr. Chairman.

The CHAIRMAN: On this question of calling Mr. McGregor. A member raised that question in the Steering Committee, the question of calling Mr. McGregor. It was voted on in the Steering Committee and the report of the Steering Committee was accepted by this committee. One of the provisions of the report of the Steering Committee was—and you will find it on page 345 of the Minutes of Proceedings of Tuesday, November 27, No. 7, as follows:

> "On motion of Mr. Croll the fourth recommendation of the subcommittee was concurred in"—that we invite Mr. McGregor.

Mr. BEAUDRY: Would you read that part of the report, Mr. Chairman, because you have interpreted things in a strange light, including my absence from the House last year, to which I will return later.

The CHAIRMAN: I will read recommendation No. 4:

> That notwithstanding any previous decision as to the hours of sitting, the committee sit on Wednesday, November 28, at 3.30 o'clock p.m., and that Mr. F. A. McGregor, former Commissioner of the Combines Investigation Act, be called for that day.

Mr. BEAUDRY: I can read that, too, and this means that we changed our hours of sitting on that day to hear Mr. McGregor.

Mr. THATCHER: Does this discussion not make one point clear. Surely we are trying to rush this matter through with undue haste. I have now about 40 briefs in my file, that have been turned in here, and which cannot be heard. One lady yesterday, told us she represented about 20,000 retailers, yet she was refused a hearing. Mr. Beaudry says he did not get a chance to question Mr. McGregor in the way he wished. I had 10 minutes, but I too would like to have had much more time. Do these facts not emphasize again how foolish it would be to try and push this legislation through in the next few days?

Surely it is sensible for us to carry on into the next session to give the matter adequate consideration. Therefore I shall back Mr. Beaudry up in his request.

The CHAIRMAN: There is a motion before the committee that the report of the Steering Committee be accepted.

Mr. FULTON: I wish to move an amendment, and the point of discussion is very much as that raised by Mr. Beaudry by way of privilege. I do not wish to criticize anybody, but I think this must be discussed by way of an amendment to the report of the Steering Committee. On the Steering Committee I suggested that Mr. McGregor be recalled.

Mr. CROLL: Let us have the amendment.

Mr. FULTON: I will move my amendment when I am ready to move it.

The CHAIRMAN: There is a motion before the Committee, and Mr. Fulton is speaking to the motion.

Mr. FULTON: I have stated that I am going to move an amendment. I am entitled to speak to the motion and when I have made my point I will move the amendment.

The CHAIRMAN: You are quite right, Mr. Fulton. Go ahead.

Mr. FULTON: I have suggested here that Mr. McGregor be recalled, amongst other reasons because I knew that there is more than one member of the committee who feels that Mr. McGregor was not adequately questioned, that there are points in Mr. McGregor's brief and points arising out of his re-statement, and there I point out that no other witness has had greater facilities extended to him than has Mr. McGregor in making his re-statement.

The CHAIRMAN: Mr. Preston and Mr. Harris both did it.

Mr. FULTON: I said no other witness has had greater facilities. Indeed, Mr. Beaudry's whole point just raised by way of privilege would not have been necessary were we not, as Mr. Thatcher has just said, unduly rushing this whole thing. Now, reference has been made to the appearance yesterday morning, I think it was, of Miss Hyndman on behalf of Mr. Thomson, the vice-president of the Retail Merchants Association of Canada. I just want to lay before the committee the proposition, and ask the committee to consider it very carefully, whether they are not, in effect, doing themselves and a wide segment of the Canadian community an injustice by deciding we will not hear further evidence after today. I was sent a copy of a telegram which was sent to yourself by Miss Hyndman, and it reads as follows:

> Yesterday morning you refused to hear representations from J. R. Thomson, St. Catharines, Vice President Retail Merchants Association of Canada and refused to hear my reasons for asking that he be allowed to make representations for his association you said because merchants association affiliated with Canadian retail federation whose representatives had been heard. Now learn that you are today hearing representatives of Ontario Retail Hardware Association and National Jewellers Association both affiliates of Canadian retail federation. Thomson himself a grocer represents association forty years older than retail federation and one which is primarily composed of small independent storekeepers who have different experience interests and service from Eatons and other chain stores and mail order houses. Thomson not asking opportunity to cry about what proposed legislation will do to him and other small merchants but in public interest wants opportunity to demonstrate that proposed legislation won't cure nor even affect high cost of living nor inflation and to submit reasons why loss leader practice greatest economic evil in retail field and one which will lead

inevitably to conditions which brought about Stevens investigation. Do you again refuse to hear representative from The Retail Merchants Association of Canada. M. P. Hyndman.

And there are other important witnesses or persons representing important and substantial bodies in the Canadian community who are asking the opportunity to be heard before this committee.

I have a telegram handed to me by Mrs. Fairclough, who asked me to raise it at the same time I raised this other one. It is from C. F. Fraser, Director, Institute of Public Affairs, Dalhousie University. It reads as follows:

> Following is text of telegram sent today to James Sinclair chairman parliamentary committee Resale Price maintenance begins. Deeply concerned press reports suggesting no further submissions to be heard by your committee. Earnestly request that every consideration be given extending hearings so that interested individuals and groups in maritime provinces may be heard. Infer from your letter Nov. 29 that such consideration would be given and hope may be permitted to appear late December or when session begins following Christmas recess.

Another telegram to Mrs. Fairclough, which she has asked me to lay before the committee at the same time, addressed to herself, from Chapleau, reads as follows:

> Concerned large department store brief accepted without recognizing possible selfish monopoly. Suggest reviewing markups their own and non price protected products versus price protected items Stevens report. Proposed legislation spells doom hundreds small merchants who are backbone our economy. Understand many briefs not yet heard by committee. This not democratic way and bad for Canada. E. M. Yale.

Mr. Chairman, I rest my whole case particularly on the last sentence of that last telegram that is signed "E. M. Yale". To proceed as we are proceeding and to cut off this committee's deliberations tomorrow afternoon and go then into secret session, with the exception only of a short debate on Mr. Croll's motion, would, I submit, not be the democratic way and would be bad for Canada.

We have all these individuals and associations who wish to give evidence before this committee. Now, I know that in the beginning we decided that we would not hear repetitious briefs, but when we have decided that we will hear the Ontario Hardware Retail Association and the National Jewellers Association, who are both affiliates of the Canadian Retail Federation, then the excuse of not having sufficient time to hear Mr. Thomson and his organization is, I think, only going to be taken as the rankest form of discrimination and is certainly a procedure very prejudicial to the arrival by this committee at a fair decision. There are other types of witnesses from whom there could be no question that we would hear repetitious evidence, but there are others from whom we would hear evidence most helpful in arriving at a proper decision in this matter, and I refer particularly to Mr. Justice MacQuarrie, who was chairman of the MacQuarrie Committee.

I think that we would be interested in knowing a number of things from Mr. Justice MacQuarrie; such as what members of this committee were in fact present and took an active part in the preparation of the report; on what evidence the report and recommendations were based, and matters of that kind; because you, Mr. Chairman, and the Minister of Justice, had made such a point of your position that this committee must accept the MacQuarrie report that I consider it extremely peculiar, to say the least, and a good deal more than peculiar, that there should be any resistance to the suggestion that Mr. Justice MacQuarrie be asked to tell us just exactly how he and his committee arrived

at their recommendations. Then there is the potential witness, Mr. Robinson, a member I believe of the executive, or a high officer in the T. Eaton firm. That firm has presented us with a brief which appears to carry some weight with some members of the committee, a brief opposing the continuance of resale price maintenance.

Mr. Chairman, in my submission, we should call Mr. Robinson to come here, if necessary by subpoena, and compel the production of books, records and papers to enable us to arrive at a fair assessment of the profit margin that that firm makes; that firm which is so strongly opposed to price maintenance and particularly by reason of the profit margin they made on non-price maintained goods as compared to price maintained goods. I would like to ask Eaton's representative to appear under oath and give the profit margins on what they call their branded goods and the profit margin of other branded goods; and I think we will then see very clearly why the Eaton company is opposed to resale price maintenance. Because certainly all the evidence before the committee, or before the Steven's commission showed that in every respect they made a far wider profit margin on non-maintained goods than they did on price maintained lines which they handled. I think that is the type of evidence we should certainly have before this committee before we are able to arrive at conclusions. There are a number of other witnesses whom I think that we should call but I am not going to try to make my list exclusive or exhaustive. I will leave it to anybody else who has a strong desire to recall Mr. McGregor, or anyone else they wish, to so indicate, but I think that those three, Mr. Thomson, Mr. MacQuarrie and Mr. Robinson should be heard before this committee and accordingly I move in amendment to the steering committee report that Mr. Justice MacQuarrie, Mr. Robinson and Mr. J. R. Thomson be called before the committee for examination.

The CHAIRMAN: Mr. Harrison?

Mr. HARRISON: If I might I would like to speak on a point of order raised by Mr. Beaudry.

The CHAIRMAN: I think if you were to speak to the amendment it would be better.

Mr. HARRISON: In that case then, I would like to say something too, but I would also like to speak on a point of privilege if I may.

The CHAIRMAN: All right.

Mr. HARRISON: I think that I may say to the committee that I am probably still in the same boat as Mr. Beaudry in that I wanted to question Mr. McGregor yesterday, and also, due to the lapse of time, a number of the other members of the committee find themselves in a similar position. I do not think I lost any privilege. I think the situation is simply one where, due to a lack of time, we just have to take our chance in this committee to get our questions in, having regard to the members we have here. To all intents and purposes the committee assembled here obtained all the information from Mr. McGregor that we require for the purpose of our inquiry.

The CHAIRMAN: Mr. Hees?

Mr. HEES: Mr. Chairman, I think, first of all dealing with what Mr. Beaudry said, it is most important that members of the committee have a fair chance to ask questions that they would like to ask, and I would suggest that Mr. McGregor be asked if he would be kind enough to come back again, and I would suggest that Mr. Beaudry be given say 20 minutes and then other members have a like opportunity.

The CHAIRMAN: Is that an amendment to the amendment?

Mr. HEES: No, I am just speaking on the amendment.

The CHAIRMAN: What do you suggest? Are you going to submit an amendment to Mr. Fulton's amendment, that Mr. McGregor be invited to come back, or that he be called back?

Mr. FULTON: Then, Mr. Chairman, I will include Mr. McGregor in my amendment.

Mr. HEES: If you want me to, I would like to put that as an amendment to the amendment to include Mr. McGregor and Mr. MacQuarrie. On the point of having Mr. McGregor come back may I say that the reason I suggested that is that I feel that his knowledge is very great and I would like to see Mr. Beaudry given the privilege of questioning him for a reasonable period of time; the gentleman on my right as well. Also, as you perhaps can remember, I requested on two occasions that Mr. MacQuarrie be asked to come before this committee and I suggest that because I think that having had Mr. McGregor before us and having been able to ask him questions has meant that we have learned a great deal. I think we would also stand to learn a great deal by asking Mr. Justice MacQuarrie a few questions. I think he is a most important witness. After all, it is on the recommendations of his committee that the proposed legislation is to be based. I think that if he could establish that the report was formed after a factual examination of the facts in the case it would help us a very great deal. Anyway, I for one would like to know on what basis he came to his conclusions, and I therefore support Mr. Fulton's amendment.

The CHAIRMAN: Mr. MacInnis:

Mr. MACINNIS: I do not think we should hurry unduly, Mr. Chairman, in dealing with this motion because it is a most important one. It has been suggested that we should have Mr. MacQuarrie come here to justify his report. Surely, that is a fantastic suggestion as it raises the question of integrity.

Mr. FULTON: On a question of privilege. Mr. Chairman; I am speaking on a question of privilege now—

Mr. MACINNIS: Well, Mr. Chairman, there is no question of privilege in the right of an individual—

Mr. FULTON: Mr. Chairman, I am speaking on a question of privilege. Mr. MacInnis says that it has been suggested that we should have Mr. MacQuarrie come here to justify his report. That is not what I said. I want to make that very clear; it was to ask upon what basis he arrived at his report.

The CHAIRMAN: To me that is the same thing.

Mr. MACINNIS: I would like to know what the difference is between them; on what basis you arrived at your report, and justifying your evidence.

Mr. HEES: The point was, on what basis do you think he came to his conclusions.

The CHAIRMAN: Mr. MacInnis has the floor.

Mr. MACINNIS: It is just a case of bringing a judge into court and saying to him; now, justify your verdict in this case.

Mr. FULTON: It is not the same thing at all.

The CHAIRMAN: Mr. Fulton and Mr. Hees, you were not interrupted by anybody while you were making your submissions. I ask you to concede other members the same courtesy.

Mr. MACINNIS: And another thing I cannot understand is why the T. Eaton Company should be brought here when their situation is not dissimilar to that of any other witness. Mr. Fulton has suggested that they come here and bring with them all their books and records and what have you from the store. So far in our proceedings we have not asked any of the witnesses who have appeared before this committee to bring their books and records nor

have we asked any of the witnesses who have appeared before this committee to be sworn. Are the T. Eaton Company so unreliable that they cannot be heard except under oath, and even under oath that they must have their books and records to make doubly sure that they have told the truth? Surely that is carrying obstructionist tactics in this committee to unusual lengths.

Mr. CROLL: Mr. Chairman, may I just make this comment. I am not going to say anything about what has already been said by Mr. MacInnis. I am particularly concerned with the statement in the wire—that part of it which said that the chairman refused to hear any reasons why Mr. Thomson should be heard. Those of us who were here yesterday and heard the application made, know that the applicant was given ample opportunity to be heard. He spoke for perhaps ten minutes and gave every conceivable reason, and there is no justification for the statement to be made that the chairman refused to hear any reasons why Mr. Thomson, on behalf of the retail grocers, should be heard. If for no other reason than that I am voting against the amendment.

Mr. BEAUDRY: Speaking on the amendment—

The CHAIRMAN: Mr. Beaudry.

Mr. BEAUDRY: I am afraid the amendment places me in a peculiar position.

Mr. HEES: What, again?

Mr. BEAUDRY: And I insist on my right to speak as a member of parliament, and I insist on having Mr. McGregor, who has been a witness, called to give me sufficient time to put questions to him—as has been done by eight or nine or ten members of the committee—after reading his brief. I do not know in what way I should voice my amendment to the amendment so that Mr. McGregor's case can be looked at entirely separately. I am afraid that if I put it as a sub-amendment the vote on my sub-amendment, which is necessarily dependent upon the main amendment, would be adverse to my contention—even if we had a unanimous vote on that particular point.

The CHAIRMAN: I would suggest that I delete this last reference to Mr. McGregor, that I put this amendment, and that I then accept an amendment from you?

Mr. CAROLL: Is the gentleman's amendment in order? It is not wholly in order?

The CHAIRMAN: The clerk has pointed out to me that we have already made a decision on this in the main committee, on the motion by Mrs. Fairclough that the T. Eaton Company and other witnesses be called. There is the rule that we do not reverse ourselves.

Mr. FULTON: Is that a rule? It is a rule of new application in this committee, then.

The CHAIRMAN: That is exactly what I told Mr. Burgess, but I said that in view of the decision the fair thing was to put the motion.

Mr. CARROLL: As I understand the motion put by the gentleman, he moves that Mr. McGregor be recalled.

The CHAIRMAN: Yes.

Mr. CARROLL: All right, and there is an amendment that Mr. McGregor be recalled and also—

Mr. CROLL: Mr. Thomson.

Mr. CARROLL: But that is not the amendment.

Mr. BEAUDRY: I have made no motion yet, Mr. Carroll.

The CHAIRMAN: Mr. Fulton's amendment before the committee is that Mr. Justice MacQuarrie, Mr. Robinson of the T. Eaton Company, and Mr. J. R. Thomson be called before the committee for examination.

Mr. FULTON: Speaking to the amendment, I just wish to reply to two comments made by Mr. MacInnis.

Mr. MACINNIS: On a point of order?

Mr. FULTON: You said that you did not interrupt me when I was speaking..

Mr. MACINNIS: The mover of an amendment has not the right to close the debate.

The CHAIRMAN: He has not the right to speak twice on an amendment.

Mr. FULTON: Oh, yes.

The CHAIRMAN: Pardon me,—in committee, but not in the House.

Mr. FULTON: Members have the right to speak as many times as they like, and I was going to reply to Mr. MacInnis. He said two things had absolutely no application for the committee whatsoever. He has made his own comment with respect to those who make silly remarks and I will let the committee judge to whom that should apply.

He says that the amendment should be turned down because I suggested, while speaking, that the T. Eaton Company should be called—if necessary subpoenaed and put under oath. I point out to you that I have consistently, I think persistently, maintained that this committee should have the right to call such witnesses as it wishes and on such terms—whether they be under oath or otherwise—as the committee may determine.

I think I have made it plain that in my view we will be denying ourselves facts and figures we need unless we call certain witnesses. I feel very strongly that the T. Eaton Company figures will be of great interest to the committee and of great help. Therefore, I also agree and I lay considerable emphasis on the point that Mr. Robinson should be called and, if necessary I said, be required to produce his books and testify under oath. In that respect I make no difference between that witness and any other witness whom the committee might want to call before it.

With respect to the position of Mr. Justice MacQuarrie, I wish merely to point out that the point drawn by Mr. MacInnis has absolutely no application. He said it was as if we asked a judge to appear before the committee to justify a verdict which he had arrived at in a case before him. If that were so, and I wish it were a similar situation, the proceedings would be different. If it were a case which Mr. Justice MacQuarrie had been trying we would know the case because, except in the most unusual circumstances, it would have been tried in open court; we could have attended and heard all of the evidence; we would know, without the necessity of making any further inquiry, upon what evidence and upon what facts and figures and what other considerations the judge had reached his verdict. In this case, we have absolutely no such information whatever. Indeed, not only are we without knowledge as to what considerations Mr. Justice MacQuarrie relied upon in coming to his decision, but we have had it suggested by two reliable witnesses before us, witnesses representing large groups, that in their opinion—well, no, that is an inference and I will not go that far. We have had a statement by them that not only were they not asked but they did not submit any facts or figures to the MacQuarrie Commission. From that I certainly, without anything further, feel we are free to draw the inference that there was not sufficient evidence before the MacQuarrie Commission to justify it arriving at its decisions and recommendations.

I simply suggest that Mr. Justice MacQuarrie be asked to come here and to tell us, perhaps not all the specific evidence, but what sort of evidence he had before him—so that we may know what evidence he had before him and whether it was sufficient evidence upon which to base the recommendations that are made.

Mr. MACINNIS: I will be much briefer than Mr. Fulton was.

He said he was not proposing any different method or treatment for the Eaton Company than any other company, but the fact remains that he did not propose that any other company should bring their records here. He did not propose that any company should do that.

Mr. FULTON: I did not propose that any other company be called.

Mr. BEAUDRY: We have heard from a company—

Mr. MACINNIS: I have one over Mr. Fulton because I have already voted for bringing the T. Eaton Company here—when Mr. Fulton was not here to vote.

Mr. FULTON: I cannot stand up under that one.

Mr. HEES: I find it very hard to understand the government's reluctance to ask Mr. MacQuarrie—

Mr. CROLL: What has the government got to do with it?

Mr. HEES: I say the government because they feel that his report is well founded—

The CHAIRMAN: What is your evidence that the government has said that Mr. MacQuarrie is not to be called?

Mr. HEES: Well, I have asked a considerable number of times—

Mr. CAUCHON: When?

Mr. HEES: On two different occasions I have asked that Mr. Justice MacQuarrie be asked to come here.

The CHAIRMAN: You have asked the government?

Mr. HEES: I have asked this committee—

The CHAIRMAN: Oh, yes.

Mr. HEES: And there has been no evidence of any willingness on the part of the committee to ask him. As the committee is dominated by government members and a government chairman, therefore it is to be taken the government does not want him to come.

The CHAIRMAN: That is pretty silly reasoning.

Mr. HEES: I think it is pretty good reasoning. A good way you can put a stop to that silly reasoning is to say: yes, we think enough of Mr. Justice MacQuarrie's report and the recommendations and conclusions he arrived at to ask him to come here and for all time settle the point to the public's satisfaction—that the conclusions were based on sound facts and reasoning. That would for all time put an end to a belief which is in a great many people's minds that this is a purely theoretical report, the kind that would come out of a classroom rather than out of practical business.

It is a good opportunity for the government to show this is a good report. I say the government, and this is a government committee—government dominated wholly, and completely—and it is a great opportunity for the government to prove this is a good report and their legislation is justified.

Otherwise, there is going to be tremendous doubt left in the minds of a lot of people.

Mr. CARROLL: Mr. Hees should take the same ground that he did on the question of veterans' pensions. He got up in the House and said that he was the man, along with a few others, who forced the government—

Mr. HEES: That is right, and I say thank you very much Mr. Carroll. If Mr. Justice MacQuarrie did appear I would say it would be because of the opposition's demands that he appear to justify his case here—and for no other reason. But the government does not want him to come. They seem to be a little afraid.

The CHAIRMAN: If I might interrupt you, I think you will recall that you yourself demanded that we hear Mr. McGregor. It was not the government who asked for it, but it was done at your request. Therefore I think you should let the committee make the same decision either to call or not to call according to the judgment of the members of this committee.

Since 1867 it has been our parliamentary practice for those who were in the majority in the House to have a majority in committees.

Mr. FULTON: Can you, Mr. Chairman, or any member of the committee suggest any reason why Mr. McGregor should be the only outside witness that this committee is to call?

The CHAIRMAN: By decision of this committee.

Mr. CROLL: May I give the reason, Mr. Chairman, why Mr. McGregor was the only outside witness called? If you will recall it, it was Mr. Hees who insisted that Mr. McGregor be called.

The CHAIRMAN: Yes.

Mr. CROLL: And he had only one reason in doing so, he hoped that Mr. McGregor would embarrass this government.

Mr. HEES: Oh no, no. As one of your constituents, Mr. Croll, I object to that remark. He is my member of parliament and he will be hearing about this at the polls.

The CHAIRMAN: Order, order!

Mr. CROLL: I won't get to the polls.

Hon. Mr. GARSON: I would like to make just a few remarks, Mr. Chairman, in fairness to the MacQuarrie committee and its report, before the vote is taken. I have been rather afraid to say anything in this debate for fear that I would be accused, as a member of the government of trying to influence the committee.

The CHAIRMAN: Order!

Hon. Mr. GARSON: I think in common fairness that we should not permit some of the remarks that have been made, perhaps not intentionally, as reflecting upon the MacQuarrie committee.

I have been in public life for upwards of 25 years, and during that time I have had occasion to see a good many reports of the general character of the MacQuarrie report, and I would like to say that I do not think I can recall a single one of all those reports I have seen in which the arguments, pro and con, have been more admirably and comprehensively summarized than has been done in this MacQuarrie report. So I defy any reasonably minded person who has not got some ulterior axe to grind or some ulterior purpose to serve to say that on the face of it that report is not abundantly clear as to just how the conclusions therein are arrived at.

Mr. FULTON: Well, Mr. Chairman, I say it, and I do not accept the hon. member's definition.

The CHAIRMAN: Order!

Hon. Mr. GARSON: I said "any reasonably minded person who has not got some ulterior axe to grind or some ulterior purpose to serve."

Mr. FULTON: I demand that the minister withdraw that remark, Mr. Chairman, on a question of privilege.

The CHAIRMAN: Order, order!

Hon. Mr. GARSON: The purpose of my hon. friend, of course, is to hold up the proceedings of this committee.

Mr. FULTON: I demand that the minister withdraw those remarks, Mr. Chairman.

The CHAIRMAN: Mr. Garson, I do think that to attribute ulterior motives to a member is unparliamentary.

Hon. Mr. GARSON: Well, then, Mr. Chairman, I will withdraw.

Mr. HEES: Now, now, do not spoil it.

The CHAIRMAN: Question? All those in favour of Mr. Fulton's amendment that Mr. Justice MacQuarrie, Mr. Thomson and Mr. Robinson be called before the committee for examination will please indicate by a show of hands. Those in favour of Mr. Fulton's amendment will say "aye"; those opposed will say "nay".

(At this point a recorded vote was taken).

The CLERK OF THE COMMITTEE: Those in favour, 8; those opposed 19.

Mr. THATCHER: Please read the main motion.

Mr. BEAUDRY: I have an amendment to make to the main motion. It is to this effect: that I ask that Mr. McGregor be recalled as a witness in order that I may have the privilege of asking him questions.

Mr. THATCHER: You had better say "that we may have the privilege".

Mr. BEAUDRY: That we may have the privilege of putting questions to him.

The CHAIRMAN: Is the committee ready for the question? All those in favour of Mr. Beaudry's amendment will say "aye". Those opposed to the amendment will say "nay".

The nays have it.

Mr. BEAUDRY: A recorded vote, please. Those in favour will say "yes"; those opposed will say "no".

(At this point a recorded vote was taken).

The CHAIRMAN: Now, the steering committee have recommended that at the meeting on Friday, December 7, the first order of business be a discussion of Mr. Croll's notice of motion relating to loss leaders; that the time allotted to each member during this debate be restricted to five minutes; that during this discussion the meeting be open to the public and thereafter the Committee adopt the procedure normally followed when a report to the House is under consideration.

Mr. THATCHER: I am sorry, I must move an amendment to that. I would like to move that on Friday the committee continue its public hearings until the end of the session and then make only an interim report to parliament. Further, I move that the committee asks to be reassembled to continue its hearings, early in the 1952 session. Surely it is clear we cannot hear all the evidence before us unless such a course is followed. If the legislation is rushed through a lot of people are going to be hurt without having a hearing.

The CHAIRMAN: All in favour of Mr. Thatcher's amendment say yea, and the contrary say nay.

Mr. CROLL: May we have a recorded vote on that, please?

The CHAIRMAN: All in favour of the adoption of the report of the agenda committee will say yea, contrary will say nay.

Carried.

Mr. BEAUDRY: I have a motion to make, and I will make it in a minute, but I would like to make one observation first. The committee has just by a majority vote prevented me from asking one question of the witness, McGregor, after having had an opportunity of reading his brief.

The CHAIRMAN: I would like to point out the order of business before us is to hear from these witnesses.

Mr. BEAUDRY: I still have a motion to make and I am making it:

That consideration by this committee of such evidence as may have been presented to the MacQuarrie Committee is precluded by privilege.

That after hearing a number of witnesses in favour of and against price maintenance representing in all a very considerable proportion of the citizens of this country, and since some members of the committee are precluded by time from securing evidence from witnesses heard, this committee comes to the conclusion that the nature of the verbal and written evidence submitted does not allow the committee to give the subject matter serious consideration.

And that this committee report to the House that it has no sufficient grounds for agreeing or dissenting with the interim report presented by the MacQuarrie Commission.

The CHAIRMAN: I will put the motion to the committee.

Mr. BEAUDRY: A recorded vote, please.

Motion defeated.

The CHAIRMAN: We have before us as our witnesses today representatives of the Canadian Jewellers' Association. The questioning will begin with an opening examination by Mr. Phelan. Perhaps you would introduce yourselves to the committee.

Mr. R. F. WILSON, K.C.: I am counsel for the Canadian Jewellers' Association and with me is Norman Leach, who is general manager of the association. With the permission of the chairman and my learned friend Mr. Phelan I would like to make some general observations and Mr. Leach will summarize the brief and answer any questions you may wish to put to him.

In the summary of our brief we ask that this committee carry out a thorough investigation of all the facts before making any decision. Secondly, we ask this committee to go into and determine what fair trade laws should be enacted, and we have gone on record as being opposed to combines. The MacQuarrie report, as I read the reference, had no basis for dealing with price maintenance at all, but in fairness to this committee, they did in a letter to the Canadian Jewellers' Association state they intended to deal with the question of price maintenance. It is our submission that the MacQuarrie Commission was not created to consider price maintenance at all, and for that reason this association, and other associations did not present briefs to that commission dealing with that subject.

It is our submission that while there is public clamour about the high price of goods, the high cost of living, this proposed legislation is not the answer and will not resolve the question of high prices.

We suggest to this committee that they make haste slowly for the reason firstly that if this type of legislation is enacted in the absence of some fair trade laws, it is going to be very upsetting to Canadian business, and secondly if this type of legislation is enacted as an amendment to the Combines Act, or put into any other Act, I assume that this government, as the government did in 1931 would in fairness to the people of this country and those who would be affected by it, submit the legality and constitutionality of the proposed legislation to the Supreme Court of Canada.

I would say as a lawyer after consideration of the Combines legislation reference in 1931 to the Supreme Court of Canada and later to the Privy Council, that the issue here is far greater and the proposition in the proposed legislation is far more startling when it is going be laid down that a business man cannot carry on his business in the way he has been accustomed to over a period of many years.

Gentlemen, this is not the place or time to argue whether or not the proposed legislation is constitutional or unconstitutional, but I do say that there is sufficient doubt about the constitutionality of it to suggest that if the government of the day does not see fit, after the legislation is enacted, to submit it to the Supreme Court of Canada, that some interested party will undoubtedly adopt that course.

Now, I will turn the matter over to Mr. Leach and he will give you any help he can.

Norman Leach, General Manager, Canadian Jewellers' Association, called:

The WITNESS: May I go back to what was said by Mr. Wilson as to the history of the MacQuarrie Committee, and I am not a parliamentarian, nor a lawyer, I am just a business person. The history of the thing as I see it is that Mr. McGregor reported to parliament he was having trouble prosecuting some bakers, and Mr. Gordon appeared and said that the bakers were carrying on a procedure as set up for them in the wartime days. Mr. McGregor then said there was no teeth in the combines legislation and as a consequence he had to resign. The MacQuarrie Committee was named to study combines legislation and how it could be strengthened so the commissioner could properly administer his office. We received a letter from the MacQuarrie Committee in January, 1950, asking us to submit a brief. I had previously read in the newspapers that Mr. McGregor had resigned and that Donald Gordon had supported the bakers, and it seemed to us the MacQuarrie Committee was studying combines. We simply said we did not favour combines, we believed in free competition and every individual manufacturer should be allowed to set his own price. We just sent him a letter and nobody realized there was going to be this implication, and I can say that in trade circles in June and July we were startled to hear that the manufacturer was not going to be allowed to tell the public what his price was going to be. We felt we had been badly misled, you can say we were stupid, if you like, that we did not present our case to the MacQuarrie Committee. I think that if the kind of evidence had been presented to the MacQuarrie Committee that you have been listening to in the last few weeks, this MacQuarrie report would have been different. I think we are presenting now what should have been presented in 1950.

To summarize our brief may I draw your attention to a typographical error on page 2. It says, "We do not feel that the point has been well established that there is no compulsion for the consumer to purchase price maintained items." I made a double negative. It should read, "We do not feel that the point has been well established that there is compulsion for the consumer to purchase price maintained items."

We maintain that although price maintained goods are offered to the public there is still a wide range of goods that the public can buy that are not price maintained, and if they want to they can buy price and quality maintained merchandise, and if they do not want to they can buy at any price they want. We also contend that in many instances non-price maintained merchandise is sold at a higher price than where the manufacturer has set the resale price. I believe Mr. Harris presented considerable evidence in that direction and I contend that is a condition which does exist. We say price maintenance means quality stability. The jeweller in Canada or in any other country sells merchandise the public does not know anything about. We contend, gentlemen, that in the case of the jewellery trade the brand and price is of great importance.

We sell timepieces, we sell gems, and we sell articles made of gold, silver and platinum. In many instances in the case of an article which is plated, it is plated on a base metal and finally there is silver or gold applied, and you or any member of the buying public has little knowledge of what you are buying until you know something about the brand and the advertising of the product. We contend, gentlemen, in the case of the jewellery trade uniquely, brand and price are of great importance. There are timepieces made in Switzerland and some made in the United States. I have a record here showing that there are some 300 brands of watches. The buying public must have confidence in the retailer, in the brand and in the price before it can buy intelligently one of those 300 brands of watches. Similarly, when you go to buy a diamond, or other merchandise, or any of the precious stones, you must have confidence in that firm you are doing business with, and that involves brand and recognized quality. We say to you that as far as the jewellery trade is concerned brand and price are of great concern to the buying public. On point No. 5, in our brief we deal with loss-leaders, and although by this time you may be bored with the question of loss-leaders, I can assure you that it is not a boring subject to the retail trade. Large buyers, characteristically, have an advantage over small buyers because they get quantity discounts. We do not quarrel with quantity discounts as such. A man who buys three little items puts the manufacturer to the expense of packaging and shipping, and all the expenses that go with it. That quantity discount, we suggest to you, is enough, that even with resale price maintenance the large buyer can consistently undersell the small retail merchant and still make the same margin of profit because of the quantity discount which enables him at any time, or all times, to undersell the small buyer and still make the same margin of profit the little man has been able to make.

If I may digress, I have something here which I think should be impressive to you. This is one edition of the Toronto *Daily Star* dated Thursday, November 22. I took two copies of the newspaper and went through it and clipped all the bargain ads that I could find. There are over 25 of them. I will refer to them quickly:

Those are watches with one-third to one-half off; here is rawhide luggage, approximately 25 per cent off; here are diamond rings at one-half off; there are ladies' coats, save $15 on every coat; here are more ladies' coats, regular $89 for $66; here is a free slipper offer with every pair of shoes you buy; here are ladies' fur coats, regular $295 for $179, etc.

Your hear about the price of watches being up quite high, and so on. Here is an offer of a 15 jewel Swiss watch at $15.95, on which a 35 per cent tax has been paid, so I assume that is not a high price for a 15 jewel Swiss watch. Here are men's handkerchiefs, regular 3 for $1.15, now 3 for 95 cents. Those are television sets, save $250, save $200. There are fur coats, regular $395 for $198. Fur coats valued up to $750 for $499. Chandeliers for your house at one-third off. Children's clothes, $8.95 for $4.98. May I repeat that this goes on every night. This is one edition, the edition of Thursday, November 22.

By Mr. Fulton:

Q. I am interested in this, but I want an explanation. Are those large stores or small stores?—A. They are a variety.

Q. A cross section?—A. This happens to be the Robert Simpson Company's, this is Northway's, this is Macdonald and Wilson Light Fixtures, Holt Renfrew's, Sellers Gough, People's Credit Jewellers, Eaton's, Crystal Fur Shop, the Shoe Circle, Fairweather's.

Q. For somebody who does not know Toronto, is that a fair cross section of the stores, large and small, or are they all large stores?—A. They are large and small. I would say preponderantly large.

Mr. CROLL: Yes.

The WITNESS: Mr. Croll would know them.

Mr. THATCHER: I would like an explanation, too. What do these advertisements indicate as far as price maintenance is concerned?

The WITNESS: May I conclude. These are men's neckties, regular $2.50 to $5.00, for $1.69 each. Here is an advertisement of the Canadian Tire Corporation, automobile oil at 37 cents a quart, save $6.75 on your battery. Men's skates and boots, regular $18 to $20, for $11.45. Here is an advertisement for bathroom fixtures, regular $219 for $169, Better Plumbing Company, at 641 Yonge street. Television sets, I won't describe them, every one of these is a bargain. I just brought this as a matter of interest. It does not mean as much, perhaps, but pre-dressed chickens sell at 59 cents a pound and Pickering Farms charge 55 cents. Fresh ducklings at 55 cents a pound, and Pickering Farms, 55 cents.

The point that I wanted to make, sir, is that while we say that there are price maintained merchandise, that I have here is one edition of a Toronto newspaper offering people all the bargains they want.

Mrs. FAIRCLOUGH: But there are no $2 shirts.

The WITNESS: I do not think there is a $2 shirt among the lot. Mr. Wilson has drawn my attention to another point which I wanted to make. This is the Canadian Jewellers Year Book. It is a year book giving the lists. In this there are four pages of watch brand names—this is an identification service to help jewellers find the makers of certain watches when they want them. There are in this book pages of names of watches you can purchase in Canada. Somebody at some time or other has them in stock. Out of that list I was able to pull out 62 names of price maintained items, leaving 239 non price maintained, out of a total of 301 watch brands listed. There is no compulsion for the public to buy any one of those 62 watches, they have a choice of 239 others to buy if they want them. If the 62 happen to be the Cadillacs of the jewellery business, the public can buy them at price maintained prices, but they do not have to. There are 239 other watch lines for them to purchase.

By Mr. Thatcher:

Q. What about the advertisements? I still have not been told the significance of those.—A. The significance of those advertisements to me is this. The public has those bargains available to them all the time. That is only one edition of a daily newspaper. You can read that in the papers any day of the week, more or less, and I respectfully suggest to you, ladies and gentlemen, that if you abolish resale price maintenance you will see brand names all throughout these ads. I do not think any of these items are loss-leaders, because they are not branded items. It is the brand in my opinion that labels a bargain a loss-leader. Here there are some Eaton brands, some are Simpson's and some of them are what we call buckeye brands, no particular manufacturer is identified with them, and they are given to the retailer with the idea to cut the heart out of them if you want to, but when the manufacturer gives you his brand with his name on it, on which he has maintained the price and the quality, etc., he asks you, the retailer, to maintain the price on that item. The public always has bargain merchandise available, and I suggest to you that if this legislation is implemented that your well known price maintained items would be in the same class as these.

Q. In other words, the prices on these goods would go down.—A. I would suggest . . . do you think it would be so?

Mr. CROLL: Do you think it would be so?

The CHAIRMAN: The understanding was that the witness would make a brief summary of his brief and then the committee counsel would begin questioning him on this brief.

Mr. FULTON: The witness indicated that he wanted to follow that one up.

Hon. Mr. GARSON: I would very much like to cross-examine on this point if everyone else is going to.

Mr. FULTON: The witness indicated in this case that he would like to follow it up, that he wanted to complete his statement.

The CHAIRMAN: The witness may proceed, but will the members in this corner of the room close to the witness refrain from asking questions until they are called.

The WITNESS: We say on page 6, that while some lines are price maintained others are non-price maintained—but that price maintenance holds prices down. On this account I have this statement to make. I know, because I work with jewellers, wholesalers and manufacturers in my work. I know that since the war there has been a constant squeeze on the retailer's mark-up. It has been caused by constant increases in labour charges, a constant increase in the price of materials. Take the matter of a Swiss watch. None of us have any control over the price of a Swiss watch. It is because of customs duties, excise duties, sales tax and the like, that prices have been going up. The manufacturer himself is fearful of pricing himself out of the market or getting away from demand. Believe me, that is the most constant worry of the jewellery trade in Canada that our prices artificially are going to get so high that the public will turn away from our goods. It is a constant worry in the jewellery business. The manufacturer therefore is constantly asking the retailer to take another squeeze, take another squeeze, take another squeeze—that sounds like Wartime Prices and Trade Board days, but that is happening. The retailers of this country are constantly complaining, they stand alone, they can't get their mark-up and if they can't get their mark-up they can't get along on what they are getting. That, unfortunately, I say, is tough. I am talking only about branded merchandise because the retailer sets his own prices on non-branded merchandise.

Now, in the brief, we said a great deal about what we consider democracy in business. Mr. Wilson has already made an allusion to it. If I may just go back and read it, it seems to me it is a valid, strong point of the recommendation:

> According to the recommendation of the MacQuarrie Commission, it is recommended that it be an offense for a manufacturer to withhold his stock from a price cutting retailer. We cannot fail to look upon this as an extraordinary proposal and without precedent. Up to the present time, it has been considered to be the democratic right of any business man to sell or refuse to sell according to his decision. It might be that the location of the store which was wrong, the merchant a poor credit risk, too many outlets in the community or the operator slipshod and inefficient, however, it is unthinkable that any Government should even consider legislation which would eliminate such a basic democratic right.

This comment of Mr. Wilson's we thought put the position of the manufacturer particularly well.

I hope I am not exceeding my time, Mr. Chairman?

Hon. MEMBERS: No, no; go on.

The WITNESS: The first concern of the manufacturer is the welfare of the retailer, hoping to keep him in a liquid position. Unfortunately he cannot always be sure, since the retailer is never completely liquid—his money being tied up in inventory and bills receivable. He makes payments to suppliers if he is pressed for such payment, but the individual supplier can never be completely sure as to the retailer's current solvency. The manufacturer could,

by the law you propose, be forced to continue selling to a store which progressively was becoming insolvent.

The WITNESS: We feel this, that the manufacturer might be forced by your law to go on selling to the retailer even when he knows that the retailer is facing insolvency.

Mr. CROLL: No, no; not at all.

The WITNESS: That is what we took to be one of the effects of the proposed legislation.

The CHAIRMAN: Once again, Mr. Croll; would you mind withholding your questions until Mr. Leach has finished his submission?

The WITNESS: I would appreciate having Mr. Croll's view on it. It seems to me that if a firm is facing the receiver there is not much that we can do if he decides to cut prices. He might be cutting prices in desperation as a last resort; facing bankruptcy, and as a fund raising proposition, he may cut prices. That is one fear the manufacturer is faced with. Isn't that the point?

The CHAIRMAN: Mr. Phelan will undoubtedly cover that in his questioning.

The WITNESS: In our brief we say:

> According to the Dominion Bureau of Statistics figures, the jewellery trade in the month of September, 1951, showed a decline in sales of 17·6 per cent over September, 1950. The entire decline is not represented by this figure since during the current period prices have sharply increased due to the imposition of added taxes so that this decline might be more properly estimated at 25 per cent to 30 per cent. While this unfavourable trend is evident, the jewellery trade is further threatened with metal scarcities in the period which lies ahead. In many parts of Canada jewellery stores are now operating auction sales and discount sales indicative that our merchants are already suffering a postwar pinch. Should the recommendations of the MacQuarrie Commission be implemented, it can only be concluded that an immediate flurry of price cutting will be generated with chaotic conditions created in this trade and industry.

Now, we end our submission by saying that we urge upon the government the fair trade laws as applied in the United States.

Mr. CROLL: What do you mean by fair trade laws?

The WITNESS: Might I elaborate on that point?

Mr. CROLL: Yes.

The WITNESS: It is simply this, the manufacturer goes before a government bureau known as a fair trade bureau and he registers the catalogue of his merchandise and the price at which it is to be sold to the public. That is openly revealed to the government. He then goes out to the retailer and he says my merchandise has been declared a fair trade item. He shows the retailer the government certificate. The retailer signs a certificate that he will resell at the approved price controlled by the bureau. You will no doubt recall the Macey case last June; that was a case brought about because Macey's had not signed a fair trade agreement. You have probably had reference to that several times before your committee. Shall I drop that, sir?

The CHAIRMAN: We have had it, yes.

The WITNESS: We would say that this fair trade law would do away with much of the present difficulty, and the result would be that the manufacturer would immediately look at his merchandise and price it very closely with better results to himself and the retail trade. We would call it a fair trade law. That is a fair trade law as I understand it, in legislative form.

Before I sit down, there are a few little points that I gleaned over my brief experience in life. You have heard of the T. Eaton Company. I have here, and would like to show to the committee an advertising dodger which that company puts out. These are put into practically every home in the city of Toronto. This is a 16 page bargain sheet and it probably goes into 50,000 or 60,000 Toronto homes; 16 pages of bargains, and they offer these to the public periodically. And practically every day they have 3 or 4 pages of advertising in most of the Toronto newspapers. I merely say this, I would be amazed if the T. Eaton Company favoured price maintenance. I think they have taken a very natural stand. I think this thing represents the fact that the small dealer has neither the resources nor the public confidence or the selling ability to offer this kind of thing to the public. The little man is not in a position to put on that sort of a sales campaign. I can suggest that retail price maintenance was never put on to help such an organization as the T. Eaton Company, it was put on to defend the little man in respect to the ability of the little man to win public confidence.

The CHAIRMAN: You have it pretty well covered in the summary of your brief here. Is there anything more you wish to add?

The WITNESS: I do not think I have much more to add.

The CHAIRMAN: Then Mr. Phelan will lead in questioning and after that the members of the committee may raise their questions. I would suggest now that Mr. Phelan now start on questions.

The WITNESS: Thank you, Mr. Chairman.

By Mr. Phelan:

Q. Mr. Leach, I would like to ask you a few questions about your association. In the first paragraph you give information as to the membership in your association?—A. Yes sir.

Q. And you indicate that you have so many members, so many associate members and so many mnufacturers; am I to infer that your association is made up of all branches of the trade from manufacturers to retailers?—A. That is right, sir.

Q. Can you tell the committee about what percentage of all retailers in Canada your 1,239 figure represents?—A. Oh, not more than 60 to 75 per cent.

Q. A substantial part?—A. Well I happen to know, for instance, that the jewellery magazine circulated in Canada has 3,400 readers. It will duplicate sometimes—two readers in a store—and I think the manufacturers would guess that of the main, worthwhile acounts, leaving out the little watch repairmen, there might be 2,200 stores in this country.

Q. And as you say you represent about 60 per cent of them?—A. I would say so.

Q. Of the 109 manufacturers what does that represent of the total manufacturers in the dominion?—A. I would probably guess about the same figure—about 60 per cent.

Q. About the same 60 per cent?—A. Yes.

Q. I see. Among your 1,239 retail members do you include those who sell on the instalment plan—credit jewellers?—A. Yes, credit and cash jewellers.
Q. Credit and cash jewellers?—A. We have some departmental stores as well.

Q. In your trade would you have some divisions—gems, watches, jewellery, and silverware?—A. No, as an association we have our manufacturers' section and our wholesalers' section—they operate with a common board of directors—50 per cent of each.

Q. I am speaking only of your retail business. You have classes of business, I suppose—gems, watches—A. No, sir. The store itself is a member. For instance, take Henry Birks and Sons, or Kents, the whole company is the member of the association.

Q. I understand that, but I am asking you if you divide your products, your commodities, into classes such as gems, watches, jewellery, silverware and so on?—A. No, sir.

Q. Tell me this. About what percentage of your total retail output is price maintained?—A. I knew you were going to ask that question and I thought and thought about it. It is a difficult question to answer. We have a unique situation in the jewellery trade. We have Henry Birks and Sons which is the biggest jewellery store organization in the world. I have no access to their figures. We have departmental stores who sell jewellery merchandise, and we have the ordinary, regular, small jewellers. I would say that Henry Birks & Sons they sell very few price maintained goods because their brand name is so prominent. If they put Birks on it that is the standard of quality. They do not make use of brands. Similarly, with the T. Eaton Company brands are not important, because of the prestige of the T. Eaton Company. However, when you get down to the little man out in Brampton, Oakville, or Lethbridge, he has not much prestige.

Mr. CROLL: Kamloops?

Mr. FULTON: They have lots of prestige there.

Hon. Mr. GARSON: Hear, hear.

The WITNESS: They have more price maintained merchandise there as the prestige of the brand is increasingly important. Those dealers have got to sell in competition with Birks, so they hold on to the brand of a watch.

I do not want to name brands here because the newspapers may give somebody free publicity and I would be accused of favouring the wrong person.

The CHAIRMAN: They will not do that.

The WITNESS: There are brands in watches that have public acceptance—which enables the small man to compete with Birks.

By Mr. Phelan:

Q. Perhaps you would give me an estimate on the smaller dealers—what percentage of their business is price maintained?—A. In watches, I would suspect it was 90 per cent.

Q. What about silverware?—A. In diamond jewellery, 75 per cent; in silverware 95 per cent probably—and I am thinking of such names as Community Plate, 1847 Rogers Brothers, and so on.

Q. Are there any other classes of commodities on which you can give us figures?—A. Well, jewellers sell electric appliances, toasters, mixmasters, and that sort of thing, but again I could not give you any figures.

Q. So we can take it from these figures from Henry Birks at the bottom, to the smallest man at the top, they would run anywhere from a small percentage to 90 per cent or 95 per cent?—A. I would say so, sir.

Q. Have you any idea how the manufacturer fixes his prices? Of the basis upon which he fixes them?—A. Well no, not precisely. All manufacturers, it seems to me, work to what they call psychological prices.

Q. Psychological?—A. If they want to sell something at $50 or $29.50, $79.50, $200, or $1,000, they make a product to sell at that price. I think that is the common procedure, is it not? You might find a store that has a $2 table. They go around to the manufacturers and say: Get me something that I can put on my $2 table. Eventually that gets into the catalogue as a standard brand. I really feel that is the way that most pricing is done.

I see that you are nodding, Mr. Hees, and I think that is the common trade practice.

Mr. HEES: Yes.

The WITNESS: A hosiery manufacturer wants to make a pair of socks to retail for $1. It would be silly to make a pair to retail at $1.33 because that is not the price at which the public buys. The price is $1, $1.25, $1.50, and $2.

Mr. PHELAN: May I take this statement from the MacQuarrie committee report to be substantially correct?

Mr. FULTON: What page?

By Mr. Phelan:

Q. Page 19 at about the middle of the first third of the page. This is a quotation apparently from some manufacturer.

> The answer, I am afraid, is that, lacking any very scientific approach, he (the manufacturer) does it by a process of trial and error. The retail price obviously has to be a compromise and since it is considered safer to put it a little too high than a little too low, it is usually a compromise on the high side.

Would that be a fair definition of the manufacturer's approach to fixing his price?—A. I would be inclined to say not—except it should be modified by stating that he must look to what his competitors are doing. If the competitor has a line of socks at $1.75 or a watch at $29.50 which the trade recognizes as good value, he would be awfully foolish to put his price at $3 or $40—in comparison with the going price.

Might I say that these ads in the newspapers have a great deal to do with the setting of prices.

I would say that any manufacturer selling chandeliers, looking over that copy of the *Daily Star,* would say: I have certainly got to have chandeliers for less than that or I am not going to sell them.

Q. Are you telling me or telling the committee that the advertisements to which you have referred deal with non-price maintained articles?—A. Yes, those are all non-price maintained as far as my knowledge takes me.

Q. So, in the field of non-price maintained goods the public is getting a great deal of benefit from competition, in the matter of prices—that would be correct?—A. Yes, I think that is a correct assumption.

Q. But in the price maintained field the price is set by the manufacturer and there is no competition that affects prices?—A. He must compete with these prices, or he could not sell his merchandise. How can he live, faced with that kind of competition—if his prices were not competitive or reasonably so?

I cannot tell you in exact dollars and cents what the comparisons are but I say any manufacturer must be prepared to meet these prices or go out of business.

Q. Would I have this as a correct conclusion from reading your brief—that the manufacturer by advertising and by establishing resale price maintenance can establish, thereby, public confidence in his products?—A. That is the intention, sir.

Q. Is that the result?—A. That is the result, yes. Any advertising that is done is calculated to win public approval—whether it is a can of soup or an automobile.

Q. Do you think that all manufacturers desire public confidence in their products?—A. Yes, sir.

Q. Then why do not all manufacturers adopt resale price maintenance?—A. Well, this is a very old story in the trade. There are people who have grown to the point where they have a stake in the industry, where they have a payroll of two or three hundred employees perhaps who have to be paid every Saturday. They have developed a price that the public will pay, that gives the

retailer a reasonable price, and it is a proper price for the manufacturer himself. The other manufacturer, frequently has to live only on his ability to undersell the first man by cheapening in every way that he can.

Shall we say that it would be difficult for a little man to come in and compete with Ford Motor Company or General Motors and, if he started out to make a car now, about his only inducement would be to make it cheaper. That has actually been the story of business.

In my experience in twenty years, I have seen, many, many small outfits selling "price" only but, as they grow up and get a stake in the industry and become something, they want to advertise and tell the public more about themselves and they go in for price maintenance.

Q. So the tendency of the manufacturer who has as his goal public confidence, is toward resale price maintenance?—A. Ultimately, I would say that is a fact.

Q. Well how would you explain the case of such large nationally known producers as Proctor & Gamble—who I understand decline to follow the practice of price maintenance. How would you explain their analysis of the buying field?—A. Proctor & Gamble I think have made such a name for themselves by advertising that the public will demand their merchandise.

Q. Is that not what you say the manufacturer of the price maintained article seeks—to obtain public confidence so they will demand his goods?—A. That is right.

Q. How do Procter & Gamble get it without price maintenance?—A. I guess I cannot answer that story.

Q. All right, sir. Another thing that is of interest to me and it may be of interest to the committee is this: you told me that certain of your retail dealers sell on the instalment purchase plan?—A. Yes.

Q. Let us assume that two purchasers at the same moment walked into a credit jewellery store; A went in to buy an article for cash, while B went in to buy some article on the instalment plan. That article is price maintained, so that A and B will pay the same price for it. Now, in the sale to B the retailer has to assume the carrying charges. How do you justify a system which prevents the retailer from giving to the cash purchaser A, some, at least, of the benefit which he derives in not having to pay the carrying charges? How do you justify that system?—A. That is a very interesting point. We have, of course, both cash retailers in the jewellery trade as well as men who call themselves credit jewellers. To be frank about it, I think the public when they want to buy on credit will go into a credit jewellery store, that is, if they want convenient terms. But if people want to pay a low cash price, I suppose they would go out and buy from the people who advertise bargains.

If you discuss the matter with a credit retailer, he will say it is simply a service to the public. For example, some stores give delivery. Did you ever question the cost of running vehicles all over the city in order to give people delivery? Or did you ever question the cost of running escalators and installing women's powder rooms and all the other costs of running an ordinary store?

The credit store says we do not have an elevator or a door man, and we do not give deliveries. So this is our service to the public, our way of competing against the other enormous competition. We give credit at cash prices. That is the argument that he will make, that it is a service to the public.

Q. Well let me put a different proposition to you. Suppose a cash buyer and a credit buyer both go into the same store at the same time. How do you justify a system which ties the hands of the retailer and prevents that retailer from passing on some of those service charges to the cash customer? Do you justify that system?—A. No, I do not and I do not think any retailer in the country would. I think when a customer goes into a store, the retailer

will make his own arrangements with him; and if the customer says: "I want my cash discount," I think the average retailer would give it to him and not turn him away.

The CHAIRMAN: It occurs to me: how would he do that in the case of price maintained goods? How would he give this cash discount?

The WITNESS: This price maintenance theory is a funny thing. Consider the chap who wishes to turn in his automobile and buy a new one. Suppose there is a Ford car selling for $2,300. The prospective purchaser will shop around and he will find variations running into $200 or $300 in the valuation placed upon his used car.

The CHAIRMAN: I think that was made clear to us by another witness.

The WITNESS: I think that is true. You have all kinds of deals in cars.

By Hon. Mr. Garson:

Q. But is it true of the jewellery business?—A. Yes. You have seen annual trade-in watch sales advertised. The manufacturers will agree that you should put on a bit of promotion because things are a little quiet. And they will say: "With our consent, go on and have a sale in watches and give a nice liberal trade-in allowance." But it would vary from store to store.

Hon. Mr. BEAUBIEN (*Co-chairman*): But that does not answer the question. You have price maintained goods. Consider this watch on my wrist—say it cost $26.—A. Yes.

Q. I am a retailer and somebody comes into my store to buy a watch, and the price is set at $26. The next person comes along and demands a discount for cash. What would you do?—A. If you were my cash customer and you said: "I want my 6 per cent cash discount," I would say that as a retailer I would be terribly stupid if I did not give it to you in spite of price maintenance. The only harm in price cutting is in the advertising of it. A man may give a liberal trade-in allowance. There is no manufacturer's scout present to find out how I operate my business. I think that the harm is done when I advertise, let us say, a 15 per cent discount.

By Mr. Phelan:

Q. I suggest that when you follow that practice, you as a retailer have abolished price maintenance yourself.—A. Perhaps that is true. It is not a rigid thing. Nobody is standing behind the retailer to learn whether or not he gives a 6 per cent cash discount.

Q. Why not give a 60 per cent discount then?—A. It would be a little more difficult for the retailer to finance it.

Mr. HEES: Yes, and stay in business.

The WITNESS: Yes, and stay in business.

By Mr. Phelan:

Q. You have expressed the fear, if I understand your brief, that the abolition of resale price maintenance would affect the independent dealer by driving him out of business.—A. I think that language is a little strong. We have a fear that it will cause chaos in the jewellery trade.

Q. Let me give you some figures from the Dominion Bureau of Statistics. In view of what you told me about price maintenance in the retail jewellery field, it might not be unfair to compare it with the grocery business wherein we were told that price maintenance was less than 1 per cent.

The department gave a division of the total sales between independent stores and chain stores, in 1930, 1941, and 1950. And in the jewellery business,

where the price maintenance practice is observed, we have this record: In 1930, the independents had 76·8 per cent of the entire national volume of business, while the chains had 23·2 per cent. In 1941, the independents had only 70·8 per cent while the chains had 39·2 per cent. In 1950 the independents had only 61·1 per cent while the chains had 38·9 per cent. So, in those twenty years, the chains had lost 15·7 per cent in volume in a business which is largely price maintained.

Let me give you the experience of the grocery business where there is no price maintenance. In 1931, the independents had 70·6 per cent while the chains had 29·4. In 1941, the independents had 69·6 per cent while the chains had 30·4 per cent. In 1950 the independents had 64·2 per cent while the chains had 35·8 per cent. So in that business, with a very small volume of price maintained articles, the independents only lost 6·4 per cent of volume, as compared with 15·7 per cent of volume in the jewellery business. Would you like to comment on those figures?—A. I question, very much, if I could.

Q. All right, sir.—A. I think probably that in the jewellery trade the independent stores have increased greatly in number since the war because we have trained a pile of watch makers who have gone out and started businesses all over the country. They may be getting a bigger ratio of business because there have not been as many chain credits. And they developed a certain volume, but perhaps cannot go too far beyond it. But in the meantime they may have opened 10 or 15 per cent more stores.

Q. Does it not strike you as significant that when we have those two types of businesses with their relative volume of resale price maintenance, that the jewellery business has lost 2½ times the amount of business that the grocery business has lost?—A. I do not think that I can evaluate your figures.

Mr. HEES: Mr. Chairman, could we not start with the questioning by members of the committee? This is all very interesting, if we had lots of time.

The CHAIRMAN: The members of the committee who were taking such an active part at the first of the discussion today might perhaps pay the penalty for it now.

Mr. PHELAN: It is always a matter of embarrassment to me, Mr. Chairman, in asking my questions, because I feel that I am trespassing on the time of the members. May I ask just one more question?

Hon. Mr. GARSON: How many more questions have you got, Mr. Phelan?

Mr. PHELAN: I have only one question more.

By Mr. Phelan:

Q. What position do you think the retailer should occupy in a community? Should he be the counsellor of the buyer, and the custodian of the buyer's interests, or merely a distributor for the manufacturer?—A. I am not going to answer that question. I think the jeweller is in business for himself and he wants to make some money. He has to pay his bills. He has to pay his manufacturers or wholesalers, otherwise he won't be in business for very long. He is there to serve the public. That is true, but he is also there to make some money.

Q. I appreciate that, but I am asking you about the service that the buying public may reasonably expect to receive from him. And I notice on page 3 of your brief you emphasize the fact that the public does not have much knowledge of the articles you deal in, and that expert advice is important for them.—A. That is correct.

Q. And that is a service which the retailer gives and charges for?—A. Yes.

Q. You say that is the service for which he charges and it ought to be extended over all lines of business? Let me comment on this point by referring to a publication of the American Fair Trade Council. I do not suppose it is prejudiced against resale price maintenance?—A. Not especially, no.

Q. I would like to read a paragraph from a journal called "A Fair Trade Manual for Management":

> Today a sale of branded goods, as distinguished from the old sale in bulk, is essentially a transaction between two principals—the manufacturer and the consumer. The manufacturer himself succeeds in doing a large part of the selling. He packs his goods, determines, standardizes, vouches for, and is legally responsible for, their quality, and he advertises them in competition with similar goods of competing manufacturers.

Now, would you agree with that conclusion?—A. I have read this fair trade literature and I agree that that is the sort of thing they write. To get down to actual business it isn't quite as open and shut as it is pointed out to be. In the final analysis the little merchant is just as important in the transaction.

By Mr. Shaw:

Q. Mr. Leach, you are general manager of the Canadian Jewellers' Association?—A. Yes, sir.

Q. In your capacity as general manager you travel extensively?—A. Yes, I have.

Q. You are quite familiar, therefore, with the various watch manufacturing concerns in Canada?—A. There is only one manufacturer in Canada and that is the Western Clock Company in Peterborough and all the rest are imported.

Q. Let me include the companies which make watches available to retailers; you are fairly familiar with the operation of those companies?—A. As familiar as anyone in my position can be.

Q. Are you aware of any case where a so-called manufacturer or distributor demands the signing of a contract by the retailer before he can handle his product?—A. I do not think there are any in the watch business. There are cases where there are franchises, there is a pen company and one of the silverware companies.

Q. I am not going to mention the company, and I do not think I should mention a very well known product.

Mr. CROLL: He is not talking about franchises.

The WITNESS: I was thinking the terms were synonymous.

By Mr. Shaw:

Q. Do you know of any case where a retailer must sign a contract with the distributor or manufacturer under which he guarantees to sell a product at less than list price?—A. No, sir.

Q. Then I have this letter from a man who has been a retail jeweller for some thirty years and he says: "If you handle their watches you have to sign a contract that you will not at any time sell their watches at a discount. I have been a dealer of theirs for some years and at present have a large stock—" You are not familiar with any such contract?—A. No, I am not, sir. I know the agreement is in existence but I took it for granted it was verbal.

Q. There may be such an agreement?—A. There may be, yes.

Q. This dealer then says, "Consequently over these years we collect watches that are not selling just because of the model of them. We cannot discount them to move them, yet we have to hold them forever as far as they are concerned. If I sold one of these watches at a discount and they heard about it, I would not be able to get any more of their merchandise." You are not familiar with that?—A. I think you have said enough to indicate to me the company you and I are both thinking about.

Q. I don't mind mentioning it.—A. This company is the biggest dealer who has this idea of a trade-in watch sale, and it is their way of giving the public a good substantial discount, if he gets in a lot of shelf warmers he cannot get rid of.

Q. This retailer claims he has older models on hand he cannot dispose of because he cannot cut the price.—A. I do not agree with his statement.

Q. Are you familiar with the financial arrangements that exist between the retailer and supplier of watches? Is it a general thing he pays cash?—A. No, he sure doesn't, that is one of the points with which I was going to take issue in the MacQuarrie report. The MacQuarrie Committee says the manufacturer has no interest in the retail store and I say he has an overwhelming interest. He encourages the retailer and says, "You can sell a $75 watch for $7 a month and not hurt yourself." He says to get in the credit business that is the way to do business and if you sell to the public on terms of ten months we will give you ten months' terms.

Q. This man says, "In fact, I plan right now putting on a sale this December to move merchandise that should have been moving this past summer, but owing to the money situation it did not move. Therefore, I am forced by the creditors to move it now or ask them to carry me for a longer time, and they cannot because of the new credit situation which the government put on last spring." Now, by creditors would he mean the supplier?—A. I would say so.

Q. He says, "Therefore, I am forced by the creditors to move it now or ask them to carry me for a longer time and they cannot because of the new credit situation which the government put on last spring. From this the banks closed down on their credit and they cannot finance as they would have otherwise. Because they have to pay this 35 per cent tax in thirty days, and you can see that this would amount to a considerable amount to them. Therefore, they cannot carry us retailers as they would otherwise do. You can see that this goes right down the line." Now, he has told me personally the supplier is putting the screws on him and forcing him to pay at the other end.—A. Mr. Shaw, I think your correspondent is a very honest man, and I hear the same thing every day.

Q. I appreciate the fact that probably the pressure is being put on the supplier, but at the same time if the supplier is putting the screws on him as far as getting the resale price is concerned, they are making it doubly impossible for the retailer.—A. I agree. I imagine if you scratch that man deep enough you will find he is a believer in price maintenance.

Q. Just a direct question now. If faced with bankruptcy or a situation where he would cut his own profits, not the supplier's do you not think he should be allowed to reduce his own margin of profit to stay in business?—A. Certainly, in ordinary common sense. It is being done every day. Fellows who are in a tight spot are cutting prices and the manufacturers have to wink at it. "What can I do about it," they say, "the guy is stuck. He has to get something out of it."

Q. But if he is under contract there is danger of him losing the agency if he does that very thing—A. I would agree, sir, but I do not think the manufacturer is going to lose too many of his customers. He is going to get them back later on, anyhow.

By Mr. Fulton:

Q. Does it not follow from what you have just said to Mr. Shaw—and I put this question down—you were giving evidence earlier with regard to discounts: Does it not follow that your argument is, in effect, that price maintenance while desirable in principle and producing desirable results when followed, is departed from as and when necessary, now, without a law, without any law?—

A. Without any sanction, that is correct, yes. I know that that is happening. I know the manufacturer wrings his hands impatiently and says "It is an awful situation right now in the jewellery trade of Canada, the price wars are breaking out all over in desperation".

Q. Would your argument follow along from there that if this can be done if, as and when necessary without any law making price maintenance illegal, is there any necessity for such a law? Would your argument follow along that line?—A. Precisely, sir. The public now has the choice of what it wants to buy and when a retailer gets into straitened circumstances, he has a right to put on a reduction sale, and he does.

Hon. Mr. BEAUBIEN *(Joint Chairman):* Then, why have price maintenance?

The WITNESS: Well, it is a nice orderly way to do business. It is much preferable. Every class of trade was happier in this country when people had money to spend, taxes were small, and the public were buying freely. We are now in an emergency.

The CHAIRMAN: Taxes were higher in the jewellery business five years ago.

The WITNESS: Well, they were applied differently. At that time the purchaser financed the purchase tax. Now, unfortunately, it is in our inventory and we owe the government 35 per cent of our capital every month.

The CHAIRMAN: You still have the sales tax as well. It is quite true. Your point is that the retailer or manufacturer did not have to finance the tax.

The WITNESS: That is the point. Previously it was an established custom that had gone on for a hundred years in this business, a retailer to make up a few displays in a counter has to buy a lot of high value merchandise. He has to spend $20,000 in order to dress his store. He is generally a little man, and in order to help him out some wholesaler or manufacturer gives him a handout, telling him to put the line in "and pay me as you go along". That is a tradition in the jewellery trade. The banker is the manufacturer and the wholesaler. Now the banker is owing the government 35 per cent of his capital.

Mr. FULTON: You mean, the manufacturer is the banker of the jeweller?

The WITNESS: Of the retailer.

Mrs. FAIRCLOUGH: Should you not have said the manufacturer and the wholesaler are the bankers of the retailer?

The WITNESS: Yes. That is an established think that has gone on for several generations, and here we are suddenly faced with a 35 per cent loss of capital in the jewellery trade, and it is hurting the jewellery business.

The CHAIRMAN: Family allowances, old age pensions, disability pensions.

By Mr. Fulton:

Q. Let us go back to the line we were following a moment ago: if and when necessary price maintenance is departed from under a pressing situation without the necessity for any law. Following on from there, would you agree with the statement that to pass a law is hardly an answer to the situation, which appears to be worrying many people, that is, the situation of high prices, to pass a law is not the answer to that situation.—A. I do not believe any person is forced to buy a Cadillac car, and if a Cadillac is price maintained merchandise, there are lots of Austins, Chevrolets and Fords around.

Q. You have given us examples of cases where even price maintained goods, so called, are made available at less than the price maintained goods without the necessity of any law being passed.—A. I would say so.

The CHAIRMAN: This is your last question, Mr. Fulton.

Mr. FULTON: You have had a lot of my time, Mr. Chairman.

The CHAIRMAN: Thirty seconds.

Hon. Mr. BEAUBIEN *(Joint Chairman):* I had about one second.

By Mr. Fulton:

Q. I want to ask you one question with regard to the MacQuarrie report. I understood you to say that the MacQuarrie Committee did not ask you anything subsequent to the letter you read.—A. No, sir, but I would look upon it as my own oversight. I should have been advised by counsel, or had a parliamentary agent or someone inform us.

Q. I am not trying to get at the blame.—A. I do not want to blame the MacQuarrie Committee. I merely said that had we recognized that resale price maintenance was going to be the paramount consideration of the MacQuarrie Committee, this is information, today, what I would have presented to them.

Q. Do you know from your own knowledge of any other individuals or organizations who made representations to the MacQuarrie Committee, who were in the same position as you were, and made the same type of submission with the same results?—A. I do not know.

Q. Of your own knowledge?—A. No—perhaps I should say—no, I don't know.

The CHAIRMAN: Thank you Mr. Fulton.

By Mr. Hees:

Q. Mr. Chairman, first of all, before I put any questions; I said some hard things yesterday but I would like to take this opportunity of congratulating Mr. Phelan on the very fine way he put questions to the witness today.

Mr. PHELAN: Thank you.

Q. Mr. Leach, you spoke about the fair trade law in the United States; would you be good enough, if you can, to outline to us what it is, how it works in the United States, and so on?—A. To the best of my knowledge, as I think I did explain earlier—I will try to be as brief as I can—the manufacturer submits his catalogue of prices to the state fair trade board, whatever it is called; that board approves of those prices if they feel they are right and then it issues a certificate and puts it O.K. on it and says that is your price. You will go to the retailer and he signs a contract that he will sell at that price. There will be fair trade, bearing in mind my friends, that when that man agrees to a fair trade price he bases it on his catalogue of prices; for instance, he recommends that his product, whatever it happens to be, the item is going to sell at 79 cents. When he does that he is sticking his neck out because he has got to sell it, or agree to have it sold, at 79 cents. A competitor may come along tomorrow and say, my price is going to be 60 cents; but his commitment to the retailer is that he will sell at 79 cents and he would suffer if they cut the price to under 79 cents. I respectfully suggest that before he goes before the fair trade office and says my brand is going to be 79 cents he has got to be awfully sure it is as low as he can possibly make it because somebody else may make it lower.

Q. Now, in the United States, does that eliminate the question of the loss-leader? I take it it does.—A. In cases where the retailer actually signs. Most of the trouble with Macey's was that Macey's would not sign this certificate and the result of that was that their supply of merchandise was tied up. I understand that since then they have signed the certificate and are again getting the merchandise, getting the goods.

Q. But here in Canada do you think this would be an effective answer to the threat of the loss-leader?—A. Most effective.

Q. How does it work out in the United States in that respect? Can you tell us something about that from your own knowledge?—A. All I could give you is hearsay, what I read about it in the trade papers and what I hear about

it in the jewellers' conventions. I think it is very well liked by the established trade in the United States; but in a case like Macey's, I am not so sure that they are going to be so very happy over it.

Q. But you think it would be practicable for this country?—A. I think it would be.

Hon. Mr. BEAUBIEN: Are Macey's coming into line with respect to this fair trade policy?

The WITNES: I do not know whether it is going to get them yet, or not.

Hon. Mr. BEAUBIEN: I seem to recall having read in the newspaper something to the effect that they were going to sign.

The WITNESS: I believe that is right.

By Mr. Hees:

Q. As a businessman do you see any difficulties at all in instituting a fair trade law of this kind in Canada?—A. I cannot, sir. I do not see any.

Q. I take it that you are amazed that the government has not followed this and made it apply to your own situation?—A. I would say this, that trade circles in Toronto never have been faced with a price cutting crisis. We did not think that they would ever exist in Canada. But we are going to come down here someday, I do not know how soon; we are going to come down here and approach the government and request a fair trade law, regardless of what steps this committee see fit to take. We feel as Canadian tradesmen that we will have to make our views known on that point.

Hon. Mr. BEAUBIEN: I hope that you will excuse me, Mr. Hees, for having taken up a certain amount of your time.

Mr. HEES: It was a pleasure, sir.

By Mr. Croll:

Q. If I remember what you said it was that over a period of some years the retailer in the jewellery business had obtained an increase in his share of the value of the articles. Would you relate that to some figures?—A. I don't think I said that, Mr. Croll. What was the question, again?

Q. That over a period of time the retailer had received a larger percentage. —A. No. I said, smaller.

Q. Did you say smaller?—A. Yes. During the war years because of the increasing costs of labour, taxation; the increase in the cost of gold and silver, the increase in the cost of labour all of which we have been forced to take since then and the mark-up has remained the same.

Q. Can you relate that, give us some figures?—A. No, I am sorry, I cannot. But it is a common trade fact, that they are not getting as much profit as we should be getting.

Q. I was interested, you said something in your remarks about democracy in business.—A. Yes.

Q. Then you told Mr. Shaw that you knew of the existence of contracts signed by retailers.— —A. Yes, sir.

Q. —retailers agreeing to sell an article at a fixed price; is that correct?— A. That is right.

Q. How can you justify democracy in business and private law?—A. I do not think I would call that private law. It is a contract between the supplier and the retailer. The retailer is not forced to sign. He has the right to buy the merchandise or not, as he pleases. The manufacturer's salesmen goes into the store and says to the retailer: I have this line of goods, this is our price, this is our contract with you to handle this line. The retailer can take it or not, just as he wishes. If he signs a contract, a contract with a company; it is a contract

involving certain obligations; and then, if he lowers the price he has broken a contract. But he does not have to sign it.

Q. You think then that the jeweller who is there and is prepared to buy the article and buy it under the conditions that the manufacturer has set is bound to sell it subject to those conditions?—A. Yes. If he signs a contract he would be a pretty poor character to break it.

Q. And if he didn't sign a contract?—A. Well, it would depend on either the manufacturer or the salesman for the manufacturer; if he puts in this line of watches and rings and agrees to sell them at a price, that is his contract and he would be expected to sell them at the agreed price.

Q. And, if he does not?—A. Then I say—the manufacturer has always said in the past—if you don't want to sell it at those prices there are no hard feelings. All I want is my goods back because it is my brand, my trade-mark, my good will; you are not forced to keep them here, let me have my goods back, I will clear them out of your store. That is the offer always made.

Q. An offer you consider to be free trade?—A. Yes, sir, because there is a variety of other lines that he can put in any time he wants.

The CHAIRMAN: Thank you, Mr. Croll.

Hon. Mr. GARSON: First, may I congratulate you upon your candor. I think you have been a exceedingly candid witness.

Some Hon. MEMBERS: Hear, hear.

The WITNESS: That is very kind of you, sir.

By Hon. Mr. Garson:

Q. Mr. Leach. you told us that watches were 90 per cent price maintained, diamonds 75 per cent— —A. May I qualify that, sir, by saying I referred to the small stores. I eliminated the big companies with the prestige of their own. It is the little fellow who has no prestige to whom I referred as depending upon the brand.

Q. Yes, and you also told us the great bulk of watches, I suppose more than 90 per cent, were imported?—A. Yes, sir, they are all imported. We just case watches in Canada. They are either Swiss or American production.

Q. What percentage of diamonds would be imported?—A. I was going to say that all diamonds are cut in Europe but, there again, there is one small diamond cutting industry in Toronto, which employs about ten men.

Q. They are probably all imported?—A. Yes.

Q. What is the percentage for silver?—A. Silverware is very largely made here. We import some lines of English silverware—bowls, dishes, entree dishes, trays, and so on, but it is very largely made in Canada.

Q. In the case of the watches and diamonds imported, those are handled in Canada by Canadian subsidiaries of European concerns, are they?—A. In some instances but I would say in as many instances they are handled by local Canadian jobbers.

May I, for the record, name those—although I do not want to give these people a lot of free publicity.

Q. You do not need to do so for my purposes?—A. If I can help I would. There are a lot of familiar names that you know of.

Q. Now, these watches and diamonds that come in here are handled by Canadian subsidiaries of European companies or by Canadian jobbers, who in some cases perhaps buy them in Europe?—A. The jewellery is made here. The diamonds are imported loose and the Canadian jewellery shops make the mounts to put the diamonds in. In the case of the watch movements they come from Switzerland but sometimes they vary the cases; they put them in Canadian cases. To get a variety in your line you buy cases of various sorts.

Q. These selling concerns, either the subsidiaries or the Canadians themselves, are the ones who fix the prices on watches and diamonds—the products that go into the Canadian trade?—A. Yes, sir.

Q. What is the mark-up on watches? The retail mark-up?—A. Well, that is a hard question to answer. I knew you were going to ask it and I have made a lot of inquiries but it fluctuates so badly.

Q. It would fluctuate from a minimum of how much to a maximum of how much?—A. I would say some watches are sold at 10 per cent mark-up, and some at 60 per cent.

Q. 10 per cent—that is in all cases on selling price?—A. Yes, as a percentage of selling price.

Q. In some cases 60 per cent?—A. In the old days jewellers used to think the mark-up on watches was a pretty satisfactory thing because he had so much service to do on it. If you buy a watch and keep it in stock for six months you have to put it in the repair department, clean it, re-oil it—because the oil dries up. Having bought the thing you have got to service it and, before the public gets it you have to adjust it two or three times. The repair department might have to be called in two or three times before the public says: You have got a nice watch.

There has always been a fair mark-up on watches.

Q. What percentage of the watch business would be handled in Canada by Canadian subsidiaries of European concerns?—A. I cannot answer that. The European figure is very, very small. Two or three firms have European connections but I would think they are Canadian in the first place.

Q. You understand what I mean by Canadian subsidiaries? I mean a Canadian corporation with substantial ownership which is not Canadian?—A. I do not know of any in that capacity at all. There are some American firms—Elgin and Bulova—who are American subsidiaries. Then, from Europe there are selling agents operating under a certain name. Take the firm in Quebec—the Hatch Company—they are the agents of Omega, but Hatch is a wholly owned Canadian company situated in Quebec City.

There is the Tavannes Corporation in Montreal, the Longines-Wittneauer Company whose head office is in the United States—but they are not all parallel by any means. Then, there are the jobbers who sell general lines. Take a firm like the Goldsmith Company. They have silver, watches, and jewellery and they are the Waltham and Hamilton agents. They are the sole distributors of the Hamilton watch but it is a wholly owned Canadian company.

The CHAIRMAN: Your last question, Mr. Garson.

Hon. Mr. GARSON: I am finished, thank you.

The CHAIRMAN: Mr. Harrison?

By Mr. Harrison:

Q. Many of the questions I was going to ask have already been asked by other members of the committee so I will not waste time going into those. However, I think you stated during your first talk to us that it was a bad time to take price maintenance away. Can I conclude from that that there may be some time more propetious for that to be done?—A. That is a logical conclusion but I do not think there is any propetious time. I think with the condition that the retailers are in it would be an invitation for the "doggondest" price cutting war we ever had in our lives. I am being critical now, but that is my opinion of the case.

Q. Another comment you made was that ultimately everything would be price maintained. That is what I gathered?—A. I hope I did not say that.

Q. That is what I gathered?—A. I sincerely hope I did not say that because that is not my concept of the thing anyway. As long as there are 25 pages of ads in the *Star* every night I do not think we need worry too much.

Q. You do not contemplate that we will get to that situation where everything will be price maintained?—A. I think not.

Q. I have had a question handed to me here and I hope I can read it correctly. I am informed that in the United States where resale price maintenance prevails it is not part of the practice that the manufacturer registers his certificates of price with a government authority?

The CHAIRMAN: There is the division bell and I have one question.

Mr. FULTON: Let us have the answer to that question.

Mr. CROLL: Did you answer that?

The CHAIRMAN: Mr. Phelan has made the observation to me that to his knowledge nowhere in the United States does a manufacturer have to register with a government bureau. The price must be public knowledge?

The WITNESS: Yes, public knowledge by having it handed to the fair trade council, or whatever they call it.

By the Chairman:

Q. My last question is that you commented on the fact that consumer credit—and I am not, shall I say sensitive, but I am a little associated with taxes and consumer credit—but you said that restriction of consumer credit was one of the reasons which forced your little jewellers to give more cash discounts and more generous trade-ins?—A. I hope I did not say that.

Q. When you mentioned taxes and consumer credit I gathered that they had forced manufacturers to cut prices?—A. I am afraid I cannot answer you back on that. My mind is a blank on that point.

The CHAIRMAN: We shall not come back now so I will extend the thanks of the committee to the witnesses.

We will meet again tomorrow morning at 10.30.

The meeting adjourned.

APPENDIX A

A SUBMISSION BY THE CANADIAN JEWELLERS ASSOCIATION

to the

JOINT COMMITTEE OF THE SENATE AND THE HOUSE OF COMMONS
TO STUDY COMBINES LEGISLATION

November 1951

Canadian Jewellers Association,
73 Richmond Street, West,
Toronto, Ontario.

1. The Canadian Jewellers Association—An Incorporation representing the interests of the Canadian jewellery trade, composed of 1239 retail store members, 71 associates, 109 manufacturers, 130 wholesalers, with a total membership of 1762, Founded in 1918—Incorporated in 1921.

INTRODUCTION

2. The Canadian Jewellers Association took advantage of the original opportunity presented to make a submission to the Commission headed by Justice J. H. MacQuarrie in 1950, at which time, this Association recorded its disapproval of any business operation which might be classified as a monopoly or combine in restraint of trade, but voiced its conviction that each individual manufacturer should be permitted to retain the right to protect his goodwill and market through his advertised price to the buying public.

We now welcome the privilege of advancing further arguments designed to support the principle of resale price maintenance as a basic right of the individual manufacturer.

Price Control vs Non-Price Control

3. In the jewellery trade as with many other lines of business, the buying public is offered both price controlled merchandise and non-price controlled merchandise. There are brands of watches on which the manufacturer sets the resale price, but there are many other brands of watches on the market where the manufacturer is not concerned about the retail price and where the retailer creates his own selling price.

Similarly, while we have brands of jewellery on which the price is maintained, it is also a fact that the majority of jewellery sold has no manufacturer's resale price and in this connection, the retailer puts on his own price. Some quality controlled lines of silverware have the resale prices established, but equally, there are other silverware lines which have a retailer's price.

We do not feel that the point has been well established that there is no compulsion for the consumer to purchase price maintained items since there is a wide range of merchandise available where the retailer sets his own price. As an Association we have publicly condemned monopolistic practices and there is ample evidence that there is a sufficiently wide range of products available to the public that they need never deal in merchandise where a resale price is required.

Price Control is Quality Control

4. While the interim report of the MacQuarrie Commission on Anti-Combine Legislation contended that resale price maintenance was not in the public

interest, little consideration was given to the actual benefits arising from such price maintenance among the foremost of which is quality control. It must be known to all business men and the buying public that substandard goods are constantly being offered "at a price". It is an established principle of business that where price is advertised and maintained, quality is similarly advertised and maintained.

The principles of quality stability and brand identification are singularly important in the jewellery business since so much of our merchandise must be sold on public confidence. We recognize that we sell merchandise or goods of high intrinsic value made of precious metals and gems about which the public has only a cursory knowledge. Prestige of the manufacturer and his adherence to known quality standards is the strength of the jewellery business. The manufacturer's brand and his published price is essential to the Canadian public if they are to buy jewellery store merchandise with any degree of confidence.

Manufacturers must protect goodwill in any line of business and especially the jewellery, watch and silverware trade where it must be admitted, the public is lacking in knowledge of timekeeping mechanism, precious metals and gem stones and where the brand and price must continue to be of importance.

The manufacturer must see to it that he is not "priced out of the market" by too high a selling price or that public approval is lost through cut-throat and unethical business competition. By resale price maintenance, he gives the buyer an insurance that regardless of the source of his purchase, he is buying at the same price as the merchandise will be sold elsewhere. This creates goodwill for the brand.

Loss Leaders

5. While the report of Mr. Justice MacQuarrie condemned the use of loss leaders describing them as monopolistic devices, it is apparent that the full impact of loss leaders was not in any appreciable degree brought forward by the MacQuarrie Commission. Statements in the press and in Parliament have indicated that some business men are now being concerned over the impact of such loss leaders. We must respectfully draw attention to the fact that only by a manufacturer's resale price can such loss leaders be avoided.

While we recognize that the MacQuarrie Commission report may have reached certain academic conclusions, we must point out that the realistic business man is very well acquainted with the consequences of retail competition in setting prices.

It should be known and understood that it is an established business practice to grant special quantity discounts to large purchasers. This places a dollars and cents advantage in the hands of the chain or department stores or other large quantity buyers. Should a policy of price maintenance not be in operation, it would be possible for the large buyer to consistently and constantly sell at a lower price than his small independent competitor, yet retain a margin of profit not available to the small buyer.

In the J. H. MacQuarrie interim report the view was held that price maintenance was a protection to the inefficient since some outlets would logically cell for less than the average. It is our considered opinion that this represents fallacious thinking and not based on any rational view of business procedure and practice. This view does not take into account factors of business location, accessibility of the retailer to his source of supply, nor the convenience of the shopping public. In the MacQuarrie Commission interim report it was stated that resale price maintenance was designed to take care of inefficient operators. We respectfully submit that this is a mistaken impression since inefficient operators end up in bankruptcy courts. We speak for

more than 1,200 small jewellers located in all parts of Canada and who within the limits of location and supply, we claim, are efficient. The manufacturer sets his price to win maximum consumer patronage and to secure volume.

Advertising and Price Maintenance

6. The manufacturer of a line of watches, jewellery or silverware has considered it his right and privilege to advertise to the public the price and quality of his goods. He has made it part of the retailer's condition of sale that he will not advertise any other lower price than that set by the individual manufacturer.

It will be abundantly clear to the observer of Canadian business that while Nationally price controlled merchandise must be sold at not less than the prearranged level, there is no shortage of bargains being offered to the public each week of the business year. The daily papers constantly contain advertisements offering every type of price concession to the buying public. The manufacturer of price maintained merchandise is fully aware that many retail stores would be quite satisfied to periodically offer well-known brands in similar price concessions and it is only by insistence on a program fair to each retailer can the supporter of a retail price maintenance program retain public acceptance and consumer goodwill.

Price Maintenance Creates Low Prices

7. Since it has been proven in two recent court verdicts that monopolistic practice will not be tolerated in Canada (e.g. the Calgary bakers and the match companies), we believe that normal competitive practice, amongst manufacturers operating in Canada, ultimately creates the lowest price for the public. It has been a common complaint in jewellery stores since the year 1945 that retail mark-ups have been diminishing on price controlled merchandise. Indeed it is the most common trade complaint that on resale items more profit is required.

Among trade groups there is a shade of opinion which suggests that should resale price maintenance be eliminated, a wide range of merchandise must go up in price rather than down. While in this submission we do not look upon it as our responsibility to comment on other lines of business, it would seem to be clear to us that in many items sold to the public, an increase in price could be more readily anticipated than a reduction. To this extent it is our belief that resale price maintenance operates in the public interest rather than to its disadvantage.

Democracy in Business

8. According to the recommendation of the MacQuarrie Commission, it is recommended that it be an offense for a manufacturer to withhold his stock from a price cutting retailer. We cannot fail to look upon this as an extraordinary proposal and without precedent. Up to the present time, it has been considered to be the democratic right of any business man to sell or refuse to sell according to his decision. It might be that the location of the store was wrong, the merchant a poor credit risk, too many outlets in the community or the operator slipshod and inefficient, however, it is unthinkable that any Government should even consider legislation which would eliminate such a basic democratic right.

The Present Business Trend

9. According to the Dominion Bureau of Statistics figures, the jewellery trade in the month of September, 1951 showed a decline in sales of 17·6 per cent over September, 1950. The entire decline is not represented by this figure since during the current period prices have sharply increased due to

the imposition of added taxes so that this decline might be more properly estimated at 25 per cent or 30 per cent. While this unfavourable trend is evident, the jewellery trade is further threatened with metal scarcities in the period which lies ahead. In many parts of Canada jewellery stores are now operating auction sales and discount sales indicative that our merchants are already suffering a postwar pinch. Should the recommendations of the MacQuarrie Commission be implemented, it can only be concluded that an immediate flurry of price cutting will be generated with chaotic conditions created in this trade and industry.

Minimum prices can mean minimum wages. We submit that the Government gives consent to the principles of minimum wages through labour legislation—within rational limits. Why should anyone quarrel with a standard price within rational limits. All prices are largely somebody's wages and an arbitrary and unwarranted interference in the normal price structure is bound to hit somebody's wages somewhere along the line.

Conclusion

10. With due deference to those who have been leading the discussion against resale price maintenance, we respectfully suggest that grave confusion exists as to illegal combine practices and a manufacturer's right to maintain his price to the public. It has repeatedly been inferred that prices are too high because of resale price maintenance, but when this inference is made, it usually transpires that the observer points to some form of monopolistic or combine practice. It is to be repeated that this Association is opposed to such operations and believes that business competition is the life blood of trade and that it will insure the lowest price to the public. We therefore propose to the Joint Committee of the Senate and the House of Commons that no steps be taken without the matter of pricing being given a complete and thorough investigation with the purpose in mind not only of seeing that monopolistic practices are avoided, but more particularly to recommend Canadian fair trade laws for the protection of the manufacturer and retailer who is anxious in a legitimate way to provide honourable and valuable service to the public and to see to it that such fair trade laws will permanently abolish the right of any trader to make use of loss leaders.

All of which is respectfully submitted by the

CANADIAN JEWELLERS ASSOCIATION

Hubert Gaucher—President
1689 Mt. Royal E.,
Montreal, Quebec.

Norman J. Leach—General Manager
73 Richmond St. W.,
Toronto, Ontario.

November 22, 1951.

APPENDIX B

MEMORANDUM

submitted to

The Parliamentary Joint Committee on Combines Legislation

by the

RETAIL MERCHANTS' ASSOCIATION OF CANADA

The Retail Merchants' Association of Canada was organized in 1896 and incorporated under an Act of Parliament in 1906. We operate in all Provinces of Canada, but Newfoundland, with offices in Vancouver, B.C.; Edmonton, Alta.; Saskatoon, Sask.; Winnipeg, Man.; Toronto, Ont.; Montreal, Que. and Saint John's, N.B. The head office is Montreal and the National Foods Division office, Toronto. Our membership, roughly 20,000 throughout Canada, is divided as between food, wearing apparel, house apparel, services and general.

The Association was organized and is maintained to provide a medium wherein matters of concern to all branches of retailing could be studied and leadership given in the orderly advancement of programs to safeguard the interests of its members and insure a fair deal to all who come within its orbit, whether producer, manufacturer, or consumer.

We are affiliated with the Canadian Retail Federation. As an affiliate of this body, we made representations to the McQuarrie Committee on September 15th, 1950, as will be seen in appendix A to the Canadian Retail Federation submission. As a result of our representations, our delegates appeared before the McQuarrie Commission on October 20th, 1950.

In both, written and verbal submissions to the Commission, two points were stressed: loss leader selling and retail efficiency. A resumé of our thinking is presented herewith.

Loss Leader Selling

In recent years, the practice of loss leader prices in promoting the sale of nationally advertized lines has tended to spread.

The term "loss leader" is accepted as meaning the selling of any article at a price lower than the actual cost, plus a markup sufficient to pay the handling cost of efficient distribution.

However, the expected competitive advantage of loss leader selling is soon nullified for its instigator when most competitors lower prices at once in self protection, thus causing the special low price to become the regular price. As a result, the whole trade is victim of loss leader selling and losses sustained have to be made up by higher prices than normally necessary on less competitive items.

Many manufacturers having recognized their ultimate distributor, the retailer, was entitled to a reasonable margin, such a margin being at least cost of merchandise plus the cost of efficient handling of same, have instituted minimum re-sale pricing policies as one remedy to the unsound and unfair practice of loss leader selling.

Many of those who have abstained from establishing such minimum re-sale pricing policies, did so only because they assumed section 2, subsection 1, paragraph C of the Combines Investigation Act forbade it.

We have always contended that this could not be the meaning of the law and the presently proposed legislation substantiates our interpretation.

While we recognize that it would be against the public interest to manipulate prices in order to lessen the competitive influence of free selling, we nevertheless

energetically contend that it is only justice to assure the efficient operator a reasonable return for his services.

Retail Efficiency

This Association has never tried to protect inefficiency. At no time, have we worked to obtain anything else than a fair return for the efficient operator. Figures obtained from leaders of all classiffications in our own membership as well as outside have permitted to determine what is actually the cost of efficient operation. As an example, taken out of the Food Industry, a report issued as recently as June 23rd 1951 by Loblaw Groceterias Company Limited, a firm whose efficiency cannot be questioned, is significant. This report shows that overhead cost has been 14·26 per cent for fifty-three weeks of operation. If 1·86 per cent is deducted as provision for taxes, we have a remaining figure of 12·20 per cent as being what we call the cost of efficient operation.

Similar and confirming figures could be obtained from other interested classiffications.

It is not the object of our Association to seek special favors or privileges by way of legislation, but we feel very definitely that since retailing is universally conceded as being an important basic industry. We submit that certain basic rights of retailers should be fully protected in the interest of the whole Canadian economy.

The enactment into law of the proposed legislation while at first thought, might appear to be in the public interest, will assurably contravene the basic rights of the retail industry.

This was our thinking and the essence of our written and verbal submissions in the fall of 1950. We respectfully submit that nothing in the interim report of the McQuarrie Commission has modified our views.

With this Committee's further permission, we would like to show that the proposed legislation would in fact ultimately hurt the consumer.

Danger to Consumer

If enacted, the proposed legislation against minimum re-sale price would have a direct influence on orderly marketing. It is certain that widespread price cutting would ensue, as already experienced early in October, in some parts of the country, when such legislation was first announced.

Chaotic conditions would result not only from reduced margins of profit for the retail trade, but also from reduction in employment. It is to be noted that wages account for as much as 60 to 70 per cent in the overhead of some classifications of retailing. With this in mind, any important reduction at the retail level would cause unemployment.

Another aspect of the problem involved would be the failures and bankruptcies as experienced in the vicious price cutting of the 1930's and result in unemployment and disruption of national economy.

Thus the consumer would be the ultimate victim of a system conceived in good faith to help him.

We respectfully submit that the consumer is the ultimate factor in the operation of the law of supply and demand. The consumer exercises control over the price of anything except the absolute necessities of life and can have a marked effect on those.

It is remarkable that a price set by one manufacturer on any article must be determined by the price of other competing similar articles produced by other manufacturers. When buying, the consumer will be attracted by:

1. the desire for such article
2. the brand name
3. the quality
4. the price

It is a known fact that the articles which have been under a re-sale price maintenance policy have always been available under various brand names, with the result that no actual harm has been done to:

(*a*) free competition
(*b*) the cost of living

If price maintenance as such is against the consumer, why would the Canadian Government and the various Provinces aid and abet such practices by appointing marketing boards wherein producers are forbidden by law:

1. to sell below a certain price,
2. to sell except through certain channels?

The answer that these boards are established to protect basic industries is accepted by us. But in turn, we respectfully submit that retailing is also a basic industry and is the most economical method yet devised to distribute goods.

It should be admitted that the practice of suggested re-sale prices has had no effect on the cost of living. We think we have proven that neither as an objective or as a result, this policy can cause any noticeable damage to Canadian economy.

On the contrary, we submit we have proven that the curtailing of such a practice would in effect be tantamount to creating disorderly conditions most dangerous to our economy.

With this in view, we respectfully submit that this parliamentary committee should recommend in its report that no legislation be enacted to curtail re-sale prices maintenance until such time as Parliament is prepared to consider and enact simultaneously legislation against loss leader selling.

It is not the purpose of our Association to defend maintained re-sale prices as an Association policy in the regularly accepted sense, but rather as the most effective means yet devised to curtail the unethical practices of loss leader selling.

Conclusion

In conclusion, we respectfully submit, on behalf of the Retail Merchants' Association of Canada, that the legislation prohibiting re-sale price maintenance be not presented at this session of Parliament and not until the McQuarrie Commission has completed its report. We further respectfully but urgently request that a hearing be given by your Committee to our official representatives.

Respectfully submitted,

RETAIL MERCHANTS' ASSOCIATION OF CANADA,
FERNAND BOISSEAU,
National Secretary.

354 St. Catherine Street East, Room 80,
Montreal, Que.
November 21st, 1951.

APPENDIX C

BRIEF PRESENTED TO THE PARLIAMENTARY COMMITTEE ON RESALE PRICE MAINTENANCE BY THE CO-OPERATIVE UNION OF CANADA AND LE CONSEIL CANADIEN DE LA COOPÉRATION

1. This submission is made on behalf of the Co-operative Union of Canada and Le Conseil Canadien de la Coopération, which together represent 1,318 cooperative societies throughout Canada having a membership of approximately 700,000. These societies are of many types comprising producer, consumer and service cooperatives.

It may be of interest to note that both the French-speaking and the English-speaking sectors of the movement have established provincial organizations to conduct their educational and promotional activities. These provincial bodies are federated to form the two national organizations which appear before you at this time.

2. On August 31, 1950, the Co-operative Union of Canada presented a brief to the Special Committee appointed by the Government of Canada to study the Combines Investigation Act. In that presentation we made the following statement: "Traditionally the co-operative movement, wherever found, has been a militant foe of restrictive trade practices in any form." This stand has characterised the movement ever since its inception in the year 1844. Nor is this surprising, since our fundamental aim is to give efficient service at cost to all who require it in the interest of human welfare.

On the subject of control of monopolies the Annual Congress of The Co-operative Union of Canada held in 1950, passed a resolution which noted the increasing concentration of economic power in Canada, and required the officers of the Union to give careful attention:

> 1. To any legislation or administrative regulations which have as their end the restriction and control of monopolistic practices.

It is significant also, that the International Co-operative Alliance, which unites the co-operatives of thirty countries, has, over many years, undertaken very comprehensive research in the field of monopoly enterprise. Its findings are published in a quarterly entitled Cartel, which is a review of international monopoly developments and consumer protection.

3. In the course of the brief presented to the Special Committee we noted several of the more serious monopolistic practices which have appeared in this country during recent years. Among them was that of resale price maintenance, the subject of your investigation. Our concern over the harmful effects of this trade practice was shared by the Lloyd Jacob Committee which expressed the following opinion in its Report:

> Collective price maintenance schemes appear to us to have led to the comprehensive regulation of competition in the distributive trades and to have impeded the development of economical methods of trading and prevented the reduction of distributive costs and prices. Associations of traders designed to bring their collective power to bear to maintain the members' prices are, in our view, undesirable. (Para. 166, Report of the Committee on Resale Price Maintenance, U.K. 1949).

4. In operating their co-operatives and developing a Canadian Co-operative Program, the consumers whom we represent encounter difficulties and frustration. It is obvious that consumer co-operatives cannot function successfully without free access to goods. But our experience is that we are denied this right because of our policy of supplying ourselves with goods at cost through the payment of patronage refunds.

Co-operatives are, therefore, very deeply concerned with that portion of the proposed legislation which deals with the refusal to sell or supply goods. This is Section 37A, subsection (3).

Although co-operatives usually supply goods to their members initially at current market prices, under the co-operation technique patronage refunds are paid to the members at the end of the year in proportion to their patronage. The eventual payment of patronage refunds, however, is regarded by many manufacturers as a serious breach of their established policy of resale price maintenance.

In order therefore, to adhere to their basic principle of doing business at cost, co-operatives require to be supplied with goods without complying with a price maintenance requirement.

The legislation now before the Committee is designed to make goods available without an agreement on the part of the persons supplied to maintain prices, and therefore co-operatives approve of the intent of the legislation. However, in examining the specific provisions of the proposed amendment to the Combines Investigation Act, we find that it is inadequate to afford protection insofar as co-operatives are concerned.

Subsections (3a) and (3b) do not cover the case of a distributor or retailer paying patronage dividends. The section as it now reads prohibits a dealer from refusing to supply goods because the buyer refuses to maintain prices at the time of resale, but the section does not prohibit a dealer from refusing to supply goods because the buyer pays patronage refunds, and such a prohibition is necessary if the provision is to assist co-operatives in acquiring goods. A co-operative may not have refused to sell goods initially at a specified price but the goods may be withheld by the dealer beacuse of the patronage refund policy followed by the buyer.

In view of the experience which co-operatives have had it is urged that the proposed section be amended by adding subsection (3c) which might be in the following form:

> No dealer shall refuse to sell or supply an article or commodity to any other person for the reason that such other person
>
> (c) has resold or offered to resell or proposes to resell or offer to resell the article or commodity on the basis that such other person is entitled to patronage refunds with respect to such article or commodity.

5. Although we submit that such an amendment would be helpful in assuring that co-operatives are not denied goods, it should be made clear that we consider further important steps are necessary to deal with restrictive trade practices.

In addition to the practice of paying patronage refunds, manufacturers and jobbers give many reasons for their refusal to supply goods to co-operatives. Some regard co-operatives as socialistic, some are under the mistaken impression that they do not pay taxes, and others just don't like them. Refusal to supply goods on such flimsy pretexts hampers the co-operatives and limits real free enterprise.

While approving of the intent of the proposed legislation and urging the amendment set out above, the Co-operative Union and Le Conseil submit that it does not go far enough. There must be a more thorough check on restrictive trade practices. We therefore submit for study and consideration a general proposal which might be incorporated in an amendment to the Combines Investigation Act. It is submitted that this proposal, which deals with a vital aspect of the problem at hand and is worthy of study, could, with proper safe-guards, be enacted into legislation.

In general terms the proposal is that no dealer shall refuse to sell an article or commodity for cash or equivalent at its established price to any person legally carrying on a legitimate business in accordance with accepted trade practices, and in the event of such refusal, such person shall have the right to refer the matter to the Combines Commissioner for investigation.

6. It has been stated that price maintenance offers a protection behind which consumer co-operatives may continue to expand and gain strength. This may be so to a limited degree. However, our movement, committed as it is, to the public welfare, will not compromise with monopoly, but rather supports the intent of the proposed legislation. Furthermore, it may be that the prohibition of resale price maintenance would lead to a period of unsettled prices which would embarrass the co-operatives as well as other businesses. Nevertheless, it is the opinion of our members that in the interest of the

consuming public generally, they must be prepared to face this threat and overcome it through increased operating efficiency.

7. An important result of minimum price maintenance has been clearly set forth in the Report of the Royal Commission on Prices, 1949, Volume 1, page 26:

> "Resale price maintenance, like other forms of restrictive practices, does offer what appears to the manufacturer and distributor, a happy relief from the unending struggle against harsh correctives of the free market system. But the solution, we think, is illusory. It not only vitiates the spirit of enterprise by which all commercial and industrial life is nourished; it deprives the consumer of his right to seek and patronize the more efficient distributors, namely those who, over a period of time can offer goods for sale at prices lower than their competitors."

The Report of the Royal Commission on the cost of living in Newfoundland 1950, stated that insofar as the cost of living in that province is concerned, the Commission's findings tend to support the conclusions of the Royal Commission on Prices set forth in the above quotation.

8. A further consideration, even more vital to the welfare of the consuming public than the reduction of prices, also prompts us to appear before you. It is the disturbing realization that the penalties imposed on retailers by manufacturers, such as warnings, fines, withdrawal of discounts, denial of supplies for not maintaining fixed minimum prices, amount to a private system of law, which in effect is outside the jurisdiction of the Courts.

This and other monopolistic practices tend to create private business governments in no way responsible to the community, which exert their influence in a manner which may be inimical to business efficiency, may conflict with governmental purpose, and in many countries may be, in principle, hostile to social progress.

9. Before concluding this presentation we wish to deal with two arguments frequently advanced by the proponents of resale price maintenance.

Much has been made of the threat of a free market price to the small storekeeper whose volume would suffer at the hand of the larger, more efficient retailer. The security of his present position appears to us to be more apparent than real, especially in the excessively wide-margin fields. It is a fact that when supply is sufficient, these lines soon become crowed with numerous, small, inefficient operators who are anxious to seek shelter under the resale price maintenance umbrella. As a result the total earning to be made is divided among a larger number of dealers, with the efficient merchant of long standing reaping a greatly diminished return.

Indeed the point may be reached at which the turnover per business becomes so small that a higher unit margin must be sought. Supporting this superfluous and costly distributive machinery is the helpless consumer whose power to reward efficiency has been filched from him.

W. Arthur Lewis, professor of Economics in the University of Manchester and an outstanding authority in this field, writing in the journal "Economica" (November, 1945, p. 202), stated:

> "The case against price maintenance is beyond doubt. It is one of the major sources of waste in distribution, and the public would benefit greatly if it and the boycotts, stop lists, discrimination against co-operative societies, and other paraphernalia by which the system is enforced, were made illegal."

10. In the second place, those who advocate this restrictive practice have expressed their fear that the use of the "loss leader" as an advertising device would become prevalent in a free price market. They have visions of utter chaos and the elimination of manufacturers and dealers through ruinous price wars.

This view, we believe, fails to take into account the changes brought about by modern merchandising methods. During the depression-ridden days of the 1930's the evolving chain store type of operation was able to attract customers away from the independent retailer by offering a few high-turnover items at cost, or less than cost, price. What he lost on these "specials" he more than gained on his regular high-margin goods.

With the growth of the chain store phenomenon, however, the advantage has disappeared. Chain store A is now competing not only with the independents in its neighbourhood, but also with chain stores B. C. D. etc. These latter can play the game just as skilfully, with the result that all are reluctant to adopt the device.

Should there be some substance to this fear, however, we would agree with the view contained in the white paper presented to the British Parliament by the President of the Board of Trade, last June, that "unfair or excessive methods of price competition would be a matter for Parliament to deal with on its merits; fears of their possible emergence in the future cannot constitute a valid reason for allowing harmful restrictive practices to continue."

11. In dealing with the particular problem before your Committee the interest of the consumer is paramount, and the submission is made primarily on behalf of the hundreds of thousands of consumers who have through necessity organized to supply themselves with goods and services at cost. The mmbers in these co-operatives believe that through the development of the co-operative movement they can, by the application of the co-operative method and the elimination of profit in the supplying of their goods, eventually solve to a great extent the problem of monopolies which is giving this Committee and Parliament such deep concern.

In support of this belief we would cite the case of the Swedish Cooperative Union and Wholesale Society (Kooperativa Forbundet). Beginning in the years immediately following the First World War, the Swedish wholesale, in company with other Scandinavian co-operatives, undertook a systematic attack on various cartels which were oppressing the consuming public. Most famous of their achievements was the successful entry into the electric lamp field which resulted in a saving of 5,000,000 kroner a year for the Swedish public. This was followed by similar attacks on the vegetable oil and cash register cartels, among others. In many cases these efforts were carried out in co-operation with other interested elements in the community.

In conclusion, we submit that co-operative enterprise, if allowed to develop normally will of itself do much to combat monopolistic, restrictive trade practices and to supplement federal and provincial legislative action in this field.

Respectfully submitted.

Ottawa, December, 1951.

APPENDIX D

November 21, 1951.

BRIEF PRESENTED BY INTERPROVINCIAL CO-OPERATIVES LIMITED TO THE PARLIAMENTARY COMMITTEE ON PRICE MAINTENANCE LEGISLATION

Interprovincial Co-operatives Limited is a co-operative incorporated under Letters Patent by the Secretary of State. Its bylaws are the usual in a co-operative; namely, that capital shall be supplied on the basis of the use made of the organization by its members, and that the surpluses arising out of its operation shall be distributed on a patronage basis

We list hereunder the shareholding members of the organization, together with their volume of business for the fiscal year ending 1950:

Co-operative Federee, Montreal, Quebec	53,268,000
United Co-operatives of Ontario, Toronto	49,319,000
Saskatchewan Federated Co-operatives Ltd., Saskatoon, Saskatchewan	17,500,000
Maritime Co-operative Services, Moncton, N.B.	7,939,000
Manitoba Co-operative Wholesale, Winnipeg, Man.	5,095,000
Alberta Co-operative Wholesale, Edmonton, Alta.	1,850,000
British Columbia Co-operative Wholesale, Vancouver, B.C.	544,000
*Scottish Co-operative Wholesale Society, Glasgow, Scotland	
*Co-operative Wholesale Society, Manchester, Eng.	
Total	$135,000,000

* These two organizations are members, but their purchases are somewhat limited. Their volume is not shown as it would present an unfair picture of the potential volume of Interprovincial Co-operatives Limited.

This Brief follows one presented by the Co-operative Union of Canada on the matter of Price Maintenance, and we wish to say first that we wholly agree with and endorse that presentation. In addition we wish to make two general statements dealing with the matter at hand:

1. The co-operative movement, if more universally practised, has the answer to many of the problems that face the Canadian people in respect to cartels, monopolies and combines.
2. The prohibition, by legislation, of price fixing at the retail level is not a wholly effective approach to the problem of combines and monopolies, which is one of the most vexing problems facing the Canadian people.

In support of No. 1 above, we would point out that Sweden has never found it necessary to enact what might be generally described as "combine legislation," because of the dominative position of co-operatives in that country. In this connection we quote from the book "The Middle Way" by Marquis W. Childs.

A report of a Swedish Government Commission appointed in 1922 to investigate the middleman's profit, said:

> It is clear that consumer co-operation offers a vigorous defence against the tendencies of private trade to combine in order to keep up prices artificially. Many examples could be mentioned where large

organizations of shopkeepers have been forced by the co-operative society to scale down their prices—an act which the trade associations by themselves otherwise would have prevented. The great importance of the co-operative movement in this respect has been proved in a remarkable degree, particularly during the period of declining values, when the co-operative societies, as a rule, have been the first to reduce prices.

Emphasizing point No. 2 above, we would say that when it is obvious that the only people who are in a position to provide effective competition are denied goods, the price at which such goods might legally be sold becomes somewhat meaningless.

One hears quite frequently the terms "Private Enterprise" and "Free Enterprise". The terms are broad ones, and like many of a similar nature, are capable of wide interpretation. It seems to be a paradox that those who proclaim the loudest that "free enterprise" should be preserved, are usually the ones who put a very narrow interpretation on it. If a narrow interpretation of "free enterprise" is allowed to prevail, we would see genuine "free enterprise" as such, gradually disappear from the Canadian scene. As evidence of this very definite trend, we only have to examine the work of the Commissioner of the Combines Investigation Act over the past few years. We mean not only the cases that have gone to prosecution, but all the investigations that have been made.

We would like to place before the Committee the co-operative definition of "free enterprise", and we quote the Rt. Rev. Mgr. M. M. Cody, head of the Extension Department, St. Francis Xavier University at Antigonish, Nova Scotia, and a former President of the Canadian Association for Adult Education:

> The Co-operative technique permits all people to get in on business just as stocks and shares permit some people to get in on old line private profit enterprise. This distinction between the old line business and co-operation is that the former is a *private profit enterprise* and the latter is a *private nonprofit enterprise.*
>
> Co-operation, in other words, is a technique by which a democratic people can carry on their business affairs, without taking any toll from their fellows. It does not destroy, philosophically speaking, the profit motive, but it does eliminate the surplus of the economic process from being directed into the hands of one class to the detriment of other classes. Men go into economic co-operation for the reason that it will improve their economic status, and that is a profit motive in the real philosophical sense of that term.

Co-operatives in Canada and elsewhere are built and operated within the framework of that interpretation. Co-operatives exist in every country in the world, and they are invariably found among the "low income groups", in their country of domicile. In England it is the salaried and wage earning group. In Canada—and United States for that matter—co-operatives are composed almost wholly of agricultural people. These people have, within the framework outlined above, invested many many millions of dollars in extensive facilities for assembling, handling, marketing and processing of primary products, as well as stores, filling stations, warehouses (wholesale and retail) lumber yards, feed plants, coal mines, sawmill, timber berths, oil wells and a refinery. Surely, having freely and voluntarily made investment of their own money in their own business, they are entitled, under a free economy, to purchase goods from manufacturers and suppliers on the same basis as any other business.

We shall now attempt to show that co-operatives in Canada have been subjected to unfair discrimination by a segment of Canadian manufacturers and

suppliers. Various reasons have been given by such suppliers, but it is quite obvious that some of the reasons given are not the real reasons. On the other hand, some of the suppliers have been frank and honest in their attitude (and we honour and commend their frankness) and have stated the real reasons. In endeavouring to summarize these reasons, they would appear to fall into three general categories:

(*a*) They challenge the right or propriety of co-operatives distributing their surplus to owners and patrons of the business on a patronage basis.

(*b*) The laws of Canada in respect to taxation are unfair to private business, and consequently co-operatives should not be supplied with goods.

(*c*) The co-operatives are socialistic and are going to "take over" the business of the country and consequently are not in the public interest and should not be supplied with goods.

In support of these three statements we would like to read into the records letters which have been received by several co-operative organizations. We do not wish to make public the names of the firms who wrote the letters, nor to whom they were addressed. We think it would be unfair to do so as it would mean penalizing them for their forthrightness.

In support of Paragraph (*a*):

Your mail order of January 30th (1947) has been forwarded to our Calgary office for attention.

Undoubtedly our representative, Mr. ..... has already been in touch with you and explained our sales policy. As you are no doubt aware by this time that since the time the company was founded we have undertaken to maintain a price protection policy on the resale of our products.

In this effort we have been extremely successful, but in no small measure has our success been due to the co-operation of the retail trade. Our products are sold at uniform prices throughout Canada and we have insisted that no plan of rebates or premiums be returned by any retailer to their customer, which procedure we regard as reduction in the minimum retail price.

We understand that it is the policy of your organization to pay periodic rebates depending on the amount of purchases to your customers or shareholders. Under the circumstances you will therefore understand that we would be violating our pledge to the other ..... of your community if we shipped you our products. We regret therefore that under existing circumstances we will be unable to fill your order.

We trust that you will be able to appreciate our position in this matter.

The following, from a wholesale firm, is in the same vein:

A number of manufacturers have written us advising that the profits of your organization are returned to the customer which in itself constitutes a cut in price; that is in the minds of the manufacturers. The cold fact is that the general run of retailers object to buying from a manufacturer whose goods are not sold at regular list prices to the public.

In view of this would you please advise us whether or not this applies in your case? As for ourselves we should like very much to serve you but we are the middleman in the matter and should we not bide by the policies of the manufacturers, then they would simply refuse to sell us and in the end we could not serve you. We do not feel that we have any right to advise you but would it not be possible for you to

pay the money out as a dividend on investment rather than as a rebate on purchases? In any case, we will have one of our representatives in ..... in about a month's time and unless we hear from you sooner we shall be glad to have him call and interview you personally.

One Regional Co-operative Wholesale in Canada, after making application over a period of several years, was finally allowed to distribute the goods of an industry. It was only allowed these goods on a signed undertaking that they would not pay patronage dividends on this merchandise. When the industry was under investigation by Mr. McGregor, the former Commissioner of the Combines Investigation Act, these people asked for the return of all the documents, and they were—very foolishly—given back. Only two of the co-operative wholesales of Interprovincial membership are distributing the goods of this industry—others have been refused.

In support of Paragraph (*b*) we submit the following letter:—

Referring to your letter of September 13 (1951), we wish to assure you that we have no ill-will towards you, and other members of your organization, but we feel that the co-operatives, whether retail, wholesale or manufacturing, are unfair competition.

I have never been able to see any justice in a situation which enables co-operatives to avoid paying their share of Federal taxation, under a plan which sounds reasonable but actually is very unjust to people who have to pay Federal taxes in one form or another.

It should not be necessary to point out that co-operatives everywhere pay all taxes that are assessed against them, whether at the Municipal, Provincial or Federal level. If they do not pay such taxes, the tax collectors have wide powers to enforce collection, and we might add, invariably they do. The laws governing taxation of all persons at all levels (Federal Income Tax included), is arrived at by the democratic procedure recognized in every democratic country. In the case of Federal Income Tax, by Parliament. The present provisions of the Federal Income Tax Act relating to Patronage Dividend were passed in 1946, largely as a result of a Royal Commission which enquired into the taxation position of co-operatives, and with the exception of a newly-formed co-operative composed of individual members, does not exempt co-operatives.

This is the only firm which has been frank enough to put their views in the form of a letter. Others have transmitted the same information verbally.

In support of Paragraph (c), we quote the following letter:

"We have your letter of June 8th, (1950), enclosing your several orders for ..... and cheque in the amount of $20,000. As you suggest, Mr. ..... called on us when he was in ..... a week or so ago, and at that time we outlined to him our position associated with what we feel to be essential in the distribution of such ..... products as we produce. He will, no doubt, be conveying the substance of these discussions to you in due course.

"As a result of these discussion, we are returning herewith the orders which you were good enough to send us, along with your cheque."

Our position in this respect, from a documentary standpoint is not as clear as we would like it to be, because the above quoted letter refers to an interview wherein their position was outlined, and on which we only have the report of the co-operative official who made the call. The company official presented our representative with a typed copy of excerpts taken from the 21st Annual Report to the shareholders of Saskatchewan Federated Co-operatives Limited. A copy of the typed extracts from the Annual Report, as supplied to our representative, is attached to this Brief.

Violent exception was taken to the part of the report which set as a co-operative goal, the ownership of production and processing facilities necessary to manufacture the goods needed by the membership. Exception was also taken to that section of the report which indicated that Saskatchewan Federated Co-operatives Limited should not find it necessary to put salesmen on the road to sell their goods to their own membership. Strong exception was also taken to the policy of the Board of Directors of Saskatchewan Federated Co-operatives Limited in buying on the British market, particularly those goods which that organization were denied from Canadian supplier and manufacturers. The Company further stated in the course of the interview that if they sold us, they would "simply be building up a competitor for themselves in the future." It was paradoxical that this Company criticized the co-operative for—

(*a*) Going to be so big that it would be a threat to the supplier;
(*b*) For a policy of not having salesmen on the road to sell goods.

We would have liked to have been in a position to present more documentary evidence in support of our experience, but documentation of this type is difficult to get. As we said previously, we respect those who have been frank and honest and not ashamed to put their position over their signature.

Some manufacturers frankly told us that they are very desirous of selling their goods to the co-operatives. They have no quarrel with our way of doing business, but they have been told by the Industry Association, of which they are a member, that they could not admit the co-operatives to the "list".

If this Brief is judged to lack proper documentation, we think there is sufficient evidence of our main contention to be found in a review of the publications issued from time to time by the Combines Investigation Branch, covering the various investigations which have been made over the past number of years.

We are of the opinion that we have submitted sufficient evidence to indicate that the factors of competition are not allowed "free play" in Canada. Canada cannot become a truly great nation if her economy is to be hampered by a selfish minority, who use their tremendous power to "throttle" competition, and by these tactics not only encourage and abet the formation of combines, but sharply add to the cost of living in Canada. Therefore, in order to achieve the goal "free competition", we strongly endorse the recommendation contained in the Brief of the Co-operative Union of Canada as follows:

> No dealer shall refuse to sell an article or commodity for cash or its equivalent at its established price, to any person carrying on a legitimate business in accordance with accepted trade practices, and in the event of such refusal, such person shall have the right to refer the matter to the COMMISSION for investigation.

Such an addition to the Combines Act would be a strong deterrent to the growth of combines as well as a definite contribution to halting the rising cost of living. The simple prohibition of retail price maintenance will not go very far in achieving either of these goals.

This Parliamentary Committee has been specifically charged with enquiring into the practice of "price fixing" at the retail level—commonly called "price maintenance". The latter term is not sufficiently descriptive of the practice.

From a co-operative standpoint the price to the consumer is not particularly relevant. If it is placed too high, it simply means that the patronage refund is large. If it is placed too low, it simply means that the patronage dividend may be nonexistent. We frankly admit that there are many arguments in favour of price fixing at the retail level. We are further frank to

say that those who are charged with the responsibility of merchandising within the co-operative movement, are often in favour of it. It makes their business operations less cumbersome. It is our considered opinion, however that the arguments against price fixing at the retail level are greater than those in favour of the practice. We believe, therefore, that price fixing at the retail level should be illegal, and we commend the Government for their proposed legislation.

We believe, however, that the suggested draft of the Legislation, as it appeared in Appendix "A" Committee Minutes and Proceedings No. 1 is inadequate, and that the following should be added.

> "(c) has resold or offered to resell or proposed to resell or offers to resell, the article or commodity on the basis that such other person is entitled to this patronage refund with respect to such article or commodity."

There are many businesses other than co-operatives which follow the practice of "patronage refunds" and such procedure should be recognized in the legislation. It is known, of course, that such patronage refund, if paid in accordance with the regulations as prescribed in the Income Tax Act are deductible from taxable income irrespective of the type of business, co-operative or nonco-operative.

We attach hereto a schedule showing a comparison between a number of items picked at random in a retail store. The list shows the retail selling price, the wholesale cost and the margin in percentage in markup on selling. It is not necessary for us to emphasize the result of these figures.

Submitted on behalf of Interprovincial Co-operatives Limited.

Extracts from

"REPORT OF THE BOARD OF DIRECTORS" TO THE TWENTY-FIRST ANNUAL MEETING OF THE SHAREHOLDERS

SASKATCHEWAN FEDERATED CO-OPERATIVES LIMITED

January 17, 18 and 19, 1950

Extracts from "Foreword"

Elsewhere in this report are pictured some of the offices, warehouses, and productive enterprises OWNED by Federated, and paid for almost entirely from savings made by the simple process of locals' purchasing from their own wholesale. During these 21 years we have acquired, in addition to the buildings in Saskatoon and Regina, an Oil Refinery, seven producing Oil Wells, two Coal Mines located at Drumheller, Alberta, a Sawmill and Timber Limits at Canoe, British Columbia, and Feed Plants at Regina and Saskatoon. Substantial as these assets are, they represent only part of what has been accomplished. CASH dividends totalling more than $1,329,000.00 have been paid to local associations, thus returning additional purchasing power to the communities where the patronage originated.

A modest start has been made toward the Co-operative goal of complete OWNERSHIP of the productive and processing facilities necessary to manufacture all the goods needed by our membership.

Much greater progress than was possible during our first 21 years can be made if the co-operators insist on buying Co-operative all the way. All factories, refineries and processing facilities are paid for by the Consumer in the cost of goods and services. Only Co-operative facilities are OWNED by those whose patronage has provided the money to acquire them.

Extracts from "Report"

The acute situation re crude oil supplies which prompted your Board to embark on a drilling program has completely changed as a result of the extensive drilling operations of both major and independent oil companies in the Leduc and Redwater fields. Plentiful supplies of Canadian crude make it unnecessary for us to import crude from the U.S.A., or to take the risk of drilling further wells of our own until better terms are offered than those hitherto available.

We shall, however, always be vulnerable until we control the source of supply of sufficient crude to provide all the requirements of our people in refined products. With this end in view, plans for the future should include the provision of some part of our refinery earnings being set aside for drilling operations in the hope of finding a new oil field so that we may secure crude oil supplies at minimum cost.

If we are to realize this potential as one of the greatest co-operative developments on the North American Continent, we must be prepared to change some of our present methods of merchandising. Maximum savings to the consumer are being sacrificed by "aping" some of the uneconomic aspects of private enterprise. It should not be necessary for Federated to put salesmen on the road, to sell to our local co-operatives goods that have been purchased for them by the wholesale they OWN. Another practice that is costly at both wholesale and retail levels, and which must be corrected, is the multiplicity of brands of the same commodity presently demanded by our membership. Not only does this result is a slower turnover, but it ties up a much larger investment in inventory than is necessary at both levels.

The introduction of more merchandise under the "Co-op" brand should enable us to considerably reduce the number of items carried and your Board and Management intend to put greater emphasis on having goods of first-class quality put up under the "Co-op Label."

Your Board has endorsed the "Buy British" campaign and has instructed its Management to make all possible purchases from the United Kingdom, preferably from the Old Country Co-operatives.

During 1949 we encountered difficulties due to shortage of certain lines, but in the overall picture we have had a complete stock most of the year—a stock that was equal in variety to competitive wholesalers. We carry a complete stock of current and nationally advertised merchandise. We have also expended into more merchandise under our own Co-op label, and consumer acceptance of our own brands has been encouraging. Many more products will be packed under the Co-op label as soon as satisfactory deals can be made.

Hardware and Farm Equipment

Sales for this department show an increase of $177,670.00 over the previous year, total sales being $1,676,309.00.

We are budgeting for an increased sales volume of 10 per cent over 1949, and we should attain this figure provided we receive the support of our local co-operatives.

During the past year, inventories were reduced considerably, especially slow moving and absolete lines, and we are now purchasing new stocks to more adequately service our locals during 1950.

In eliminating and disposing of certain stocks which were acquired during the war years, and consequently were either over-priced, inferior in quality or obsolete, your hardware department suffered a loss of $132,483.00. The greater portion of this loss, amounting to $91,462.00 was taken in the liquidation of Machine and Tractor parts.

In following the general policy of Federated, this department is exploring the British market for steel goods, such as nails, wire, wood screws and tools. It is hoped that this market can be developed and it is felt that now that Britain is in a competitive position due to the devaluation of the pound Sterling, every effort must be exerted to increase bilateral trade.

The only way co-operatives can create maximum savings and thus made a greater impact on the economy of our people, is to get into production and control the source of supply of the raw materials. We must constantly remind our members, local directors and managers of this fact and this is the continuous work of the Organization Services Division.

CONCLUSION:

We have often stated that the ultimate objective of the Consumers' Co-operative Movement is to OWN our own system from production to consumer. Such a program cannot be accomplished overnight, but must be our goal if our consumer members are to receive maximum savings. Margins between wholesaling and retailing can and are being narrowed, with a corresponding widening at the manufacturing level. Savings in the distribution of commodities are thus only a small part of what is possible when the savings from manufacturing and processing in co-operatively owned plants is passed on to the consumer. An examination of our financial statement reveals that the savings made in actual distribution are comparatively small, and that almost all the savings have come from the ownership of our own productive enterprises.

Inasmuch as your wholesale will continue to be a "procurement agency" for many of the needs of our people for some time to come, emphasis must be placed on shortening the economic distance from the producer to the consumer.

Private wholesales' chief concern is to sell to the retail stores and they are not much concerned with the problem of disposing of merchandise at the retail level. Our problem, however, is a very different one. Owned as we are by the same people who own the local outlets, we have accomplished little by a transfer of goods from our wholesale to warehouse to the shelves of the country store. Our job is only complete when the goods have passed through to the consumer. It is obvious, therefore, that a more concentrated effort must be made to ascertain the needs of our individual members so that when procurement is made by the wholesale they will pass into the hands of the consumer via the local associations in the shortest possible time.

LIST OF PRICE MAINTAINED GOODS

Article	Cost Retail	Cost Wholesale	Margin (Based on Selling Price)
Glass Coffee Pot	$ 4.25	$ 2.83	33·4%
Glass Double Boiler	5.05	3.37	33·2%
Pressure Cooker	27.50	18.30	33·4%
Waffle Iron	15.45	10.30	33·3%
Food Mixer	73.75	49.17	33·3%
Toaster	32.00	21.33	33·3%
Electric Tea Kettle	12.50	8.33	33·3%
Aluminum Sauce Pan	14.55	9.69	33·4%
Alarm Clock	8.75	6.02	31·2%
Blow Torch	11.25	8.40	25·3%
Totals	$ 205.05	$ 137.74	32·8%

LIST OF GOODS NOT PRICE MAINTAINED

Article	Cost Retail	Cost Wholesale	Margin (Based on Selling Price)
Glass Ware (Fire King)	$ 1.98	$ 1.46	26·2%
Aluminum Tea Kettle	3.98	2.84	28·6%
Aluminum Sauce Pan	2.90	2.17	25·1%
Door Lock Set	8.50	6.35	25·2%
Planes	17.10	12.80	25·1%
Hack Saw	2.50	1.85	26·0%
Hand Saw	8.85	6.65	24·8%
Level	6.20	4.65	25·0%
Enamel Roaster	5.15	3.86	25·0%
Enamel Sauce Pan	2.70	1.94	31·8%
Totals	$ 59.86	$ 44.57	25·5%

HOUSE OF COMMONS

Fifth Session—Twenty-first Parliament
1951

(Second Session)

JOINT COMMITTEE OF THE SENATE
AND THE HOUSE OF COMMONS

ON

COMBINES LEGISLATION

Joint Chairmen—The Honourable Senator A. L. Beaubien
Mr. James Sinclair, M.P.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 14

THURSDAY, DECEMBER 6, 1951

WITNESSES:

Mr. Norman M. Dunn, Counsel; Mr. Robert U. Lamb, Managing Secretary; Mr. Angus Firth, Assistant Secretary; Mr. George Hougham, Consultant; Mr. Chalmers Gorsline; Mr. R. I. Blain, all representing the Ontario Retail Hardware Association.

OTTAWA
EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY
1951

MINUTES OF PROCEEDINGS

THURSDAY, December 6, 1951

The Joint Committee of the Senate and the House of Commons on Combines Legislation met at 10.30 o'clock a.m. The Joint Chairmen, the Honourable Senator A. L. Beaubien and Mr. James Sinclair, M.P., were present, Mr. Sinclair presiding.

Also present:

For the Senate: The Honourable Senators Aseltine, Burchill, Fogo, Golding, Horner, Vaillancourt.

For the House of Commons: Messrs. Beaudry, Blair, Boucher, Carroll, Carter, Cauchon, Croll, Dickey, Mrs. Fairclough, Messrs. Fleming, Fulton, Garson, Harrison, Hees, Jutras, MacInnis, Mott, Murray (*Oxford*), McLean (*Huron-Perth*), Roberge, Stuart (*Charlotte*), Thatcher, Welbourn.

In attendance: Mr. Thomas N. Phelan, K.C., and Mr. Guy Favreau, Counsel for the Committee; Mr. Norman M. Dunn, Counsel, Mr. Robert U. Lamb, Managing Secretary, Mr. Angus Firth, Assistant Secretary, Mr. George Hougham, Consultant, Mr. Chalmers Gorsline, Mr. R. I. Blain, all representing the Ontario Retail Hardware Association.

The Chairman tabled a brief received from Woodward Stores Limited, of Vancouver, B.C.

On motion of Mr. Thatcher, the said brief was ordered to be printed as *Appendix J* to this day's Minutes of Proceedings and Evidence.

Mr. Dunn was called, tabled a brief, and Appendix thereto, on behalf of the Ontario Retail Hardware Association, which are printed as *Appendices A* and *B* to this day's Minutes of Proceedings and Evidence; was heard and questioned thereon.

Messrs. Lamb, Gorsline, Blain, Firth, and Hougham were called and questioned.

Mr. Favreau tabled the reasons for judgment in the case of C. Duquette *et al* versus Charles E. Frosst and Co.

On motion of Senator Aseltine it was ordered that the said reasons for judgment be printed as *Appendix K* to this day's Minutes of Proceedings and Evidence.

On motion of Mr. Hees it was resolved that the Committee sit at 3.30 o'clock this day for further questioning of the witnesses.

At 1.05 o'clock p.m. the Committee adjourned until 3.30 o'clock this day.

AFTERNOON SITTING

At 3.30 o'clock p.m. the Joint Committee resumed. The Joint Chairmen, The Honourable Senator A. L. Beaubien and Mr. James Sinclair, M.P., were present, Mr. Sinclair presiding.

Also present:

For the Senate: The Honourable Senators Aseltine, Burchill, Dupuis, Fogo, Golding, Horner.

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For the House of Commons: Messrs. Blair, Carroll, Carter, Cauchon, Croll, Dickey, Mrs. Fairclough, Messrs. Fleming, Fulton, Garson, Harrison, Hees, Jutras, MacInnis, Mott, Murray (*Oxford*), McLean (*Huron-Perth*), Roberge, Stuart (*Charlotte*), Thatcher.

In attendance: As listed for morning sitting.

Questioning of the witnesses was continued.

The witnesses retired.

In accordance with the recommendation contained in the Fourth Report of the Sub-Committee on Agenda and Procedure, concurred in on November 30, the following documents are printed as Appendices to this day's Minutes of Proceedings and Evidence:

Appendix C: Brief submitted by Canadian Association of Consumers.

Appendices D, E, F, G, H, I: Briefs by the Alberta, Manitoba, Ontario, New Brunswick, Saskatchewan and Quebec Branches of the Canadian Association of Consumers.

At six o'clock p.m. the Committee adjourned until Friday, December 7, at 10.30 o'clock a.m.

A. L. BURGESS
Clerk of the Committee.

EVIDENCE

DECEMBER 6, 1951.

10:30 a.m.

The CHAIRMAN: Come to order, gentlemen.

The only order of business before we hear from the Ontario Retail Hardware Dealers Association is this; that within approximately the last 10 minutes I received a copy of a brief from the Woodward Stores, of Vancouver. It was decided at the meeting of the steering committee yesterday that no briefs received after December 3 would be printed in our record; however, this one is from British Columbia and has suffered from the handicap usual to material coming from that province and only arrived this morning. I think under the circumstances that we should accept this brief and have it printed in our record. We have received about 10 copies and they will be distributed to members immediately, as far as they go.

Mr. HEES: Are they for or against?

The CHAIRMAN: They are for competition, Mr. Hees.

Is there a motion that this brief should, along with the others received up to and including yesterday, be printed in the record, as it was sent to us by special delivery.

Mr. THATCHER: Could you tell us what the brief is about? Is it another department store that is taking the same stand as Eaton's?

The CHAIRMAN: I do not see any point in the Chairman enlarging on a two page brief when you are going to have it in the matter of a couple of minutes.

All those in favour of this brief being printed in our record please signify?

Those opposed?

Carried.

The CHAIRMAN: Does anyone else want a copy of this brief?

Hon. Mr. ASELTINE: I would like to have one.

The CHAIRMAN: Our witnesses this morning are the Ontario Retailer Hardware Dealers Association. There was some question as to why they were called, why the committee decided to call them. There is no national Retail Hardware Association—I believe they do intend to form a national association very shortly—they represent a part of the retail trade who are very much interested in this matter of resale price maintenance. Now, Mr. Dunn, perhaps you will be good enough to introduce your delegation.

Mr. Norman M. Dunn, Counsel, The Ontario Retail Hardware Association, called:

The WITNESS: I am Norman M. Dunn, counsel for the association. With me here today are Robert W. Lamb, managing secretary of the association; Mr. Angus Firth, assistant secretary, a statistician in the offices of the association; next is Mr. Chalmers Gorsline, of Collingwood, a retail merchant; and Mr. Richard I. Blain, who is another practising merchant in Brampton. He is in his own business in Brampton. I will be saying a word about this later, but in view of the importance of this question of resale maintenance to this organization we have called upon the services of a consultant, a gentleman who has had a great many years of experience in marketing, and it may be that he will

have to answer some questions later—Mr. George Hougham, who now lives in New Westminster, British Columbia, and he is here in the capacity as a consultant of our association.

The CHAIRMAN: Thank you, Mr. Dunn.

The WITNESS: We are not all going to make speeches, but we wanted to render every assistance we could.

The CHAIRMAN: We are gratified that you brought so many along with you, Mr. Dunn. The procedure has been for the spokesman, or any other member of your group, to make a short summary of your brief, and then the committee counsel will start an examination, and after that the committee members will follow up. If any question can be better answered by any other member of your group, he may do so.

The WITNESS: Thank you.

Gentlemen, first of all may I draw attention, for the purpose of correcting a rather unfortunate typographical error that crept into our brief. On page 32 of the brief, one little letter added, which makes it sound rather different—"equality" instead of "quality"—"debasement of equality", we would not want that to happen. There are one or two other minor typographical errors, which I do not think are material.

Mr. Chairman, the association, as has been stated, is called the Ontario Retail Hardware Association, and it represents the vast preponderance of the Ontario dealers. 96 per cent of the Ontario dealers are among its members, and a large number of members are from other provinces, with the exception of British Columbia, in which province there are very few members. So that, overall, the association represents 40 per cent of the membership of the retailing trade throughout Canada. Now, as you gentlemen are aware by now, the hardware trade is an important part of the retail trade in Canda. The 1950 records show $192,000,000 worth of business done over the counter of hardware stores. Unfortunately, there are no figures in Canada to show what percentage of that is done by independents and what percentage is done by chains. Sometimes we find things like that in the American figures, but the Dominion Bureau of Statistics in its wisdom—I think because of the small number of chain stores in Ontario—does not make a practice of separating them, because there are only two chains in Ontario, Aikenhead's in Toronto and Mills Hardware in Hamilton, so they would only be revealing internal records if they did. However, as you can see in the brief, it has been estimated by a competent economist in the United States that in this type of business approximately 95 per cent of the retail trade is handled by independents.

Now, gentlemen, I am going to be as brief as I can, but I do want to stress some things. I understand, Mr. Chairman, I am not to read the brief and it is not necessary, of course, but I may beg your leave to read a sentence here and there. I would like to emphasize that something fundamental to our position here is that we have certain characteristics in the retail hardware business which do not apply to very many other businesses. You have had an opportunity of reading the brief, it is 32 pages, but it is double spaced so it is not so bad. As you gentlemen will see, on page 4 reference is made to the economist in the United States who classifies the characteristics that lend themselves to the independent retailer. First of all he has a large inventory; secondly, he has a wide range of stock; thirdly, there is a great measure of personal service; fourthly, there is a very slow stock turnover and, fifthly, there is a high degree of technical knowledge involved at the point of sale. Those things are not involved in a great many other businesses, for instance,

dress goods has no technical knowledge involved, in the food business there is no technical knowledge involved, but in the hardware business it is very different.

In addition, as I have indicated in the brief, our people perform a service to the individual coming into the store, which the hardware merchant never gets paid for. He counsels his customer on various ways of maintaining his property, he explains new products coming on the markets, insulating material or a new type of tool. There is a great deal of special service rendered by the retailer. These are all things that underlay the position we take as being vitally interested in resale price maintenance. It is shown for your interest on page 6 the extent of competition that exists as between retailers and there is a little table there. You will notice even in the smallest town there is a very high degree of competition, there is a high degree of competition in even the smallest community, and that is something we like, and it is interesting we think to note that has been the case.

Now, gentlemen, you probably realize from looking at the brief that we seek to set out certain positive things in the brief, what resale price maintenance is, what it does for the hardware people, and we take a negative position in the latter part and say, "Why is there objection to resale price maintenance?" We have attempted to list some of the objections highlighted in the well known MacQuarrie report. The first main thing in the positive part of it is, what is resale price maintenance? Now, gentlemen, I do urge you to give consideration to the definition that was arrived at by the Federal Trade Commission in the United States. The beauty of that definition is, as we lawyers say, it is both inclusive and exclusive, it includes everything that resale price maintenance is and excludes things that really are not. Resale price maintenance is the marketing policy under which the manufacturer as owner of a commodity identified by brand, trade mark, trade name, copyright of patent, places restrictions on the price at which that commodity shall be sold by purchasers and sub-purchasers.

Gentlemen, I think it is important to bear in mind it is restricted to branded merchandise and is neither a minimum nor maximum. There is a tendency creeping into these proceedings for speakers to indicate it is a minimum. I urge you to realize, gentlemen, it is both the minimum and maximum selling price.

In answer to question some of my colleagues who are in the business will probably tell you that that functioned to keep prices down through the scarcity periods following World War II. There was a time you could not buy a Mixmaster in the city of Toronto for love or money and when one came in it was sold to somebody on a list. It was sold at $59.50, or whatever the price was, and we all know that short of government control the dealer could have got almost any price for that Mixmaster.

So I urge you to realize, gentlemen, that price maintenance is not limited to a minimum price, and I urge you to consider that Federal Trade Commission definition.

Now, on pages 7 and 8 I attempt to show briefly the history of this practice in the United States. I am not going to take time to go into that in great detail but I want to urge on you this fact, which I think is very clear from all the literature on the subject: that resale price maintenance was not a brain child of some clever lawyer on some particular date who said: Here, we are going to do this; and this is going to clear up all our problems.

I suggest to you it is a businessman's solution for a businessman's problems. These problems were very acute in the United States in the '90's and towards the turn of the century. With the sudden growth of manufacturing and marketing procedures, a situation developed where many branded products were really being, as some people have said, "kicked around"—and very serious

trouble ensued. There was a gradual growth of this practice of stipulating prices at which branded products should reach the consumer.

Gentlemen, it is common knowledge to everyone who has been sitting here for the last weeks what happened in the United States. The American courts decided in their wisdom, because of the anti-trust legislation in the United States, that even a vertical price agreement between manufacturer and distributor was, according to their minds a trust—and "trust" is a word that is bandied around in all American writings. The courts decided it was a trust and price maintenance became illegal in the United States around the turn of the century.

Then what happened? The chaos that followed in the marketing of branded merchandise resulted in a positive demand from the public for legalizing this practice. They adopted a phrase down there which I think is not a bad one, although I do not know that it is the best one. They call them "fair trade laws" and, as you all know, in 1931 the first fair trade law was introduced in the state of California.

Now, I do not think we are concerned here that it was very largely tied up with the pharmaceutical industry—the pharmaceutical industry was one which had felt this competition at the turn of the century—but at any rate we have this first statute in California and then, following in very quick succession, you had it in 44 other states. So, you have 45 states with fair trade laws.

Then you had the Miller-Tyding Act which introduced fair trade legislation in inter-state trade, provided that it did not go into nonfair trade states.

I suggest to you, gentlemen, for your earnest consideration, that Canada, sitting here beside the United States, should not go back to 1900 and start all over again. The United States have made a lot of mistakes in legislation; they have made a lot of mistakes in their industry and in their business; but they have gone through the pains of this cycle—first of having price maintenance legal, then having it made illegal, and then the horrible legislative process of having it legalized again over a period of years—in order to get back to where they were in 1890 when the Clayton Anti-Trust Act was passed.

I suggest to you, gentlemen, that it is not reasonable and is not sensible for Canada, sitting beside the United States, to go back 50 years and start that procedure all over again. As I have told you, it was a natural economic growth; it was not something dreamed up in a hurry; and it was something that businessmen did themselves.

I mention in my brief one product and I am going to take a second to mention it here. Everybody in this room remembers the Ingersoll watch. I am younger than some of you in this room but I remember it vaguely. The Ingersoll watch was probably the best known product on the North American continent. Everybody knew that you could go into a store and get an Ingersoll watch for $1—and everybody knew what they were getting.

The story of the Ingersoll watch is the story of the beginning of price maintenance in the United States. Certain stores, certain types of merchandising units, thought that the Ingersoll watch would be a perfect opportunity to get people into their stores so what happened? They first sold it at 79 cents. That was just fine—so, having sold it at 79 cents they said: Let us sell it at 49 cents. People were trooping into their particular stores to get those watches and, incidentally, they probably bought some other things at the regular price.

What happened? Well, jewellers, hardware stores, corner stores all across the United States who had previously been buying Ingersoll watches could not possibly re-order Ingersoll watches when they were being sold in other stores for 49 cents or even 79 cents. So they simply did not re-order Ingersoll watches.

And what happened? The few stores that had been selling them at 79 cents had a hey-day; a few very lucky people got a good watch for 49 cents—and the honeymoon was over, gentlemen, in a very few months—and the Ingersoll watch disappeared from the American market.

In the past 10 or 15 years—more than 15 years ago after the Ingersoll watch disappeared from the market—the only watch that you could buy if you were going to give your boy a watch when he came out of school would cost you $2 or $3. As I say, that showed how price maintenance worked, and how it grew naturally in the United States.

Now, gentlemen, I hasten on to discuss how much price maintenance there is in the retail hardware business. I have seen from reading your proceedings that there has been some difficulty, as there was with the MacQuarrie commission, over just how much price maintenance we have in Canada. We Canadians are not so statistically minded as they are in the United States. At least that is the way I found it when I started to prepare this brief. We maintain, as one of the services that our association renders to its own members throughout Canada, a statistician. That is Mr. Firth whom I introduced to you whose business is to calculate mark-ups according to traditional experience in the hardware trade. In other words—Mr. Thatcher will correct me very quickly if I am wrong—there are certain things in the hardware trade which are for sale to the public and other things that are channelled to trades, like roofing. I do not know this but I think on roofing the traditional mark-up is very much less because it has a very small market generally. So, with that experience across the board our organization maintains the procedure for calculating the profit inherent in the trade and the advances which come about from time to time.

Our practice, as Mr. Firth will tell you if you ask him, is from time to time to check three wholesalers. We take the lowest price of the three wholesalers and calcuate it at different rates resulting in different kinds of profits which experience has shown will enable a hardware dealer to stay in business and make an honest living. These vary from article to article. Now, we distribute them as a feature of our service. Now, this price book is a big, formidable thing and it carries 26,500 items.

Now then, in a sampling—I think you gentlemen will know what I mean when I say sampling—we did not go over the entire 26,500 items but we took a good many items and sampled them, and our Mr. Firth came up with the conclusion that 2,094 items in our price book were subject to price maintenance. But there are 2,094 where the manufacturers say: "here, the price is so much", and where the manufacturer would probably register an objection were the retailer not to adhere to it. It figures out at 7·89 per cent. In dollars and cents it is more difficult but a survey of our directors, who are all in the trade, all engaged in marketing hardware at retail level, indicates that it is 10 or 15 per cent.

Now, gentlemen, that is not any more than the MacQuarrie commission report stated. They said 15 per cent. Dollarwise it looks like 10 per cent to 15 per cent, and I do suggest that it is interesting to note that the British committee—I am going to refer to it several times here, gentlemen—you gentlemen may have examined this interesting report which took, I believe, over two years of hearing witnesses before it produced this. We are going to say later on that this document was not used at great length in the findings of the MacQuarrie report.

The British committee in 1949 found as a fact from their investigation that it would be from 5 to 10 per cent. That is on page 10 of my brief, gentlemen; a short reference to page 69 of the British proceedings.

Now, gentlemen, where does that leave us? As the MacQuarrie report stated: "if it is as small as that it is not of interest at the government level".

Now, there is more to it than that. I have given you the five charactertistics of the retail hardware dealers. These things which are price maintained, we find from investigation of the hardware merchants, have a tendency to be the things that are being bought repeatedly. Other things that are bought very rarely such as a hammer or trowel or mason's level have not the same tendency to be price maintained. That is, the bread and butter items, the stuff that is being sold on more or less general demand has a tendency to be price maintained and that is why it is so important to us and I say to you gentlemen that the fact that it is only 7·89 per cent does not suggest for one moment that this committee should not deal with it because of the unique position that it has in this particular business, and I suggest to you that the only way that you can get a bird's eye picture of price maintenance in Canada gentlemen, I say with all due respect, the only way you can get the overall picture is to take specific cases and say: "how does it work here?" You will have to say: "this is only 7·89 per cent of the goods, then how does it work in another industry?" and then, I suggest that the MacQuarrie commission, when they said that it was too small, and that it did not interest the government, they did somewhat miss that phase of it.

Now, gentlemen, I was going to take a few minutes to refer to the British committee. I notice that you gentlemen have looked at the excerpts from the British committee which appear in my brief at pages 12-14. They made surveys from various angles. They surveyed and interviewed manufacturers, they interviewed distributors and they interviewed consumers and they had quite a lot of consumers there.

Now, in that paragraph, which I am not going to read at this time, I suggest to you that those findings of the British committee are worthy of the greatest consideration. They stressed this importance of technical skill which is involved at the point of sale. They stressed the fact that there is a slow turnover in some of these items. There are factual problems, gentlemen, that affect our industry and may affect other industries. It is recognized that many have to make some stipulations on price. If a salesman comes in and says: "How many do you want of these tack hammers, for instance" and the merchant buys a quantity of tack hammers it may be months and months before they are sold. He has got to buy in relation to the manner in which he can sell. We must recognize gentlemen,—I regret to say that it has become unpopular, this idea of being in business for profit—we must face the fact that everybody who is in business is in business for a profit. I think that the Minister of Finance recognizes that fact. Now, gentlemen, these men have got to buy things so that they can sell them at a profit, and they want to know that after they have loaded up their shelves with, say, 20 gross of tack hammers, that the price is not going to be all shot to pieces within the next month or two. Now, gentlemen, at the risk of being censured for reading too much, I am going to read the final conclusions of the British Committee, which are not very long and which start at the bottom of page 16. May I just, before I do that, say that the position in England, as I understand it, is very similar to the position in Canada, where price maintenance has never been illegal, it has always been recognized as legal under the common law. I will tell you in a minute—there was a case in England back in 1783 when it was definitely approved and it has never been made illegal by any statute, so in 1949, when the British Committee was considering this matter, they were in the same position as we are in here. Here is what they said: "We take the view"—now then, gentlemen, I am not taking the time of the committee to read a lot of the other things the British report said, but I would urge

every member of this committee to get access to the report of the British Committee and read a lot of it. I do not think there is a word in that report that will not be helpful to this committee. Now, this is the final conclusion of all their findings:

> 162. We take the view that the manufacturer of a branded article remains responsible for the quality of the goods sold under his own brand; he cannot, therefore, be indifferent to the terms on which his goods are sold to the public. Our evidence has shown that well-known branded articles are particularly liable to be used as loss-leaders by distributors and we are satisfied that their use in this way has not brought any permanent advantage to manufacturers, distributors or the shopping public as a whole. Resale price maintenance offers a convenient means of protecting brands against misuse by distributors in this or other ways.

Paragraph 163, gentlemen, is their recommendation:

> 163. We recommend that no action should be taken which would deprive an individual producer of the power to prescribe and enforce resale prices for goods bearing his brand.

Now, gentlemen, there is the final conclusion of two years of investigation by a learned committee in Great Britain. I am going to refer in a minute to the parallel findings of the Federal Trade Commission in the United States. Now, gentlemen, we come to the negative side of this proposition, as we see it. The heading we have here is: "Has resale price maintenance any tendencies adverse to the public interest?" Now, this is a question that interests every member of this committee because we are all concerned, and I say "we" advisedly because we are marketing to the public and unless we satisfy the public we are just out of business, so we are all concerned with the public interest. Gentlemen, my study of this subject has revealed no organized opposition to resale price maintenance from manufacturers' groups, dealers' groups, or even consumers' groups in any formidable way. Talk to the man in the street. I have made a little one-man survey myself in the last couple of weeks and I find that they will tell you we do not want manufacturers keeping the price up. You ask them if they understand price maintenance and you find they do not understand it at all, they just have a vague idea that somebody is making the price higher than it should be and, therefore, that is bad. Now, that thought runs all the way through the writings of anyone I have been able to find who opposes price maintenance, economists, legislators, and judges, if necessary. Gentlemen, that situation is acute in the United States. You have Washington—and I am saying this with the greatest respect to our friends across the line—you have in Washington a fixation about trusts. Anything that looks like two people discussing the price of a thing, they say that is a trust and that is bad, that is contrary to something in the constitution, at least contrary to the public interest, and that is why the United States Supreme Court went so far—went further than Mr. McGregor said here or would think of doing—they said, under the Clayton Act a vertical agreement would be a combine. You could be a combine even when it is only one manufacturer—such is their fixation across the line. Any two people discussing a price, unless it is a government board, any two individuals in business discussing a price, they call it a trust and that is all. That runs through all their writings. You will find economists who will say "price maintenance is contrary to the public interest" and you will see that phrase repeating itself. Now, gentlemen, the same thing is beginning to show itself in this country. We are getting just a little, not as much, but just a little of that idea that because two people are discussing price, even though they are not on a horizontal basis, that it has a tendency to provide, as I said in my brief, a breeding ground for a "combine," which is the word

we do not like in Canada. Now, that is one of the things I was sorry the MacQuarrie report did not clarify. They say, as one of their findings, that resale price maintenance agreements make it easier for manufacturers openly or tacitly to enter into a combine. Our brief is quite clear. We do not like combines any more than this committee does. We believe they are contrary to public interest and they have been so held by the common law back to 1783. Combines legislation did not start in 1890 with the Clayton Act in the United States, and it did not start in Canada with our Combines Investigation Act. It went back to 1783, the common law idea, which was this, that any manufacturer could fix the price of his goods to the person he was selling it to, but if a manufacturer tried to fix it with another manufacturer that is contrary to the public interest. It is as old as that. We have this type of thinking creeping up in Canada now, that because a thing might make it easier for people to get into a combine, therefore price maintenance is bad. Now, gentlemen, you had before your committee here the other day a gentleman whom we all respect as a civil servant of this country, one who made a great contribution to the legislation of this country and who is now retired, and he came and was heard, and I have read with a great deal of interest the remarks he made, and, gentlemen, I am going to refer you to just three things that he said as indicative of this type of thinking that is creeping into Canada. On page 390 of your proceedings, Mr. McGregor used these words: "The extension of the practice in recent years has been alarming." Now, I am not going to read a whole lot. You have all read it. He elaborated to some extent, but I suggest to whom is it alarming? It is alarming people who think somehow it is going to make it easier for people to band together and form a combine. My answer is this, the function of the legislature is to make the Combines Investigation Act fit the facts, the modern economic facts in Canada. If it is not strong enough at the present time let it be amended, but let it be amended along the traditional common law lines. Do not let us tamper with the Combines Act because it is open to people to quietly do something which we could not prove under the present Act is a combine but which we think is a combine and therefore make other things illegal. Gentlemen, if there are types of agreements between manufacturers that are not caught by the Combines Investigation Act now, we say let the Combines Investigation Act be amended, let it be improved, put your law officers of the Crown at work to close the gaps, but keep the pattern, which is against horizontal agreements; make it as tough as you like but do not change the pattern which we have had since 1783. Now, you have this gentleman saying it is alarming. But he does not elaborate. Then on page 395 of the Minutes of Proceedings he said:

> As the very purpose of resale price maintenance is to prevent sales below the minimum price established, it is obvious that the effect is to keep prices, right across the board, higher than they would otherwise be.

That is quite an incomplete statement on price maintenance—"it is obvious that the effect is to keep prices, right across the board, higher than they would otherwise be." Gentlemen, it is that word "obvious" I object to. Here is a witness coming before this committee saying something is obvious and not giving any facts. There are no facts to substantiate that. As a lawyer I am also very hesitant in saying that something is obvious. This word "obvious" appears again on page 396, where he said:

> First of all, resale price maintenance is a system that is obviously designed to prevent, and which does prevent, reductions in retail prices.

Now, gentlemen, do any of us know of any reductions in retail prices in the last five years? There have been very few. We will show you in our brief

that one of our price maintained items has gone down a little bit but non price maintained articles have all gone up, yet Mr. McGregor says it is obviously designed to prevent, and does prevent, reductions in retail prices. I suggest, in fairness to this committee and this country, you should not put your approval on changes in legislation on the ground of the opinion of somebody that it is obviously contrary to the public interest. I suggest to you that you should have proof, and I am very glad that we have a little statistical information that may help you.

I promised to tell you about that 1783 case. It is not in my brief, so I will just refer to it. We have a couple of lawyers on this committee and they might like to talk about it.

The CHAIRMAN: We have more than a couple.

The WITNESS: A couple, well I will use that like the baker's dozen.

Mr. CARROLL: We have a couple of good ones.

The CHAIRMAN: Someone has remarked we have a couple of good ones.

The WITNESS: It was Lord Mansfield, in 1783, in the case Rex *v* Eccles, 1 Leach 274, who said:

> Persons in possession of any articles of trade may sell them at such prices as they individually may please, but if they confederate and agree not to sell them under certain prices it is conspiracy.

Now, gentlemen, there is your combines law back in 1783. It is the common law and I say do not change it.

Mr. CARROLL: What is the citation?

The WITNESS: 1 Leach 274. It is also reported in 99 E. R. 684.

Then, in the MacQuarrie report that I have been speaking about, on page 17 they say:

> Resale price maintenance facilitates and makes more effective horizontal agreements (open or tacit) among manufacturers.

I say, gentlemen, if there are horizontal agreements, I do not care if they are open or tacit, let the Act be amended.

By Hon. Mr. Fogo:

Q. Is that statement correct that you just read?—A. I am quoting from the report on page 17.

Q. You are reading it, but are you saying it is true or untrue?—A. I am saying that it is a very bad policy on which to consider legislation, to make something illegal because it helps something else.

Q. As a statement of fact is it true or untrue?—A. I would say it has not been proved. In my investigation I have not been able to see any suggestion that it is an integral part of horizontal combinations other than in the writings of gentlemen at Washington, D.C., who have this same fixation about trusts. They will say the very same thing. They will say price maintenance is bad because it provides a breeding ground, makes it a little easier for the big boys to get together behind closed doors. That is not the way to take the thing. If the big boys are getting together behind closed doors, let the Act deal with them but do not make something illegal which has been perfectly legal since 1783 and which had to be legalized at some trouble in the United States. Now then, gentlemen, we come to a very important question which is raised in the MacQuarrie report. This is all part of the negative side of my brief.

Resale price maintenance does not mean high prices. Gentlemen, we are all interested in high prices. Let us start from what the MacQuarrie report said on page 19:

> . . . the general level of prices is higher with resale price maintenance than it would be if competition existed.

Now, that is a statement, let us say, that is a finding that was not elaborated; they did not say we investigated this, that and the other thing and for various reasons it was higher. Let us see what other investigating bodies have found on that. On page 20 of our brief you will find an excerpt from the findings of the Federal Trade Commission, which I am sure you also had thrown at you by Professor Fuller, or at any rate I think that group emphasized this, and this was important so I want you to hear it again. The MacQuarrie report, as you will recall, quoted five findings of the Federal Trade Commission as to what happened when price maintenance went into operation. You see, we have this very interesting situation in the United States that it is the only country in the world I know of we can study price maintenance going into operation, and I say we should study it with great interest. You had in the United States a case where there was no price maintenance at all, and then you have price maintenance legalized, all within a matter of a couple of years. I know some of you gentlemen will be saying that the Bureau of Education on Fair Trade had some axe to grind. I do not think the Eli Lilly had any axe to grind. I have studied the Eli Lilly digest and I have seen what happened when price maintenance came in. The MacQuarrie report quoted these five findings. They all had to do with what happened when price maintenance was inaugurated. They pointed out that prices were increased in some stores and were decreased in the independent stores, but unfortunately, and I think it is most regrettable, the MacQuarrie report stopped at the fifth finding and did not copy in the very next one, and here is what the sixth finding says:

> 6. The manufacturers of the price-maintained brands of drugstore items covered in this study generally named minimum prices that were within the range of prices actually charged by their large-volume customers just prior to the time they placed their trade-marked products under minimum resale price contracts.

Now, that is all I have been able to find in the time I have had at my disposal. There is only one of these books in Toronto and Mr. Fuller had it and I couldn't get it. This one is a report of a committee on resale price maintenance presented by the president of the Board of Trade to parliament by command of His Majesty, in June, 1949.

The CHAIRMAN: May I point out to members of the committee this report is available in the library and in the committee office, as is the British Hansard for 1951, and the last government White Paper.

Mr. FLEMING: Are there enough copies for circulation in this committee?

The CHAIRMAN: I have inquired of commission counsel and in the library what demand there has been and I may put it this way, they tell me there has been remarkably little demand.

Mr. FLEMING: Probably that is because we are snowed under with all these briefs which have been submitted.

The WITNESS: Gentlemen, you may have difficulty getting it to read but I commend it to you. It is 222 pages of close printed and carefully documented material. Incidentally they had three units of consumers, three big women's organizations appear before them. Now, gentlemen, I have read this paragraph from the Federal Trade Commission report and the finding of the commission in

the United States. Admittedly it was the drug business they were investigating but they found as a fact in their investigation that in price maintenance the general tendency was that independent prices came down, the large volume prices remained pretty much the same and it is quite possible some of the cut-raters may have had to increase their prices, and I have no doubt Macy's did.

By the Chairman:

Q. Are you acquainted with the situation in Newfoundland?—A. I confess I am not, sir. Now, gentlemen, the parallel findings of the British committee and the United States findings, supplement the vacancy in the MacQuarrie report. Here is what the British committee found on the question of mark-ups, and this is page 14 of the British report, "On the whole the margins allowed on price maintained goods appear to be lower than those taken on free price goods. The circumstances vary, however, from product to product and from trade to trade. We do not attach any great significance to the fact that margins on branded and price maintained goods—especially on well known brands—are generally lower. Indeed we should have been disturbed had this not been the case, for such goods do not ordinarily require inter alia the same sales effort as unbranded goods. There is therefore no comparison between the two classes of trade."

You have those two parallel findings that price maintenance does not necessarily push prices up. We attempted to find out just what has happened in Canada. We took a number of hardware items, some fast moving, some slow moving, and through our statistical department we charted the price movement on these items from 1939 to 1951. This is table No. 1. The first table No. 1 is a very small one on page 6. This is table No. 1 on page 23, and it runs over onto page 24. We have taken, first of all, paint, which is a fairly fast moving item and the mainstay of every hardware store. I have taken a product price maintained and one not price maintained. We could not get the average from 1935 to 1939, to tie it in with the Bureau of Statistics figures, and if there was more than one price in 1951 we simply averaged them. Mr. McGregor says statistics cannot be relied on because they can prove almost anything, but I assure you, gentlemen, every product I asked Mr. Firth to investigate is included in my report.

Now, I am not going to read all these figures, but you gentlemen who have looked at it will see that the price increase on the three price maintained paints varies from 62·9 to 77·4. These are retail prices I am referring to. The non-price maintained item, which is a competitive item, increased to 83·7 in the same time. I also showed the mark-ups which are in percentage of retail selling price. Mark-ups are very often related to the dealer's cost, but for the purposes of my thinking I like to think of it in terms of what the customer pays. As Mr. McGregor says, I come here as a consumer. There are some other items, flashlight batteries went up only 30 per cent, waxes went to 15·4 per cent and you will notice the mark-ups on waxes are very small. Electric light bulbs is one I like because I seee it went down 2 per cent in the years from 1939 to 1951. The mark-up there is 25 per cent. Now, in the next stage we have cooking utensils and there are two items there that are price maintained, one is a certain kind of double boiler which is up 80·4 per cent, another kind of double boiler went up 74·2 per cent, and another kind of double boiler which is not price maintained went up 106·2 per cent. Again the mark-ups in all three are almost identical.

Now we get into hand tools and we find in the hardware business hand tools are very rarely subject to price maintenance and we find a great variety of price increases. The last one is hand saws which went up from $4 to $7.01. Hammers went up 112·17 per cent, planes 113·1 per cent, and the general run of them is substantially higher.

Q. Weren't these the things you said were slow moving and were not price maintained?—A. Yes, these have a tendency to be slow moving; these things are technical things.

By Mr. Fulton:

Q. A hammer isn't a very technical thing.—A. No, it would be technical to me, though. I think I talked about tack hammers.

The CHAIRMAN: No, you talked about ordinary hammers.

The WITNESS: Gentlemen, I come here as a consumer and a lawyer and I may have committed many sins of omission and commission, but I have to rely on this huge delegation I have here to correct me where I have made technical mistakes. I have shown also on page 24 the national price trends published by D.B.S., which are the September, 1951, figures. You will notice commodity prices across the board went up 121 per cent, and the nearest subdivision I could get to hardware was home furnishings, maybe that is not the right category but it went up 99·1%. I want to be the first to say this is only a very small sampling, and I know very well gentlemen here can say what about this or that or something else. This is only an indication of what I think your committee should do. I do not want Mr. McGregor to be called back this afternoon and say I attempted to demonstrate something from twelve or fourteen items. Nothing is further from the truth.

Mr. BEAUDRY: I don't think there is any danger of that.

The WITNESS: I do say in my investigation I asked my colleagues to get me the price trend on twelve or fifteen items and curiously enough they support the rest of the proposition. They support the findings of the Federal Trade Commission and the British committee.

Now, there is an appendix, and I am not going into it in detail, but I thought the committee would be interested in seeing it. I may say this information was gathered at a time when we were not thinking of price maintenance as a problem at all; it was gathered as a service to hardware dealers so they could see how they were doing on their pricing. That is what we try to do for our members, so we made this investigation in seven towns and you will see we have averaged it. Again, gentlemen, these are retail prices. I urge you to realize these are based on the selling price of the articles. This is the type of thing we give to each of our members for a small fee and it contains pages and pages. In the final column on all these sheets of appendix A you will see the mark-up our statistician suggests. There is a little variation and it has occurred to me it may be of some interest to you to see how these mark-ups vary from item to item, and I say again there is no attempt to differentiate between price maintained goods and free price goods. This was a survey made last May and there was no differentiation made at that time and there has been no attempt since to make a differentiation. I would love the opportunity of going through the whole of appendix A and finding how many were price maintained and then going back and seeing what happened to them since 1939. You did not give us too much time and we have been working rather hard to get something for you.

Mr. FLEMING: How long would it take you to prepare that information from the survey?

Mr. FIRTH: I think we could come up with partial statistics in a fortnight, but that is a terrific job.

Hon. Mr. GARSON: Even this would be a sample.

The WITNESS: This would be a very representative sample.

Mr. HEES: A very worthwhile sample.

By Mr. Fleming:

Q. Do you think it would be well worth waiting two weeks for?—A. I would love to see it done. I think it would be of the greatest help to everyone. It is something that has never been done in Canada before. I may say, gentlemen, when the annual convention of our association comes up in January next I am going to urge them to work out ways and means of getting these little independent people to keep records that will be helpful.

By Mr. Fleming:

Q. You seem to have about 300 units on these sheets on appendix A.

The CHAIRMAN: I think Mr. Dunn is almost through and I think it is quite a compliment to their association that they should have prepared such an extensive brief as they have.

The WITNESS: I think perhaps it might simplify things if I finished my statement, and I will try to be as brief as I can. The next subject, and I think a subject that has been bandied around here as much as anything else, is resale price maintenance does not restrict competition. You will be interested to know there is one thing in the MacQuarrie report with which I heartily agree and they used a phrase that fascinated me, "social control of prices."

I am entirely in favour of social control of prices but don't any of you gentlemen ask me: Yes or no—I see that Mr. Phelan has gone out.

The CHAIRMAN: He will be back.

The WITNESS: Do not ask me—yes or no? Because you have got to define these words.

I am going to try and forestall a question by giving you something I looked up before I got on the train last night. I thought I would find out what the word "social" means. All I have at home is a Concise Oxford Dictionary which I think is a good one—

The CHAIRMAN: It is a good one.

The WITNESS: And in the office if my secretary says she got something from the Concise Oxford Dictionary I will go along with it.

It defines "social" as: "Not fit for or not practising solitary life".

The CHAIRMAN: A combine.

Mr. FLEMING: It sounds like members of parliament.

The WITNESS: Gentlemen, I may not forestall a question but I put it to you this way. You talk about the social control of prices and I am all for it, because we live in a society—which is social living. We do not live in a socialist sphere necessarily—as that is a political term. Some parts of the world do live under the socialistic regime but we do not have that—and it is up to parliament to decide whether we ever shall.

The CHAIRMAN: Up to the people.

Mr. FULTON: The people decide that.

The WITNESS: We live in social circumstances and we do not live alone. That being the case, we must govern ourselves in accordance with the interests of other people. That is what social control is.

I just thought of a little example here. You talk about freedom, and there has been so much said about freedom of competition and freedom of enterprise. The word "freedom" is being used all the time. Somebody says to a witness: Do you believe in free enterprise? But gentlemen, if anybody asks me that question I am not going to answer until I define both "freedom" and "enterprise" and by the time I have given the definition of "freedom" and "enterprise"

there will be no time for questions—which will be disastrous. Therefore I hope that question will not be asked.

However, I have a little example here which I think is an answer. It is a very homely example of freedom in our social form of living.

It is, that in front of my home in Toronto there is hanging on a lamp post a sign that says "No Parking".

Hon. Mr. BEAUBIEN (*Joint Chairman*): Do you ever get a ticket?

The WITNESS: Oh, sir, perish the thought.

Mr. FULTON: Do not ask him that?

The WITNESS: Do not ask what happens if I do get one—that would be even worse.

Gentlemen, that is an infringement on my freedom which is in the social interests. There are a lot of people going back and forth on my street. I live right near Avenue road and St. Clair. In the old days, when the farm went up to the King's Highway it was ours, but now when we live in congested areas it is not ours any more. It is Mr. Fleming's, and other peoples'—going back and forth downtown on my street. Now, that sign is to accommodate Mr. Fleming and other people, and they do not let me park in front of my own house.

That is the type of social interference—

Mr. FLEMING: I object, I do not drive on that street—or park.

The WITNESS: You had better not park. That is one of the infringements on our freedom which we have to endure to live in a social community.

Now, I am not going to get into a speech on freedom of enterprise but I just want to forestall questions. I say that price maintenance is social control of prices and that is why I like that word—I can adapt it to my thesis.

Hon. Mr. GARSON: Social control by whom?

The WITNESS: I cannot answer that in one word, sir. Do you want me to answer it fully?

By the Chairman:

Q. I think all of us know the answer because we are all parliamentarians? —A. As to how I should answer that?

Q. No, as to what the answer is?—A. I submit that is the purpose of your enquiry here.

Q. The answer to Mr. Garson's question is: by the government; by the will of the people?—A. Yes, but that is not the answer to Mr. Garson's question. Mr. Garson wants me to say that it is social control by the manufacturer.

Hon. Mr. GARSON: Certainly.

The WITNESS: That is what he expected me to say if I answered it in one word; but it cannot be answered in one word.

Well, we have got into this thing and we are going to finish it.

Mr. HEES: Attaboy!

The CHAIRMAN: I am moving you down on the list, Mr. Hees, and he can take some of your time.

Mr. FULTON: Mr. Garson asked a question.

Mr. FLEMING: As the matter has been raised let the witness give his statement.

The WITNESS: I am sorry that I did not answer your question—I am not deferring to Mr. Garson because of his position as a member of the cabinet, but he has raised such an interesting question that I do not want to go away from it; but I cannot answer it in one word.

The CHAIRMAN: The members here are obviously extremely anxious to start questioning you. I have no doubt but that Mr. Croll, Mrs. Fairclough, Mr. Thatcher, Mr. Hees, and others will be delighted to ask you that question and you will have ten minutes to answer.

Mr. FLEMING: We should clear it up now surely?

The WITNESS: Do not let me forget it, Mr. Garson?

Hon. Mr. GARSON: I do not think I am even on the list.

The WITNESS: Maybe Mr. Hees will put it on his list—but he has been moved down.

The CHAIRMAN: No, he is back in his old place.

The WITNESS: I say, very simply, that we have social control of prices—which has come about in this gradual economic development that I have attempted to trace. It is a type of limitation, and I am going to go right along with that. It is a type of limitation of the most careless type of competition there can be—if there was not some sort of social control of competition.

I am sticking my neck out when I say social control of competition. Mr. Garson will say that can only be done by parliament. Yes, at the final level.

However, I remember one thing from my study of economics when I was going to college. It had to do with the time when the North Atlantic shipping got its great impetus with the advent of steam. There developed competing lines. They were really in big business and they had big and expensive ships. They were competing with each other and they started cutting prices. They started, and each time one cut the other cut, and the result was that the entire North Atlantic shipping business was at the risk of bankruptcy, and the bottoms would have been gathering rust in Liverpool or New York if it had continued.

However, they got together and formed the North Atlantic shipping ring. I cannot go into the economics of it but I remember the matter from college. I do not know how it is controlled and, as there are different countries involved, perhaps it is by an International Convention. However, something had to be done for what Mr. Garson might very simply call free competition. I think that free competition has got to be defined. I would say competition careless of the social interests of others is the kind of competition which I do not think is in the public interest—competition which is careless of the social interests of other people.

Now, there is plenty of competition in the hardware business as there is in any other business, but I just want to put this one thing to you as as an illustration. There is competition between the branded items that are distributed through retailers and there is very, very tough competition with private brands which are manufactured, custom made, for retailers.

I am not saying they are only made for Eaton's or for this firm in Vancouver who put the brief in today. It goes right down to the little drug store who sells cough remedy which is John Brown's cough remedy, the best cough remedy in Podunk Junction or some other place. That is a private brand.

Do not lose sight of the fact that the private brand runs the whole gamut from Eaton's right down to the little fellow who mixes something in his shop. Those are private brands, and they are competing.

I would like to go into it more fully but I must go on. However, I would leave with you the thought that a manufacturer who is the manufacturer of a brand name, in selling and in advertising, has got to think of the competition from private brands when he prices or gives the price that he thinks the product should sell for. He cannot do it indifferently to the others. That, I say, is social control of competition.

The CHAIRMAN: I wonder if I might interfere again. We are taking considerable time—

Mr. FULTON: Perhaps we should recall the witness.

Mr. HEES: What about this afternoon?

The CHAIRMAN: It is perfectly all right if the committee so decides. There are just two points. First of all I believe the members of the committee are very anxious to ask questions and also you have with you these gentlemen who are in the retail business and who I suppose are going to speak.

Mr. HEES: Can we decide now whether we will come back this afternoon?

The CHAIRMAN: We can decide that at one o'clock when we see what progress we have made with the questioning.

Mr. HEES: If we were going to come back this afternoon—and I think we would all like to come back, and I do not see how we can better spend our time —then this witness could carry on and nobody would be bothered about the time.

The WITNESS: I would like to spend about another fifteen minutes under my own guidance.

The CHAIRMAN: I think almost every point you are going to make is going to be asked about by members. Then, in the course of questioning you can get the point over. We have some very skillful men here to do that very thing.

Mr. FLEMING: We should know the point that Mr. Dunn would like to get on with.

Mr. FULTON: I do not think we should limit a witness in his presentation.

The CHAIRMAN: The understanding was that the witness was called for a summary of his brief. Other witnesses when called were told by the clerk, as was this witness, that it would be a ten minute summary. Then, there was to be an examination by counsel on the main points and then further questioning by members of the committee. I have been on many committees and I have not seen a committee where so many members wanted to question, but you have brought in things like the North Atlantic shipping ring which are not covered in your brief.

The WITNESS: No, but I do not think Mr. Phelan is going to limit me to a statement of claim.

The CHAIRMAN: I think Mr. Phelan is going to question you on your brief.

Hon. Mr. GARSON: We have entered into an arrangement with every other person who has appeared and they have acted in accordance with that arrangement. This gentleman knew what it was and it is not altogether unreasonable to expect the same adherence to the regulations here as in other cases.

Mr. HEES: If this gentleman can bring out points which may be so important as to change or alter the legislation you are proposing is not that proper?

Mr. FULTON: In the witness's brief there is this heading "resale price maintenance does not establish a private system of law." The witness has been dealing with that under the general heading of social control of prices. The next point is that: resale price maintenance does not discourage economic efficiency.

Surely the witness is to be allowed to buttress his statements of principle.

The CHAIRMAN: Actually he would have saved time if he had read his brief.

Mrs. HEES: Nobody attempted to cut off Mr. McGregor and he was selling a government scheme.

The CHAIRMAN: Mr. McGregor was called at your request.

Mr. HEES: And I was very glad to hear him. I would have stayed for two more days, and I would liked to listen to this gentleman for two days. He is talking a lot more sense than a lot of people have talked for quite a while. All I am asking is that we decide now, right away, to come back this afternoon and let him go on talking.

Mr. JUTRAS: I do not think this is the time to decide.

Mr. HEES: Let him go ahead now and we will come back this afternoon.

The WITNESS: It is extremely difficult for me to rush through in the remaining minutes. I have not much left and I would like to point it out in the way I had in mind.

Mr. JUTRAS: Go ahead and finish what you have to say.

The WITNESS: It is going to be very difficult for me if I feel that every word I say is going to cut off a word which might come out of a very interesting question.

Mr. HEES: Let us come back this afternoon.

The WITNESS: I would be very happy to go on and then decide later whether questions remain that deserve—

The CHAIRMAN: Just go ahead.

The WITNESS: Now, I have dealt with the question of competition. Well—wait a moment—in that interplay I overlooked something. It is in connection with the question of competition and how it works out in practice. It is extremely difficult to phrase it sometimes just in a sentence or two.

I might say I have had some difficulty with it myself but I ran across an exceedingly interesting passage by a very well-known authoritative economist in the United States which I think points out better than I can say, or than most people can say, just the practical working of competition under price maintenance.

This is one of Mr. Nystrom's books. I have no doubt but what he has been referred to you before. He is now Professor of Marketing at Columbia University and, at the time of writing this—in 1915—price maintenance was a very hot subject in the United States. I ask you to bear in mind the date of the book—it is not an obsolete book and he has written other books since—but it was written when price maintenance was a very hot subject in the United States.

In three little paragraphs here, which unfortunately were not included in the brief, I think he answers the question raised under the heading of competition.

For the record, this is from Mr. Nystrom's book, The Economics of Retailing, published at New York, in 1915 at page 17:

> "Price maintenance restricts competition among the producer's own products, but in doing so it sets the energies of the producer free to work out the most economical system of distribution possible for his particular kind of goods. Where price maintenance does not prevail, the producer, without channels of distribution of his own, must not only struggle with his competitors among the producers, but also with the goods he has produced remaining in the hands of dealers. In other words, he has unwittingly become a second Frankenstein and must avoid destruction at the hands of his own creation.
>
> We have seen that a struggle of this kind is likely to force a small manufacturer to cheapen the qualities of his goods and to attempt to get distribution by stimulating excellence; or to combine with some other manufacturer who has a selling organization reaching directly to the retailers, or to combine or sell out to some large selling organization such as a mail order house, department store, or chain store system or to surrender to a trust.
>
> None of these results in themselves are desirable from the standpoint of the consumer or the public. The American people do not look upon the development of great business and commercial organizations with easy minds. Our experience with industrial combinations has not yet

clearly indicated the way to handle these concerns and brings new and difficult problems for our government to solve. That price maintenance does not prevent competition will be clear when one observes that there are a dozen well-known safety razors on the market, scores of varieties of corn flakes, several brands of grape juice probably hundreds of brands of shoes, several brands of collars and cuffs, dozens of makes of cameras, dozens of brands of hosiery, corsets, hats and so on; lines in which some manufacturers have maintained their prices for years."

This is the last sentence:

I am not an economist and I cannot answer some of the details of that but, in my humble submission, it seems to put over the point which I have discussed with my colleagues. That is where your private brands come in and that is where you have competition.

Now, I am very nearly at the end but I want to mention this heading on the matter of private brands and to say this one thing. Price maintenance gives to the independent retailer the same control, if you like to call it control, that the chain store or department store has with its private brands. Someone said yesterday that the Singer Sewing Machine Company sells their merchandise direct to the consumer all over the world. I cannot ask a question, but I would like to have someone here say whether that is social control of prices. With the Singer Sewing Machine Company selling sewing machines in Toronto there is no control over the price, and there is no suggestion that there should be—because they are selling in competition with White's, Swiss machines, Swedish machines—and they are all in competition. You can buy four or five kinds of machine. They do control their own prices and they do it locally. This committee cannot touch them. I say with the greatest respect, as I know that you are all legislators, that you cannot touch them unless you have some kind of price control—because they sell through their own dealers. The smallest corner hardware store in the smallest town or the biggest one, to have that continuity of price which the Singer Sewing Machine gets through their vast economic power, that the T. Eaton Company gets with its tremendous purchasing power and its tremendous slice of the retail business in Canada, and which other stores get, the A. & P. in the United States, price maintenance gives that same kind of continuity of price and it gives that same power to control prices, and it gives it to the little independent store.

Now, gentlemen, the next heading which this questioner mentions, resale price maintenance does not establish a private system of law. This has interested me very much since I started investigating this particular subject, because my investigation early produced a thought in my mind that resale price maintenance is nothing more and nothing less than a contract between two Canadian citizens as to the manner in which they shall merchandise a particular product. It is not something very elaborate, it is just a contract, and I am going to suggest, with the greatest of respect to the lawyers on this committee, that it may very well be a matter of doubt that the parliament of Canada has exclusive jurisdiction to control a contract of that kind. Now, I see Mr. Garson smiles and I realize immediately . . .

Mr. FLEMING: That doesn't mean anything!

Mr. HEES: That's nervousness!

The WITNESS: Thank you, Mr. Fleming. I hasten to add that I am deeply conscious of the extent to which power is taken under the heading of trade and commerce, how that phrase has been utilized to extend the jurisdiction of the legislature of which you gentlemen are all members, but I suggest that is not just a thought, it is something that should have very serious consideration by the House of Commons before legislation goes too far, because you are dealing

with a contract between two men, and I emphasize that by reference to the Duquette-Frosst case in Montreal. I have had great difficulty in translating that judgment. I tried to read it. From what I can see, having a bit of a translation, the whole approach to that question was an approach in which the learned judge, Judge Marier, applied the civil law of the province of Quebec to determine what was the effect of this contract. Now, I thought because there was a rigid contract in writing between the manufacturer and the dealer, and Judge Marier inquired into the effect of the Quebec Civil Code on that contract—that, gentlemen, is where I got that thought, that if Judge Marier found that, I have no doubt the Ontario Court of Appeal will do the same if any one of my clients in the pharmaceutical business is called in on the same sort of thing. It is a civil contract. So I throw that out as a problem, gentlemen. I do urge you not to think of this private law business. The British white paper, I think, coined this phrase of private law. Gentlemen, I urge you to realize that every contract that is entered into in the Dominion of Canada is the private law for those two people. It changes the common law.

The CHAIRMAN: In fairness to the British white paper—you have read that thoroughly?

The WITNESS: Well,—

The CHAIRMAN: The British white paper is not referring to private law in that sense. They found that there was a price ring inflicting fines on a retailer. That is what they mean by private law.

The WITNESS: Yes, but the MacQuarrie report adopted their language of a private law and said there was a tendency to set up a private law and referred to the British white paper. Anyway, the phrase has been bandied around, gentlemen, and in a tone of voice that there is something sinister about a private law. Gentlemen, there is nothing sinister about a contract. For instance, Mr. Garson and I might enter into a contract for the sale of a house I own in the city of Toronto. I own it and he wants to buy it. That is our private law. It does not affect the other people of Canada as long as it is between the two of us.

By Hon. Mr. Garson:

Q. This is a very crucial point. Would Mr. Dunn say that before the passage of the Combines Investigation Act a private contract amongst manufacturers to fix prices was just a contract?—A. I would say that as far back as 1783 it was declared to be against the public interest.

Q. But apart from any prohibition which is contained in the law, it was just a contract?—A. Well, we have to define words again. Just a contract. Just a contract. It is a contract with six, seven or eight people, but it is still a contract. It may have ramifications, have affected other people.

Q. But apart from any prohibition that there may be in the law in relation to that contract, it is just a contract in exactly the same sense in which you are using it in that phrase?—A. I cannot say that, because a contract is a legal relationship which affects the rights of those two people. There are types of arrangements that the Combines Act sought to catch which I really do not think are contracts.

Q. I am talking apart from that. Supposing there is no Combines Investigation Act, and you and I agree that you will charge a certain price for your commodity and I will charge a certain price for my commodity, and it will be the same price. That is just a contract?

Mr. FLEMING: It is not enforceable under the civil law in view of that decision of 1783.

Hon. Mr. GARSON: I am speaking on the assumption that there is no prohibition in the law against such a contract. It is just a contract?

The WITNESS: May I say this, that in the case that you have put I would say there is a contract for which there is no consideration, therefore it would not be really a contract. But let us say you and I were partners and we broke up or partnership and we entered into an agreement that we would not compete in a certain territory or would not sell our commodities. Let us assume that our product is known as the Dunn-Garson something-or-other, widely known, and Dunn sells his, and Garson sell his, but we agree to protect that name and it is advisable that we not undersell for, say, 10 years. In that particular kind of case, which I have thought up on the spur of the moment, I think there is a contract there and I think there is consideration for it. Now, I have no doubt that it contravenes the law because it was between two manufacturers and, therefore, contrary to the public interest and that as far back as 1783.

Mr. FLEMING: And therefore unenforceable.

The WITNESS: The one you mention I do not think is a contract because there is no consideration for it, it is more of an understanding.

Hon. Mr. GARSON: A mutual exchange of covenants is not a contract?

The WITNESS: I would hesitate to express a legal opinion offhand.

Hon. Mr. GARSON: I am not trying to embarrass you to give a legal opinion, but when you say that this is just a contract, it seems to me that apart from the prohibition of the Combines Investigation Act or other law all of these other conspiracies in restraint of trade are just contracts; and the reason we passed the Combines Investigation Act was to make them illegal.

The CHAIRMAN: I would like to remind the witness once again that this is not in the brief. You involved Mr. Garson in this, although it is not in the brief. Perhaps we can bring this up again, but we would like you to finish your brief in the meantime.

The WITNESS: I get so interested in legal questions.

My proposition is that as between a manufacturer and a dealer it is a contract and it has been legal at common law for a great many years. If there is any difficulty about that contract, gentlemen, the courts are here, as they were in Montreal. Judge Marier was there. His court functions, and it decided a matter that arose by way of a dispute. There was a dispute under that little private law that the MacQuarrie Committee reports about. Mr. Duquette was unhappy because he could not sell 222's he could not get any from Frosst's. He sought damages and also applied for an injunction. There is the clearest example if there is any difficulty with these contracts the courts are there. The chairman has already reminded me that I have been bringing in some things that are not strictly in my brief. I will be of this much service to him and will not go into it. But there are two or three generations of litigation in the United Kingdom on resale contracts of one kind and another—all kinds of disputes arising out of this subject. I have not all the references here. The indications in the literature on the subject are that there have been many cases and I suggest to talk about this as a private law, where something is done behind closed doors and there is no social control by the judicial part of our government, is simply to beg the question and close your eyes to the facts. In talking about it being a contract, it is not as important a part of my brief, but I will be glad to discuss it if we have time later. Now, then, the final thing—I think this is the final thing, gentlemen—the heading at any rate which starts on page 28 is this: "Resale price maintenance does not discourage economic efficiency." Now, gentlemen, throughout the MacQuarrie report this phrase appears that resale

price maintenance does more to encourage inefficiency than it does to assist the independent dealer—I am paraphrasing their words. Now, gentlemen, that passage of nystrom I read a few minutes ago cuts right to the very root of that. Resale price maintenance makes people a little more ingenious to get brands on the market. Eaton's and others have their own brands. It creates that type of ingenious competition, that type of ingenious manufacturing procedure. Now, the question is whether there is inefficiency in some of the retail outlets, too. Let us assume a very cold-blooded attitude that here there are 4,000 hardware dealers in Canada. If 3,000 of them are operating inefficiently, therefore we should just weed them out because they are not an efficient unit. I think that type of government administration is in vogue in some countries in the world, but let us assume we are going to do that here, that 3,000 of them are inefficient, therefore we weed them out. Do not forget the five characteristics that I started out with, five characteristics in a hardware store you cannot get anywhere else. In a little country town you can get that type of service, but, now, suppose he is inefficient. We are a country of 14,000,000 people less 100,000, according to a Toronto paper I read this morning, and we are spread across 3,500 miles, and the density of our population is sad in many places. Now, that dealer has got to be in business at that crossroads selling aluminum pots and hammers, whether they are tack hammers or any other kind, he has to be in business at that corner. I suggest to you, as legislators, we must not lose sight of the social significance—and I use that word "social" in what I like to think as a pure sense of the term—of the independent hardware man at the crossroads across Canada. I say, suppose he is inefficient. I say we should keep him, let him stay in business—as I said a few minutes ago for the benefit of the Minister of Finance—and let him make a little money. But is he that inefficient? Here we have table No. 2, which appears on page 30. We are getting very close to the end, gentlemen. I do not think I will be very long. On page 30 we have this comparative efficiency. Now, again, these are statistics and Mr. McGregor might come back and say, "these are not anything, those are just bare, dry statistics". I think they speak volumes. We have here a table showing the comparative efficiency in independent, chain and department stores in the United States. I was not able to get any for Canada. I obtained this from one of the reports of the Harvard School of Business Administration. We also have the chain variety stores in the United States. I am not suggesting for one moment that these chain stores are chain hardware stores. Do not think I am trying to suggest that they are not, they are chain variety stores but they are the only chain stores for which I could get any figures. We have chain variety stores. Then we have chain hardware stores in the United States, and they include chains and independents, and we have hardware stores in Canada. They also have independent variety stores in the United States. In each case we start at the first line and have 100 per cent of sales shown there. Your cost of goods for your department store—now, this is the national average of all department stores in the United States, and it includes Macy's, the bad boy of fair trading, and the others. Their cost of goods is 64·8 per cent. The chain variety stores, their cost is 63·68 per cent. The hardware stores, all kinds, their cost of goods is 71·8 per cent in the United States, and in Canada the cost of goods is 73·9 per cent. This is information that I was able to obtain from the library of the University of Toronto.

Now, then, at the purchasing level, hardware stores are, I will say, the most inefficient because they pay the most for their goods. Well, that is self-evident. We all know that the chain store can buy 10 carloads or six boat loads of something and get it at a price far less than Mr. Blain here can get it for his store in Brampton. Their cost of goods sold is very much lower than ours, so their gross profit is very much higher. Their gross profit is 35·2 per cent, ours for a hardware store in Canada is 27·1 per cent. We are inefficient

by that amount. Then comes the question of operating expenses. I must confess I was surprised to find this. With my little training in economics I used to think that when organizations got bigger they got more efficient, but there are certain types that do not, and one of them in a retail store, whether it is a hardware or a lady's shop, as they get bigger they get problems that create non-productive expenses and you get your operating costs going up. I would like if every member of the committee would hear these figures. You have read them, but I would like to read them for you.

Here is the significance, the operating expenses in department stores in the United States is 32·5 per cent, that is an average of all department stores in the United States, and according to all the news we hear they have the most efficient methods of doing business. Now, chain stores' operating expenses are 28·6 per cent, they have not got quite the operating expenses the department stores have. Hardware stores in the United States are 23·75 per cent, and hardware stores in Canada are 20·9 per cent.

Now, gentlemen, I put the proposition to you a few minutes ago, even if you think these fellows are inefficient we should keep them anyway because of their social significance. There may be other studies that go deeper into this, but may I repeat I only bring these statistics as a guide post, I do not ask you to accept them as final, because I have no doubt there are more statistics on this. I have only had ten days to think about this thing and I came up with this.

Then you have your cost of goods which is very low in chain stores and a little higher in the department stores, so I say we are not inefficient. If anybody think that resale price maintenance is sheltering inefficiency, certainly the inefficiency is not that of the independent dealers. If anything, the inefficiency from the standpoint of the public interest is in the department store. Just think of it in this way, supposing Mr. McGregor goes into Eaton's and assume that Eaton's operating expenses are the same as the average, which is 32·5 per cent, and Mr. McGregor buys something for $100 in Eaton's; $32.50 goes to pay for their operating expenses. If he goes into Mr. Blain's hardware store and buys something for $100, $20.90 goes to pay his rent and the junior who works in the store and light and all those things.

The CHAIRMAN: Are those the same goods?

The WITNESS: Mr. Chairman, the department store covers goods of all kinds.

The CHAIRMAN: Is it your point they sell the same goods for $100 as the small store?

Mr. FULTON: On branded goods they do.

The WITNESS: I will give you an example. I bought a Beaver saw myself about a year ago for $74.50. Now, let us assume for the purpose of simplicity that it was $100, and you buy it in Eaton's for $100, and if Eaton's cost is the same as the American average, $32.50 goes to pay overhead. You buy the same saw from Mr. Blain for $100, and $20.90 goes to pay his overhead. The bulk-buying power of the big chain is more than wiped out by the efficiency of the independent dealer. Again I repeat I do not attempt to say these figures are the only figures available. I put them to you in good faith as the only ones I could find. I did some investigating in the drug store field and I have some figures on that if anybody wishes them.

The CHAIRMAN: We had the druggists before us for two sessions.

The WITNESS: These are the only figures I could find and they are figures from authoritative sources. I would urge your committee, with the greatest of respect, to pursue that matter further before accepting the MacQuarrie report that price maintenance shelters inefficiency or encourages inefficiency.

Now, gentlemen, I am through. I appreciate very much your patience because I have taken far more time than most of the other counsel who have introduced a brief; maybe it is my fault, but I am interested in the subject and I think it is something of the greatest importance to Canada and I do urge your committee not to exercise undue haste. I remind you the British committee spent two years before they got this volume. I do not know how long the Federal Trade Commission spent. I do feel your committee can very well follow up the type of statistical information I have found on this subject. You have heard a lot about the pharmaceutical lines and the electrical lines and so on, and I would urge your committee to follow this type of reasoning and get further information.

The CHAIRMAN: I want to thank you, and I want to say in passing you have unduly alarmed Mr. Thatcher about the penalties of getting too big in the retail trade.

I want to say, as chairman, one thing again on Mr. Hees' remark. Every other group who appeared before us had ample warning and Mr. McGregor, a retired civil servant, was invited on Tuesday, November 27, and appeared on November 28. He appeared here with only twenty-four hours' notice to prepare a brief and he had no accountants or lawyers to help him. I think we should be very grateful he did prepare the brief. I was interested to hear that Mr. Dunn, as a lawyer, spent ten days preparing this case. I am especially upset at Mr. Hees' remark about Mr. McGregor in view of his statement, "I think Mr. McGregor has answered all my questions".

Mr. HEES: Well, he had.

The CHAIRMAN: I again remind the Committee Mr. McGregor appeared on twenty-four hours' notice. Mr. McGregor's presentation of the brief was not quite as long as the summary of his own written brief presented by this counsel.

Mr. HEES: I had absolutely no objection to the time Mr. McGregor took. I think he gave excellent evidence, I think we learned a lot, and I think we have learned as much from Mr. Dunn today. I understood the purpose of this committee was to get the facts on this vital matter so that we do not pass legislation that is not justified. What is the objection to our sitting for two hours and listening to a very factual talk on this subject?

The CHAIRMAN: There is no objection at all. The procedure was that those who had strong views should present their views in writing and then we would, after studying the briefs, question them. I think to carry out that objective we will have to sit this afternoon.

Mr. HEES: Can you think of any better way we could spend our time?

The CHAIRMAN: I would like now and again to turn up in the House.

Mr. HEES: I think this is just as important as anything going on in the House.

By Mr. Favreau:

Q. First I would like to clear up one possible bit of confusion that may have arisen out of Mr. Justice Marier's judgment. In the province of Quebec we have no mandatory injunction, that is you cannot ask the court to give an order to enforce positively a private contract between two parties. It is true Mr. Justice Marier decided there was a contract in this particular case, but under our law a contract exists legally first, when there is consent between two parties and, secondly, when the consideration is legal. He did not render a decision as to whether consideration of the contract was legal, he just said, "If it is legal then there is no recourse before this court because I cannot

enforce it legally, and if it is illegal then I cannot give you the recourse which you demand". I think I should simply read the part of the judgment that covers that point:

> Considering that if this condition is legal, respondent had a right to refuse the order seeing the violation of this clause by petitioners by selling certain products of respondent at lower prices than those indicated in the catalogue, and that if this clause is illegal, the contract depending on same is null and void, and petitioners may not demand execution of same by an order of this court.

There was never any decision concerning the merits of the contract, whether or not it is legal is still pending.—A. I am glad you brought that in. I do not want to labour it, but since you have gone into it in detail I would like to read my Montreal agent's translation of an earlier part of the judgment:

> A fairly thorough investigation was made to establish the importance of petitioner's pharmacy and the importance of respondent company, but we do not think that this may alter in any way the decision in this case, because this is still a case involving private interests even if these interests serve a large public.
>
> The Frosst Company in Montreal has many competitors who make or sell similar products. In Montreal there are approximately four hundred pharmacists who serve the public, notwithstanding the fact that their services are not, in the opinion of petitioners as widespread, speedy and effective as those rendered by the Pharmacie Montreal.

Is that a fair translation?

Q. That is quite a good translation.

Mr. FLEMING: May I ask if we can be furnished with copies of that judgment?

Mr. FAVREAU: We have a full copy, including the proceedings before the court.

The CHAIRMAN: I think it would be of interest to lawyers, I do not know if a layman would want to study that language.

Hon. Mr. ASELTINE: I suggest it be included in the record as an appendix.

The CHAIRMAN: The reasons for judgment should certainly be included.

Agreed.

Mr. FAVREAU: In view of the fact that there is very little time for members of the committee to question, I shall limit myself to two questions.

By Mr. Favreau:

Q. Your brief seems to be based on the British report. There may be some mistake in saying paragraph 163 is the last recommendation of the report. I read in my copy of this report paragraph 164, a further conclusion in paragraph 165, and further conclusions in 166 and 167. May I read this from paragraph 164:

> Producers are not, in our opinion, entitled to use resale price maintenance to obstruct the development of particular methods of trading, to impede the distribution by another manufacturer of competitive goods or to deprive the public of the benefits of improvements in distribution. Public policy requires adequate distribution of goods with provision for such price reductions as are justified by low-cost distribution or by a regular policy of distributing surplus profit to the customer.

Then, speaking of the horizontal agreements, paragraph 114 deals with that:

> It appears to us to be contrary to the public interest for a manufacturer to use his power to cut off supplies in such a way as to obstruct the growth of particular methods of trading, to impede the distribution by another manufacturer of competitive goods or to deprive the public of the benefits of low-cost systems of distribution.

Should we not conclude from the report that the committee did not want at that stage to go further than condemn horizontal price maintenance, but konwing vertical price maintenance carried some possible danger, they wanted to leave it to the government to decide whether or not vertical resale price maintenance should not altogether be abolished also? To make my question clearer, may I say that once the report of the Committee on Resale Price Maintenance had been tabled before the president of the Board of Trade, the Board of Trade reported itself to parliament with a White Paper called a Statement on Resale Price Maintenance, which was issued in June, 1949, and the conclusion to which I refer is paragraph 40 on page 11:

> The government proposes to provide in the legislation to be introduced that manufacturers shall be entitled to indicate, recommend or prescribe only maximum prices for the resale of their goods and it will be unlawful to give any indication of resale price unless it is clearly stated that the price indicated is a maximum.

—A. I do not know if that is officially a question, but I am going to take the position it is enough of a question that I should in fairness deal with it in this way. First of all I would like to say I am obliged to Mr. Favreau for reading something further from this because I can heartily endorse this from cover to cover.

Mr. FLEMING: For the record, will you mention what it is?

The WITNESS: This is the British report. The white paper is subsequent to this.

The CHAIRMAN: It is a consequence of it.

The WITNESS: Gentlemen, I repeat again, Lloyd Jacob's report should be available to your committee. My friend Mr. Favreau read a little more than I put in, and that only means I want to read a little bit more after what he put in.

Mr. FAVREAU: This report was supplemented by a white paper in 1951.

The WITNESS: I do not concede it supplemented it. I would like to read paragraph 161 which I think puts in complete perspective what my friend Mr. Favreau read:

> In arriving at our conclusions we have drawn a distinction between the fixation and maintenance of resale prices by an individual manufacturer and the collective administration of resale price maintenance schemes. The effects upon the public interest of these two methods of maintaining prices and their impact upon economy are, in our opinion, different.

My friend has asked me about the British white paper. Now, I am not experienced in politics and not too experienced in the British parliamentary system, but I urge you gentlemen to remember that the Board of Trade in England is not like the Board of Trade in Toronto.

The Board of Trade of Toronto is a group of businessmen who have business interests and they meet together for business purposes. The Board of Trade in England, as I understand it in my limited way, is part of the government which is in office from time to time.

By the Chairman:

Q. It is comparable to our Department of Trade and Commerce?—A. That is the Department of Trade and Commerce or the Federal Trade Commission in the United States.

Hon. Mr. ASELTINE: The white paper is a political report?

The WITNESS: Exactly, senator, and that is what I am coming to.

Mr. FLEMING: Issued by a socialist government?

The WITNESS: You took the words right out of my mouth.

The CHAIRMAN: Since Mr. Fleming has not read the debate, I must say that one of the most emphatic speeches was given by Ted Leather, a Conservative member coming from Hamilton.

Mr. HEES: And a very responsible member we are told.

Mr. MacINNIS: Does the fact that it has been set out by the government make it any less valuable than if it were made by a board of trade?

The WITNESS: Mr. MacInnis, I am not saying the British white paper is any less important but it must be put in its proper perspective. It is the political philosophy of a socialist government then in power in the United Kingdom. It is not a finding which pretends to be the result of an investigation. It is a statement of policy. It is the thoughts, the economic thoughts of the government.

By the Chairman:

Q. Would you just read on and see who asked that the report be made?—A. The board of trade.

Q. And as a result of receiving the report they issued a statement of policy—which is the white paper?—A. Two years later, and it did not coincide with the conclusions I have read from the Lloyd Jacob Report, where they recommend in part that the government should not take any steps at that time to interfere with vertical price maintenance agreements. They said: We are happy to know that horizontal agreements are still being considered—that is what the Lloyd Jacob Report said. That was tabled and gathered dust for a year and a half.

Q. That is not true, either, because in June of 1950— —A. I am sorry—it was a year.

Q. And in June of 1951 there was the second debate.—A. I am sorry.

Q. And it was a very extraordinary thing that in that debate which I hope members will read, Conservatives, Liberals, and the Labour people all joined together in denouncing this practice.

Mr. FLEMING: The chairman is now talking about a third thing—British *Hansard.*

The CHAIRMAN: I am talking of the debate in June 1951 after the presentation of the Lloyd Jacob Report.

Mr. FULTON: I think the chairman is strictly out of order.

The CHAIRMAN: I am the only one here who has, as a member, taken time to read this thing.

Mr. FULTON: How do you know?

The CHAIRMAN: Obviously, because the two of you are fumbling around and feeling your way through it—

Mr. FLEMING: Do not be so silly. If there is any fumbling around going on it is being done up where you are sitting. We have been talking about a report and about a white paper, and I wanted to bring out the fact that you are now introducing a third subject, British *Hansard.* I want to make it quite clear that I do not think the chairman should cast aspersions on people when someone merely wants to get the record straight.

The CHAIRMAN: I am not casting any aspersions. I mentioned three things and I said they were the official white paper, the Lloyd Jacob Report, and the two debates in June of 1950 and of 1951. I was delighted to see that some members noted down those things when I mentioned them. It would have been very helpful to members who are so voluble if they had read these things in the last two or three weeks.

Mr. FULTON: Mr. Chairman—well, never mind.

The CHAIRMAN: Go ahead, Mr. Dunn.

The WITNESS: I have made this suggestion or this proposal—I want you to consider the British white paper of June 1950 as a political document—a statement of political philosophy.

Hon. Mr. GARSON: Of 1951?

The WITNESS: I am sorry, I am getting confused—maybe I am getting tired; but it is much worse listening than talking, even at that.

Mr. HEES: It is very pleasant.

The WITNESS: This is a statement of political philosophy of the government then in force and I think we can take judicial notice of the fact that it was a socialist government which was in power at that time.

Now, in the course of my investigation I ran across two statements by fairly prominent members of socialist governments and their literary advisers in the United Kingdom which I think points to the background of this white paper. They illustrate that this white paper is a statement of political philosophy. There is a gentleman by the name of Mr. W. Padley, a member of parliament but I do not know from what county. He is in private life the president of the union of shop distributive and allied workers. That, I would guess, would be similar to the union in departmental stores and so on.

He made a speech and, although I cannot give you the original, I got this from a magazine published in England called *Scope*—widely disseminated among the manufacturing trade. It appears in *Scope*, the issue of September 1951 page 90.

Mr. Pradley has this to say:

> Any attempt to solve the question of distributive efficiency by returning to private competition must be steadily resisted and countered by genuine socialists proposals for public control.

Now, his whole thinking is that the government should control all prices. It is inherent in that statement.

Back of the socialist government at that time was a gentleman well-known and who everyone reads—Professor G. D. H. Cole. He is a well-known writer, and, as we all know, very close to the socialist party in England. I will read what Mr. Cole said in his latest book—which is summarized here. It was not in print at the time that *Scope* went to press in September of 1951. This is modern stuff, not back in 1783. His book is called "The British Co-Operative Movement in a Socialist State."

He advocated that the state should buy up all large scale distributive organizations including multiple and department stores, and convert them into mutuals each with a board of management consisting of representatives elected by the customers and temporarily nominated by the state.

Here is what he says about the independents, and this is in quotation marks:

> "For the present at any rate I would leave the small private trader alone on condition of them observing fair practices."

Mr. CARROLL: Those like Mr. Thatcher.

The WITNESS: Yes, like Mr. Thatcher—but Mr. Thatcher is just on the borderline of being a chain because, with one more store—

Gentlemen, that is the background of the white paper, which I suggest is a political document representing a party then in power. I might say that I cabled my representatives in England to turn up any statement that has taken place either during the recent election or since the election as to the attitude of the government which now has some majority in the United Kingdom—as to what their attitude is towards the white paper. I have not received a reply yet but whenever it comes I will certainly see that the information is passed on because I think it will be of some significance.

I am sorry that I have been so long.

The CHAIRMAN: I am anticipating the wishes of Mr. Hees and some other members of the committee, and if this is not acceptable we can vote it down. but is it agreed that we should meet at 3.30 this afternoon?

Mr. HEES: I would so move.

The CHAIRMAN: Moved by Mr. Hees, that we meet again at 3.30.

Carried.

By Mr. Favreau:

Q. May I put it to you more simply, Mr. Dunn— —A. As simply as possible, please.

Q. —that the statement of the board of trade on price maintenance in 1951 was the direct result of the board of trade having acted upon the recommendation contained in paragraph 165 of the committee's report of 1949. In paragraph 164 they said what I have quoted to you there concerning the advisability of not preventing the low cost distributor from passing on to the consumers parts of the advantages and they say in paragraph 165:

> We recommend that appropriate government departments should invite consultations with the principal national organizations in trade and industry to consider the most satisfactory means of insuring that this policy is made effective.

And would it not be that in just having that investigation carried out in 1951 the board of trade came to the conclusion that the sole way to dispose of the matter was to prohibit resale price maintenance thoroughly?—A. As I read that, I think all they suggest is that the government go more deeply into the thing and get help from all trade organizations—and that is exactly what I would like this committee to do.

Mr. HEES: Hear, hear.

The WITNESS: I would like them to go into this whole subject from coast to coast, from hardware to lingerie, to see where price maintenance fits into Canadian economy and what it does at all levels. I suggest, with the greatest respect—I say that with so many legislators here—that should be your function.

Mr. FULTON: It should have been our function.

Mr. HEES: Still is our function, is it not?

The WITNESS: Being unlettered in politics I cannot say.

The CHAIRMAN: Some of these gentlemen here are pretty unlettered too, I can assure you.

By Mr. Favreau:

Q. At page 4 of the brief among the articles which you quote as being price maintained I see that you quote Stanley tools?—A. No, I do not.

Q. They are not price maintained?—A. No, Stanley tools are not price maintained.

Q. Could there be a mistake there and would you not say that Stanley tools are price maintained as a matter of fact?—A. As I understand it they are definitely not, but Mr. Gorsline is actually in the business. The question is whether Stanley tools are price maintained.

Mr. GORSLINE: To my knowledge the Stanley Tool Company, who are the manufacturers of Stanley tools in Canada, do not have any direct contact with any retailer in the group which we represent. They do not issue any price lists to the retail trade. The information which we secure on Stanley tools, price-wise, is from the jobber—which is only as a price to us. We must of necessity set our own retail prices.

Mr. FAVREAU: Would there be more than eight hardware stores in Niagara Falls?

Mr. GORSLINE: Could there be?

Mr. FAVREAU: Could there be more than eight hardware stores in Niagara Falls?

The WITNESS: Mr. Firth had better answer that question.

Mr. FIRTH: I believe the heading you refer to is the number of member stores. What page?

The WITNESS: The first page of the appendix—oh, I am sorry—what page are you referring to?

By Mr. Favreau:

Q. Page 24 of your brief, concerning Stanley tools?—A. What was the question again?

Q. I am asking whether to your knowledge there are more than eight hardware stores in Niagara Falls?—A. We show eleven in the appendix.

Q. What is the reason that I find in the Niagara Falls *Evening Review* of November 28, 1951, and in the issue of October 17, 1951, an advertisement listing Stanley tools at the same price—eight advertisers on this particular page—and this is on November 28? What would be the reason for those identical prices to be put forth by each of those dealers in the same locality—if there is no price maintenance?—A. Mr. Gorsline, you are in Collingwood, perhaps you could answer.

Mr. GORSLINE: Sir, I think the fact has been established over a great many years, and I think Mr. Dunn covered this point very well in his brief, that traditionally there is a mark-up on hardware products; a mark-up which has been recognized by the trade across Canada, I think. I believe the same thing applies in the United States.

On certain items there is a mark-up, assuming it is an operating mark-up, which makes it profitable to handle certain merchandise. I think you will find there is a very definite uniformity across the country, taking freight costs into consideration, in the mark-ups that are used. I think that would apply not only in the hardware business but in other types of business.

The WITNESS: Might I refer to sheet 5 of Appendix A. That sheet covers tools or hardware and you will notice, Mr. Favreau, that our pricing people have indicated pretty much for all those tools, or all things under that item, that it is 33⅓ per cent on selling price. On a couple of things they are lower but you will notice running across the stores on that particular page, sheet 5, that there is a very high degree of uniformity.

By Mr. Favreau:

Q. What sheet?—A. Sheet 5 of the appendix.

Q. There are two pages.—A. Yes, I am sorry. On the first page you will notice that Welland is way down. There is a local situation there because

Welland is a highly industrial city. There is a high volume direct to industry and a very large volume of sales not made over the counter in the ordinary way. On bolts and nuts you will see that in Welland their average mark-up on retail price is only 28½ per cent—even though we suggest from our experience in the trade as a whole that 33⅓ per cent is reasonable.

Q. In your experience, and I am asking any of the gentlemen who might have worked on the preparation of this list of prices, which is secret to the trade, how are your mark-ups prepared? Are they in practice prepared in the same way as by a manufacturer who decides at what fair average price he is going to fix the price on one of his articles sold nationwide?—A. May I answer the first part of that question, or perhaps the second part—or one part. The manufacturer, as I have attempted to show in my brief where there is price maintenance, sets his price so it will achieve two objectives. As I said before, the manufacturer just like everyone else wants to make some money. He wants to sell a lot of merchandise and he wants to make some money. If he does not get that merchandise across the counter to the customer he does not make any money.

So, he considers whether the customer will buy it at a certain price, having regard to other competitive items—as I have illustrated—having regard to private brands. So, the manufacturer in setting that price considers how best to get goods to the customer.

The second thing is that unless the retailer is left with a profit so that he can make some money the manufacturer is not going to do any more business with that retailer.

Let us assume the position of a complete monopoly in some item. The economists in the United States say that theoretically what a manufacturer would do would be to cut the retailer's margin down so low—and he could not get it in any other place—that he could make little profit. However, he could only cut it so far even under a monopoly or the retailer would not handle the item any longer.

Those are questions the manufacturer must consider and I am answering that part of the question because I think it is more within the field of my investigation.

Now, as to the procedure that the retailer follows—

Q. I am asking about the procedure which your organization follows to establish mark-ups which you have suggested to your members?—A. Perhaps Mr. Gorsline would speak on that.

Mr. GORSLINE: I think I can perhaps give you a satisfactory answer to that question. The Ontario Hardware Association, as you will notice from the brief, has been in existence for many years. We conceived the idea that there were certain services that could well be rendered to our membership in view of the very extensive line of merchandise which is handled. The directors many years ago deemed it advisable that we should furnish all our membership with some guidance in the matter of costs, which are very hard to arrive at frequently, and also the suggested mark-up which may be used in the retail hardware field. In order to arrive at these figures we have endeavoured at all times to employ men with practical hardware experience, and they have been given sole responsibility of preparing for the members suggested resale prices. There was no suggestion on the part of the association, or no collaboration on the part of members or executive as to what these prices should be. The only thing in connection with this price service that the directors have ever discussed to my knowledge is what items we would like to have listed.

Mr. FAVREAU: Would these prices recommended by the manufacturer himself be higher or lower than the mark-ups recommended by your organizations?

Mr. GORSLINE: That is a difficult question to answer. I think they may be substantially the same. I think in some cases we varied a little in our ideas. For instance, ammunition is manufactured by only one manufacturer in Canada and he does suggest the resale price which you will notice on page 3 shows a maximum mark-up of 25 per cent. These figures vary to a very small extent in some cases where freight does not have to be considered. We feel that 25 per cent is not a reasonable mark-up because this is a seasonal item and if you go into it in any degree at all you have an investment in that one item of $2,500 or $3,000 or $3,500. I do not think with a seasonal line that 25 per cent is ample, but that is the suggested mark-up by the manufacturer.

Hon. Mr. BEAUBIEN (*Joint Chairman*): Gentlemen, we are adjourned until 3.30.

AFTERNOON SESSION

Committee resumed at 3.30 p.m.

Hon. Mr. BEAUBIEN (*Joint Chairman*): Gentlemen, I think we have a quorum. Mr. Favreau, will you continue your questions?

By Mr. Favreau:

Q. Let us come back to the 1951 white paper again, please. Is it not a fact that subsequent to the presentation of the report—the presentation of the British report in 1949—the Board of Trade had asked diverse trade associations to supply it with information and suggestions as to the way in which, and by which, the two final recommendations of the committee could be implemented? —A. I am sorry, Mr. Favreau.

Q. You do not have that information?—A. No, I have not the British white paper.

Q. May I refer you to paragraph 38 of the white paper, which reads thus:

> Thus the situation is that the trade organizations concerned, while no doubt accepting the first part of the Lloyd Jacob Committee's proposals, (i.e. that resale price maintenance by individual producers should be allowed to continue), have not been able to suggest any means of carrying out the second part, (i.e. that the practice should be operated with greater flexibility, so as to allow price reductions justified by low costs). The government regards these two recommendations as standing together and cannot accept a situation in which the first is fulfilled while the second remains a dead letter.

Is that the reason that they finally decided that the only way to implement the report was to get rid of resale price maintenance altogether?—A. Not at all, Mr. Favreau. The answer, I think, is to be found in the fact that fundamental to the position of the British Board of Trade is the political philosophy that went behind the government of the day, which, as I said this morning, has as part of its inherent philosophy control of prices by the government. Now, Mr. Padley whom I read from this morning made it quite clear that the socialist government of that day in the United Kingdom wanted to control prices at the government level, that is, to control a broad field of prices. Indeed, the Lloyd Jacobs report is, as I say, a result of an extensive factual investigation. They made this clear distinction, which I read this morning, in paragraph 161, the distinction between the vertical and the horizontal, and they say, as I stated in my brief that the effects on the public interest of the two were different. They stated that the manufacturer of a branded article could not be different

to the terms on which his goods were sold to the public. Then they go on to say, however, that with respect to the horizontal type further study should be given to see what could be done.

Gentlemen, as I see it, when the British white paper comes to the House of Commons it reflects the desire of the socialist government in the United Kingdom to enter in a large measure on the control of prices at the government level, and they indicate that the trade associations have not been very helpful in working out ways and means of that type of control. Well, I think that perhaps we can take it pretty much as read that trade associations do not normally like to have prices controlled by a government body, they think in terms of bureaucrats, of endless routines and forms, and so on, and do not like that. The part that you have read, I think, clearly reflects that difficulty, that they were not able to get the trade associations to suggest a type of price control which fitted into the political philosophy of the government of the day. I do not think we should assume for one minute that that white paper which you are reading from represents the position of the government of the United Kingdom today.

Mr. CROLL: Why not? They have not repudiated it and have not said they would not go along with it.

The WITNESS: I cannot ask questions, I know, but I have endeavoured to find out—

Mr. FULTON: Try, anyway, and see.

The WITNESS: —whether the present government has either repudiated it or not. I have not that information yet. If you have it I would be glad to know.

Mr. CROLL: I am merely telling you they have not repudiated it publicly up until now.

Mr. HEES: They haven't been in long, give them time.

The CHAIRMAN: *Hansard* debates show very clearly the Conservatives and Liberals supported the Board of Trade on this proposal.

The WITNESS: They supported it at any rate in 1951 when they were sitting on the other side of the House.

Mr. FAVREAU: I am reading paragraphs 164 and 165:

> 164. Producers are not, in our opinion, entitled to use resale price maintenance to obstruct the development of particular methods of trading, to impede the distribution by another manufacturer of competitive goods or to deprive the public of the benefits of improvements in distribution. Public policy requires adequate distribution of goods with provision for such price reductions as are justified by low-cost distribution or by a regular policy of distributing surplus profit to the customer.
>
> 165. We recommend that the appropriate government departments should invite consultations with the principal national organizations in trade and industry to consider the most satisfactory means of ensuring that this policy is made effective.

The WITNESS: Yes, and then in 166 they go on to say:

> We can find no adequate reason to justify a manufacturer either in interfering with the terms on which the distributor disposes of another manufacturer's goods or in surrendering any part of his interest in the resale prices of goods bearing his brand for this purpose. Collective price maintenance schemes appear to us to have led to the comprehensive regulation of competition in the distributive trades and to have impeded the development of economical methods of trading

and prevented the reduction of distributive costs and prices. Associations of traders designed to bring their collective power to bear to maintain their members' prices are, in our view, undesirable and we note that the commission set up under the Monopolies and Restrictive Practices (Inquiry and Control) Act, 1948, has already been asked by the Board of Trade to investigate two of the industries from which we received evidence.

Now, they are getting into the horizontal again.

By Mr. Favreau:

Q. They are in favour of the vertical as long as it does make the consumer profit by the lower cost?—A. I think perhaps since you have brought that up you might let me read this—

The CHAIRMAN: At this point I might point out we are particularly interested in the hardware business in Canada this afternoon, and what may have been said in the British House of Commons can be left to the members to read.

Mr. FAVREAU: Can we read the reference into the report?

The WITNESS: You have raised this question of the British government being very anxious that price maintenance should not be developed so as to unduly interfere with the price to the consumer, and I would like to read paragraphs 48 and 49 at page 10 of Lloyd Jacob's report.

Hon. Mr. GARSON: This is all very interesting but surely the document speaks for itself.

Mr. HEES: This was prompted by your counsel.

Mr. FULTON: At the moment I understand the witness is replying to a question of committee counsel.

Hon. Mr. GARSON: He has told the committee this morning that he endorses all these things, that it is an excellent document from beginning to end, and we can read it.

The WITNESS: I commended it for your study. Mr. Chairman, it would have taken less time for me to have read this.

Mr. THATCHER: A lot of us are not lawyers and I would like to hear arguments that are not legal ones.

The CHAIRMAN: We understand counsel has studied the brief, but I think most of us are anxious to question the witnesses. Mr. Favreau will give way now if he has ten minutes at the end.

The WITNESS: May I have one minute?

Mr. CROLL: Mr. Chairman, who is running the meeting? I heard this gentleman all morning and I just couldn't take it any more and left. I want to question witnesses and find out something about the hardware business.

The CHAIRMAN: I must confess we would have progressed more if we could have questioned witnesses.

The WITNESS: I am just answering questions.

The CHAIRMAN: I will now end Mr. Favreau's questioning and call on Mr. Murray, who is first on my list.

Mr. MURRAY: I am not very well versed in this legal phraseology, and I might get my ears pinned back for what I want to say. I for one want to commend the last witness for the splendid presentation of his evidence and particularly for his favourable references to the drug profession.

The CHAIRMAN: Perhaps your drug association should have hired him too.

Mr. MURRAY: I have one or two questions but they are questions of importance and ones that have given me considerable concern. My experience with resale price maintenance goes over a number of years and I think that experience is after all one of the greatest teachers. I presume, gentlemen, your trade along with a great number of other trades throughout Canada today employs hundreds of thousands of retail clerks who are not only potential consumers, they are potential buyers, and maybe we can suggest to the minister they may be potential voters.

The CHAIRMAN: Is the minister the only one concerned with voters in this audience?

By Mr. Murray:

Q. I want to ask you if you are experiencing difficulty in your trade in retaining employees. Before answering that I am going to ask you to reflect on it for a moment because it seems to me you are not only competing in retaining female help but it seems to me today you are competing also with industry to retain retail clerks in your business. Do you experience that difficulty?—A. I am going to have one of my colleagues answer that question, but I would like to mention the percentage of cost in the United States hardware stores of retail sales help. It is 9 per cent of all retail sales in the United States that goes to make up the payroll of employees. I thought that might be of interest. Mr. Gorseline, will you answer the question about the difficulty of retaining employees?

Mr. GORSLINE: It seems quite obvious that in an industry such as the retail business, particularly in a small community where hours are longer than they are in industry, and in a great many respects possibly the wages would tend to be lower, we are faced with definite competition from industry in the employment of help. That is a factor which gives concern to us in our cost percentage, so far as help is concerned.

Mr. MURRAY: So that, sir, you would agree that retail clerks might be one of the largest employee groups in the entire dominion, and you might say they would be the first to suffer under the chaos which would follow a period of price cutting?

Mr. GORSLINE: I do not entirely like the words "price cutting". I do not think we are alarmed particularly in the hardware industry about the usual price cutting which goes on, on articles which are not nationally known and advertised at a price which is considered fair. I think that the consumer has been sold a favourable opinion of the manufacturer by his presentation of his merchandise, by his reputation for continuing service on that merchandise, and standing behind his guarantee; and I think that when a customer comes into my store to buy an electric appliance or any other item which is price maintained, he has made up his mind about the cost—possibly after shopping the area to find what is available in that particular line of merchandise. He has decided that this electric tea kettle, for instance, at $16.50 represents value for his money, backed by service and that it is an article on which he can depend. I think the whole theory we are trying to arrive at is whether it is logical for the government to permit the complete cancellation of that evidence in the minds of the public—on merchandise that is nationally advertised.

Mr. MURRAY: I, sir, am interested in the result that this is going to have in creating chaos in the retail trade and lowering the income that the employee will receive. Only yesterday I talked with the Bureau of Statistics and I found that weekly earnings of the retail trade for Canada as of October 1, 1951, were $41.23, whereas the over-all earnings for Canadian citizens as of that date were $51.53.

You can see there is already quite a variation and if this situation creates lower margins for the retailers, they of necessity are going to create lower wages for retail clerks in Canada. That is the point I am interested in—the result of this thing.

Mr. GORSLINE: I think it is very hard for us to predict the results of something we do not know very much about. We do know from what information Mr. Dunn gave us this morning that when this matter was handled in the States and when the setting of retail prices was made illegal by the federal government, there was apparently a period of chaos. The state governments took up the matter in turn and enacted fair trade laws to get away from the chaos that had been created.

I think, speaking for the hardware industry, from the very nature of our business which, as has been explained to some extent, has certain technical aspects and people must spend years in it and even then know nothing about it, that our average payroll per employee is possibly higher than it is in some of the other retail outlets. I do not think we stand on the comparison of wages paid to the same extent, possibly, as some of the other stores who are selling items at much lower margins—such as groceries, where technical knowledge of the item is not so necessary for successful selling.

Mr. MURRAY: And I think you could say, sir, that you may therefore lose your sales clerks to industry because the prevailing rates in industry are higher?

Mr. GORSLINE: Yes, I think that is true in general.

I think it might be interesting to recall in the period of the war when labour was allocated to this industry and to that industry, the retail trade of the country regardless of its importance to the consumer and that he should have goods available to him at all times, had absolutely no priority in the employment of help. There was just no such thing. We had to take what we could get where we could find it—cripples, or old people, or anything that we could find that might offer something in wrapping up parcels, but it was not salesmanship.

Mr. MURRAY: I think you would agreee that the orderly process of established prices provides employment and it is in the interests of the general economy of the country?

Mr. GORSLINE: I agree absolutely.

The CHAIRMAN: Mrs. Fairclough?

The WITNESS: In line with the question I think that Mr. Lamb has made some calculations on the number of retail stores or types of retail stores and persons depending financially upon them. It might be interesting to the questioner if he could tell the committee something about that.

Mr. LAMB: I understand there are 248,000 retailers in Canada and if they averaged three persons per store you would have 744,000 employees.

Mr. FULTON: In all retail stores?

Mr. LAMB: Yes.

Mr. CROLL: How will this bill affect them?

Mr. LAMB: Well, naturally, if a dealer in any business cannot make any money he cannot pay his employees and he will have to cut down his staff.

The CHAIRMAN: Mr. Croll, you are about eighth on my list so you should save your questions until then.

Mrs. FAIRCLOUGH: Mr. Chairman, this morning Mr. Dunn referred to the number of items which are ordinarily carried by retail hardware stores—26,530. I do not know whether every store carries that many?

The WITNESS: No.

Mrs. FAIRCLOUGH: He also referred to 2,094 which are the subject of resale price maintenance. Now, I have brought up this question before and I would like to bring it up again with the hardware people. Of the 2,094 items which are subject to some measure of resale price maintenance, do you have any figures which would show how many are merely suggested prices and how many are rigidly enforced?

Mr. GORSLINE: I think I might offer you an answer to that question. It has been a source of questioning in my mind as to just how far this resale price maintenance proposition goes. In our business we have a great many lines of merchandise on which a suggested resale price is named by the manufacturer. There is the other group of merchandise which we know as "franchise merchandise" which covers major appliance lines and on which suggested prices are more or less enforced.

There is only one manufacturer with whom we do business and with whom we signed a resale price maintenance contract, and as I understand it, it is the intention, when any retailer signs a contract, that the manufacturer expresses a desire that the price be observed. I believe if there were continuous cutting below that particular level the manufacturer might feel in the interests of himself and his customers across the country that some action should be taken to persuade that retailer to adhere to the price that he has suggested.

I think I have answered Mrs. Fairclough's question in the fact that the actual number of items which we feel we are definitely required to maintain price on is comparatively small, but the items which we include in those 2,000-odd as being resale price maintenance items are items on which the manufacturer has suggested the resale price and which he much prefers to be followed by all the trade.

Mrs. FAIRCLOUGH: Then you would say that the manufacturer does not come into your store and remove his stock, at least the stock of his manufacture, nor does he penalize in any other way the retailer because of the odd article here and there that is sold below the price he has suggested, but in the case of steady sales—that is, if you sold an article consistently, on which he had suggested $16.50, and you sold it all the time at $15.50, he might remonstrate with you and eventually, according to the contract, remove this stock from your store. Is that correct?

Mr. GORSLINE: I think there is a possibility of that happening. As I stated we do not have contracts, and you must also remember that the enforcement of this resale price maintenance would be a tremendous job on the part of the manufacturer because I suppose that retail hardware trade on the smaller items of price maintenance, that they are practically all purchased through a jobber, there is no direct contact with the manufacturer on them, but it does seem fair to me, I may have a very fine business in my community and an article goes out to be retailed at $9.95, and I may have a competitor who is comparatively weak finacially and by consistently selling below him on any price maintenance article I can probably force him out of business, which I do not think is good for me nor good for him. I think the success of business in any community—we have three harware stores in Collingwood, if we had four I think we would get more hardware customers because there would be more choices of sources of supply, and on such widely advertised articles, nationally advertised products as Johnson's wax, they provide a satisfactory business and a lot of stores want to sell that product. They have created a tremendous demand for Johnson's wax products and everybody is anxious to handle them, but they are sold at a narrow margin of profit.

Mrs. FAIRCLOUGH: You referred to the MacQuarrie report, under general conclusions and recommendations, it says here in the third paragraph:

It is to be noted that the committee does not recommend that it be made an offence to prescribe and enforce resale prices which are not minimum.

And then it goes on to say:

It follows that suppliers would be free to suggest and enforce maximum resale prices.

Now, I would like to ask these gentlemen whether anyone would care to comment on the likelihood of a maximum price becoming an accepted price for any article in the hardware field. Assuming that this legislation goes through, supposing a manufacturer adopts a maximum price for some article. What would you say were the chances of that price becoming the price for the article?

The WITNESS: I think I can answer that rather quickly. I think there will be a great tendency among many of the independent stores to accept such a price as the general price, but if the stores with large buying power decided to sell at a much lower price, then there would be complete chaos, nobody would know where they were and, eventually, if that general price was below the price at which the general run of independents could make a profit, then the product would disappear off the market.

By Mrs. Fairclough:

Q. In a condition such as you describe, that would be possible only in times of plentiful supply of that particular product, but coming into an area of scarcity would you believe that the tendency would be to maintain the maximum price?—A. The tendency would be stronger, then, yes. But, again, scarcity and location have a lot to do with it. It would depend. In a city such as Hamilton, where you have a lot of outlets, the problem is different to that of a small place, where you have only one or two outlets, and the question of scarcity becomes more important. It is then a question of scouting around to every town to get the few scarce items. They would never show up in a town like North Bay.

Q. That is a statement like one I made the other day in this committee, that under such conditions equitable distribution of goods in short supply would almost disappear.—A. Yes, as I said this morning, in the case of the mixmaster, after the second world war if it had not been for resale price maintenance in which a set price was established, people would have been paying fantastic prices for mixmasters. When one showed up it would go to the highest bidder. It would mean individual dickering, and when that happened people would begin to wonder what is a fair price for a mixmaster. If one of their friends had bought one for $150 because they were scarce, and somebody else got it for a lot less, confidence would begin to be lost in the product and people would stop buying it. That is what happened to the Ingersoll watch.

Q. I do not know whether, Mr. Chairman, I can refer to the British white paper.

The CHAIRMAN: Any member is entitled to do it because we had discussion on that by the witness.

By Mrs. Fairclough:

Q. I would like to refer to the note by Mr. Henry Smith at the conclusion of the recommendations.—A. That is the dissenting member.

Q. Yes, he is a dissenting member, and in paragraph 2, the second sentence, he said, referring to resale price maintenance,

. . . it inevitably leads to retail prices being higher than they would otherwise be in areas and under conditions where distribution costs are low and to an unnecessary proliferation of retail outlets.

Would you agree with what he is saying in effect there, that it is his opinion that trade should be concentrated in the larger distribution areas, and the closing up of small businesses which he contends cannot operate at the same margin as the larger business?—A. Of course I do not understand him at all when he says that price maintenance leads to prices being higher in certain areas, because the experience—Mr. Gorsline, I think, mentioned this morning his business is in Collingwood. He has to pay transportation on merchandise from the nearest point, like Toronto, but on an item like a Sunbeam mixmaster he sells it at the store at the same price as it is sold in Toronto, he absorbs the transportation cost. As he said this morning, if the item is not price maintained it is invoiced to him at a certain price, he pays the shipping prices and then makes a mark-up on the cost price, cost plus shipping charges plus mark-up, so if there is no price maintenance it is my feeling you would definitely pay a dealer more for a thing like a mixmaster, particularly in a remote place in northern Ontario.

Q. You could not call those places in Ontario that are remote from large trading centres, you would not call those areas where distribution costs are low. I fancy, Mr. Smith refers to what he has said here, the prices might be higher in Toronto but there are too many retail stores anyway.—A. Yes.

The CHAIRMAN: This is your last question, Mrs Fairclough.

By Mrs. Fairclough:

Q. I would like to concentrate on this one. It would look to me as though Mr. Smith is saying it does not matter very much whether there are retail stores in Collingwood or some place in the north, that if there is a big store in Toronto that can sell the article cheaper than the other stores can, the consensus is that it is better to have the one big store in Toronto and not have these other little ones.—A. I said this morning, if you have 3,000 merchants that are inefficient out of the 4,000, let them disappear, and then the people can order through the catalogues and have things sent to them, but they won't have the hardware merchant in their town to put in a pane of glass or fix the baby carriage.

The CHAIRMAN: Mr. Thatcher, it is your turn.

By Mr. Thatcher:

Q. I have only two or three questions. I was interested particularly in one part of this brief, and that is the experience of the United States and Britain with the practice, because I think that the Canadian government could benefit from the experiences of those countries. I am not just clear as to exactly what has happened there and I would like to have Mr. Dunn amplify it a little. If I understand, from page 7 of his brief, in effect, around 1890 this practice was abolished in the United States.—A. A little later than that, because it was some years before the Supreme Court of the United States finally ruled that vertical agreements were contrary to the anti-trust bill.

Q. The effect of that legislation in the United States was similar to what would happen if we were to abolish it in Canada? I mean there would be a parallel as far as the legislation is concerned?—A. Yes, except their legislation required judicial interpretation to have effect. Our bill is more clean-cut. It would not take a court to determine what is to be done.

Q. Could you tell me this: In the United States what was, in a general way, the experience that retailers had when that legislation was abolished? Did it create chaotic conditions? Did it put many people out of business, or was it serious?—A. I would not undertake to give statistics as to how many people went out of business in that period, but the literature on the subject is full of this theme, that when branded products were kicked around, as

they were during that period of time, many of them disappeared from the market completely, and were replaced subsequently by other comparable items which eventually came on the market at higher prices. I gave a minute or two to tell the story of the Ingersoll watch this morning. It was colourful and interesting, but there are numerous similar examples.

Q. Excuse me, Mr. Dunn—you would say it caused very difficult times?—A. No question about it having caused severe hardship, both to the retailers and the public.

Q. Do I understand from your brief that the net result of that was that 45 out of the 48 states had to repeal or put back some kind of fair trade laws?—A. The situation was so bad that they had to take legislative measures to legalize the practice, and they then called it fair trade. It started in California in 1931 and it was so responsive to public demand that it followed in 44 other states in a few years.

Q. Your suggestion in your brief is that the American experiment with this type of legislation was a failure?—A. Absolutely. History reveals that it was a failure there, and if we put this legislation through here we are going back to the 1900's.

Q. I have tried to follow just what happened in Britain. You say a committee was set up to study the question, called the Lloyd Jacob Committee. Was that a parliamentary committee like this one, or a private committee like the MacQuarrie Committee?—A. It was a private committee like the MacQuarrie Committee.

Q. It was supposed to be an impartial committee?—A. I would not know how it related to the political complexion of the government of the day, but I believe eminent gentlemen were called in.

Q. On page 17 of your brief you state that the British Committee recommended that no action should be taken. In other words, they recommended exactly the opposite of what the MacQuarrie Committee recommended?—A. Yes, and they recommended the very opposite to what the United States Supreme Court did.

Q. Let me follow a step further. Was this reported back to the Labour Government?

Hon. Mr. GARSON: I do not want to interrupt my friend, but I think that in respect of a document which we are all capable of reading it is going to mislead this committee terribly if questions and answers of the type we have just been hearing are given, because the statement that has just been given by the witness, I do not agree with it for one moment as an accurate statement. Why should we, in relation to a report which we can all read, trail the witness through it and take up the time of the committee, when we can form our own conclusions? It is written in the English language and not in a foreign language.

Mr. THATCHER: Mr. Chairman, there have been 50 briefs filed in here and we have had no time to read them. If this witness can tell us in a nutshell, why should we not get that information from him?

The CHAIRMAN: If Mr. Thatcher follows this line of questioning he will find that the Labour Government did go ahead and that these views are not those of the Labour Government.

Mr. THATCHER: I would like to get the facts.

Hon. Mr. GARSON: I suggest that the facts are here, the facts of the report is the report. You can call 20 witnesses and you will still have to go back to the report to see what the facts are. What is going to happen is that this evidence will be put on the record and if there is any further debate or discussion, those taking part in it—if they are foolish enough—will quote the witness, and then others will quote the report. So we might as well be on a basis of equality and quote the report from the start.

Mr. FULTON: I am not a very good lawyer and I might need assistance in interpreting a document. Are we not allowed to avail ourselves to the assistance of expert evidence, and I think that Mr. Dunn can be called an expert in this respect—

The CHAIRMAN: This committee has employed two eminent counsel, who have been sitting here with the Lloyd Jacob Report and the British white paper, and not one of the members of your party here, I am told, have yet availed themselves of that source of information. And now you ask a man who has come forward as the counsel of one particular group to give us information that can easily be obtained from our counsel. If you are asking this, Mr. Thatcher, the consequence of that report was that the British Labour Government announced in the British House of Commons that they intended to bring in legislation to ban resale price maintenance.

Mr. FULTON: You have said that about four times now, Mr. Chairman, and we heard you the first time.

The CHAIRMAN: It probably takes four times to hammer it in.

Mr. THATCHER: May I proceed now?

The CHAIRMAN: I will give you an extra four minutes because of the interruption.

Mr. THATCHER: Now, you say according to the report they recommended no action should be taken, which was exactly the opposite to what was done in this country.

The CHAIRMAN: They published a white paper accepting the report and announced in Parliament they were proceeding with the legislation.

Mr. THATCHER: Why didn't they?

The CHAIRMAN: Because, fortunately or unfortunately, an election intervened.

Hon. Mr. GARSON: All this material is spelled out in words of not more than three syllables in the report to which the witness is referring and in the white paper. It is a waste of time asking the witness questions on this when he has certainly not by any evidence today been qualified as an expert economist.

Mr. THATCHER: If I want to waste ten minutes trying to get information I can do it.

Mr. MACINNIS: Mr. Thatcher has the right to ask any questions that are within the ambit of the brief presented by the delegation before us today. I think it would be much better to let Mr. Thatcher ask the questions and let the witness answer if it is information that throws more accurate light on what has been done.

The WITNESS: I think I can shorten this by saying I agree entirely with Mr. Garson that a document such as this should speak for itself. I should also add one of the things that impressed me most of all is that none of the recommendations found their way into the MacQuarrie report. The only reference to this economic investigation was a short quotation from the terms of reference but otherwise we do not know from the MacQuarrie report what they did. Now, I ask you gentlemen to take the time to think about it and digest it but do not gloss it over the way the MacQuarrie Committee did.

Mr. FULTON: May I speak on a point of order. I understood, and it has always been said in connection with inquiries of this sort, that one of the advantages is they throw the searchlight of publicity on what is going on. It is quite true we are all capable of reading these documents and if there is criticism of anybody who has not read them we can accept that criticism, but the fact

is the public has not read them. The public is interested in this—although the chairman and the government are doing their best to keep them uninformed—

The CHAIRMAN: Some of the members are doing their best to prolong the inquiry.

Mr. FULTON: I think Mr. Thatcher should be allowed to ask this witness what the documents say and what the sequence of events were subsequent to the making of the report, so that information may appear on the record.

Hon. Mr. BEAUBIEN (*Joint Chairman*): Every member of the committee knows the sequence of events.

The CHAIRMAN: I think I will let Mr. Thatcher proceed. I would remind him that the witness is a representative of a group of hardware merchants.

Mr. THATCHER: The most powerful argument he has made today is that the experience of these other countries with price maintenance did not work, and if I am wrong in that I would like to know it.

Mr. HEES: If Mr. Thatcher had been allowed to go ahead he would have been through.

Mr. CROLL: It would be a pity to have him through; I want to hear him.

Mr. THATCHER: I wonder if the witness would say if there are any other countries in the world he knows of where they have abolished price controls?

The WITNESS: I read some place in my travels that no other country beyond the United States had actually found a condition where the practice was illegal, and I saw references to European countries indicating that the practice was quite legal there. I cannot explain it further than that, but that came up in the course of my investigation.

The CHAIRMAN: Mr. Thatcher, would you permit me to interrupt for one question? Have any of these European countries any form of combines legislation?

The WITNESS: I cannot give you exact information but the information I did get from my reading was that in European countries the practice was legal and therefore the United States was the only country of importance where the practice was at any time illegal.

The CHAIRMAN: For your information, Sweden in 1946 and Great Britain in 1948 were the only two countries to have any combines legislation.

The WITNESS: We were discussing resale price maintenance and vertical agreements, and I was asked a question and I said from my reading that no country had made it illegal. I wasn't purporting to give any evidence on combines legislation.

The CHAIRMAN: This is a committee on combines legislation.

By Mr. Thatcher:

Q. I am referring to page 21, and Mr. Dunn suggests at the top of the page the British government found price mark-ups on maintained goods were lower than other types of goods. Do I take it from that the British government did go into figures and facts?—A. The report so indicates. They called dealers and manufacturers, and they got costs, mark-ups and came to that conclusion.

Q. From your remarks this morning I gather that neither the MacQuarrie Committeee nor this committe have gone into this kind of thing?—A. Precisely. I think that is what you should do. My figures are just a guide post to you. You might find my figures are wrong.

Q. Do the figures you have submitted to us as an association generally indicate that in the industry margins on price maintained goods are less?—

A. The information as to margins is not as clear as it is on price rise. The indication on price rise is very marked and price maintained goods have not risen as high as non-price maintained goods. The difference in the margin is not so acute. You will notice it is 21·6 in the case of paint but it is not uniform across the board. The tendency is for the mark-up to be much larger on non-price maintained goods The hardware man figures he has to have 33⅓ per cent on general lines.

Q. Some of these figures on pages 23 and 24 do indicate price maintained goods have not gone up as rapidly as other non-maintained goods in the past few years?—A. Oh, definitely.

Q. You maintain this practice as far as the hardware business is concerned has kept prices down?—A. There is no question in the world.

Q. If price maintenance is abolished would prices generally in your line come down or would the cost of living come down?—A. If price maintenance were abolished I think it would be demonstrated that these price maintained articles we show on page 23 would go up a substantial amount. These men I talked to today tell me they do not get enough margin on price maintained goods. For instance, electric bulbs are 25 per cent on retail. The generally suggested mark-up I am told is 33⅓ on retail prices. If they were not price maintained tomorrow they would want to get 33⅓ per cent in the outside places.

The CHAIRMAN: You now have had eighteen minutes, Mr. Thatcher.

Mr. THATCHER: But you said you would take off all these interruptions. I only have two more questions.

By Mr. Thatcher:

Q. One thing which small retailers I take it are worried about is if this maintenance was abolished it might help to concentrate a lot of business in the large department stores. This morning we had Woodward's come in and they were the ninth department store that said they favoured it. What is the feeling of your association?—A. Our people for the most part are independent and are in competition with the chains.

Q. Do you think any countries would be put out of business, is it that serious, or would you just be hurt a little bit?—A. Our profits would be very substantially reduced, we would be unable to continue a great many lines and the customer wouldn't be able to get a great many lines. A large number of products would disappear from the small store and people would have to go to the larger centres to get them. It would most definitely take a great many products out of the small stores.

By Mr. Hees:

Q. I was very much interested this morning in what you had to say about the United States fair trade laws. Am I correct the history was roughly this, in 1900 the United States government outlawed price maintenance and in the period from 1900 to 1931 there was a very unsatisfactory period from the point of view of the retailers and consumers. In 1931 we saw the appearance of the first fair trade law in California and today in forty-five of the forty-eight states we have fair trade laws which have been legalized by the Millard Tidings Act.—A. It is a long question and I think the answer is yes.

Q. I would like you to comment on the impression I got that these fair trade laws must be just as satisfactory to the consumers as they are to the retailers because we all know governments are elected by people and there are a great more consumers than retailers. Now, if these fair trade laws had not proved satisfactory to forty-five of the forty-eight states the governments would have been defeated and the fair trade laws thrown out. Therefore I think it is fair to assume these fair trade laws are satisfactory to the people

of the United States.—A. I am not a politician but these laws were passed by legislatures and legislatures are elected and usually wish to follow the wishes of the public or they won't get elected the next time. Now, the Act was actually passed by the legislature in California and if it had been unsatisfactory I doubt if it would have passed in other states and I doubt very much if it would have passed through congress, because you have all kinds of pressure coming on congress. I think it indicates it has the support of the public.

Q. These fair trade laws in the United States are satisfactory to retailers and consumers?—A. I think we have to take that.

Q. I am glad you agree with me because I think that is a very important point. Following along from what you said this morning I take it this committee studied the problem of resale price maintenance for a period of two years and came to the conclusion that no action should be taken to interfere with vertical price maintenance; is that correct?—A. I have already stated that and the committee can see the report for themselves.

Q. In view of what has taken place in Great Britain and the United States, does it not seem extraordinary to you that we here are planning to pass legislation to outlaw price maintenance instead of examining the possibilities of introducing legislation similar to fair trade laws in the United States?—A. I would say we are just putting the clock back fifty years and starting where the United States was in the 1900's. In doing that we have to go through the whole business of having legislation passed to bring in fair trade laws.

Q. It has become obvious I think to those sitting on this committee that the government intends to steam-roller this legislation through.

The CHAIRMAN: Mr. Hees, order. The matter of examining witnesses is one thing, but some of the opposition seem to be trying to obstruct the proceedings.

Mr. HEES: I will be through in my ten minutes, but this is a conversation between me and Mr. Dunn and I am very interested in his opinions.

The CHAIRMAN: Mr. Dunn is also an expert on parliamentary procedure in this House too.

Mr. HEES: I don't think anything I said is unparliamentary. I think you are holding things up.

Mr. CROLL: I think it is untrue, Mr. Chairman, and that is much worse.

Mr. FULTON: Mr. Chairman, a point of order.

Mr. CROLL: Is Mr. Fulton raising a point of order?

Mr. FULTON: Yes, I am.

Mr. CROLL: What is it?

Mr. FULTON: I want to know who has the floor here, what kind of procedure it is—

Mr. CROLL: This is Sinclair procedure here.

Mr. FULTON: That is the truest statement yet made here.

The CHAIRMAN: It might also be that Mr. Fulton, Mr. Hees, and Mr. Thatcher are doing everything they can to delay this committee.

By Mr. Hees:

Q. Now, it is obvious to me and I think to others on the committee that the government intends to steam-roller this legislation through. Do you not consider it is possible that legislation to deal with loss-leaders should be introduced to protect the small retailer?—A. Regardless of how the legislation comes through and by what mechanical process, if the legislation comes through next month or next year, the retail trade will be in great jeopardy unless the legislation in itself or in some parallel statute gives real protection against loss-

leaders. I may say I am very pleased to see my friend, Mr. Croll, has embarked on an attempt to define loss-leaders. I think it is going to be exceedingly difficult to define loss-leaders. I think Mr. Croll has made a start and I commend to the committee a study of this question and I do say with all the conviction I have if this legislation goes through next week or next year it must be accompanied by protection against loss-leaders.

Mr. HEES: Mr. Chairman, I am through in seven minutes.

The CHAIRMAN: Thank you, Mr. Hees, you are an admirable man—as far as time is concerned.

By Mr. Carter:

Q. I think the witness said this morning he had made a sort of one-man personal survey, is that right?—A. That is right.

Q. And you found that the consumer was very ill-informed about this?—A. He knew nothing about it.

Q. I think you used the words he had a vague notion that somebody was making twice what they should be?—A. That is right. It is the very word "fix." He has not made any study of it, he just thinks somebody has fixed it, and if somebody has fixed it it cannot be good.

Q. Are you acquainted with the situation in Newfoundland?—A. As I told the chairman this morning, I cannot give any assistance on it.

Q. Will you accept as a fact that before Confederation there was no resale price maintenance in Newfoundland?—A. If the member has made this investigation himself I accept it with pleasure.

Q. Well, I am a Newfoundlander myself and I know from personal experience; and it was confirmed in a brief submitted to this committee by the Newfoundland Co-Operative Union—

The CHAIRMAN: And by the Royal Commission on Prices.

By Mr. Carter:

Q. Yes, and by the Royal Commission on Prices. Now, when Newfoundland came into confederation it suddenly felt the impact of resale price maintenance. Newfoundland was different from other provinces of Canada where the impact was gradual—and in the case of Newfoundland the impact was sudden.—A. I am going to ask questions before I can answer that type of question. In Newfoundland, before confederation, was price maintenance illegal?

Q. No, it was just not practised.—A. All right, I understand. That was just the same as it was here in 1927.

Q. And as a result of the sudden impact of resale price maintenance in Newfoundland this is what happened. Page 23 of your briefs mentions batteries and, I do not know the figures for flashlight batteries, but in Newfoundland, in my province, ignition batteries are a very important item for fishermen.—A. Yes.

Q. The position in Newfoundland was that before confederation the landed cost to the retailer of an ignition battery was 45½ cents per cell. The price to the consumer was 60 cents per cell. Then came confederation, and suddenly the landed cost went up 1 cent—from 45½ cents to 46½ cents to the retailer—but the price to the consumer jumped to 80 cents. From 60 cents to 80 cents—to the consumer?—A. What type of battery was that?

Q. Number 6 dry cell.—A. Who manufactured it? Is is Eveready?

Q. I am not certain whether it is Eveready or Columbia, but there are several of them and the prices are just about the same.—A. But there are batteries which are not price maintained. I wonder if we could have it established in any way that this was a price maintained battery.

Q. Well, according to the brief—

The CHAIRMAN: There are two briefs which have been submitted to this Committee: one from the Co-Operative in Newfoundland and one from the Premier of Newfoundland. I know you are an expert on the British one—but this is a little closer to hand, in which all these facts and figures were also given.

By Mr. Carter:

Q. Would you not say in the face of that evidence that the consumer was really justified in thinking that somebody was pushing up the price a little higher than it should be?—A. There is no doubt about it but that the price is higher than it was before. There is no doubt about that, but I cannot say why. I must confess I do not think I should be asked—where I do not have in front of me the exact legal set-up. It may be that you have a definite price maintained battery. Now, transportation costs were one thing and it may be that they were being handled in some other way.

Q. Well, I do not wish to take too much time but the landed costs jumped 1 cent whereas the retail cost jumped 20 cents.—A. That took place in how short a time?

Q. Immediately after confederation?—A. What about taxes?

Q. Taxes were the same in each case.

Mr. THATCHER: What about sales tax?

Mr. HEES: And excise tax.

Mr. CARTER: Landed cost includes taxes and everything. However, I do not want to take too much time on this and I want to get along to something else.

Mr. HEES: Stay with that one.

Mr. CARTER: We have had evidence before this committee, Mr. Dunn, concerning aspirin tablets. We found that you could buy an aspirin tablet which conforms to the government regulations and contains all the necessary chemical ingredients, the exact formula put out by another firm, for 19 cents.

The CHAIRMAN: Per hundred.

Mr. THATCHER: What type of hardware is this?

The CHAIRMAN: The same type of hardware the witness was referring to a little while ago.

By Mr. Carter:

Q. But Bayer aspirin sells for 79 cents. Would you not think in the light of that evidence that the consumer is justified in saying that somebody is putting the price up higher than it should be?—A. Mr. Carter, according to my investigation, Bayer aspirin in 24's in 1939 sold for 39 cents. In 1951 they sell for 29 cents—an increase of minus 25·6 per cent.

Q. I am not interested in that?—A. You are suggesting that prices are going up.

Some Hon. MEMBER: That is because of copyright.

The CHAIRMAN: Order. Mr. Carter asked a question about evidence previously given here by Professor Fuller, the representative of the druggists, in which he brought forward the fact that Bayers aspirin sold at 79 cents for 100. As Dr. Blair pointed out, this is the only country left where Bayers have a copyright. Mr. Fuller admitted—he did not say any drug store, but Mr. Preston later said that in 100 per cent of the drug stores, there was for sale a non-maintained price aspirin complying with the pure food laws selling for 19 cents. Mr. Carter is asking—

Mr. THATCHER: On a point of order, Mr. Chairman, at the risk of being batted down again, what has the price of aspirins got to do with the price of hardware?

The CHAIRMAN: I am very glad you raised that point, Mr. Thatcher—how counsel for the hardware people gets into the drug business—but he got into that by quoting I think it was the Murray Company and the witness himself introduced the pharmaceutical business.

Mr. THATCHER: Do two wrongs make a right?

Mr. CARTER: Do I have time out?

The CHAIRMAN: No.

Hon. Mr. GOLDING: Was there not a motion passed here that members of the committee were to question a witness only on his own brief?

The CHAIRMAN: Senator Golding, I am very glad that you brought out that point too. The preliminary brief which was submitted here, a short 28 page brief, was supplemented by a short two hours of oral presentation during which time counsel for the hardware people introduced the point of resale price maintenance in drug stores. It is his presentation upon which members are now asking questions. Mr. Carter is one of the few government members appearing on my list, since "government" is mentioned so often; and since the list is largely composed of Conservative, CCF and Social Credit members, why is it that when Mr. Carter asks a proper question I am asked "why are we bringing up drug stores".

Senator Golding, I would have been delighted this morning if you had pointed out that the witness was not counsel for the drug business.

Mr. CROLL: Would you look back at page 49 of the Combines Committee Legislation report.

The CHAIRMAN: Yes, there is Mr. Fuller's evidence.

Mr. CROLL: Read it, Mr. Chairman.

The CHAIRMAN: I do not think there is any need for me to read it. I merely give it to Mr. Dunn. Will any one question that my summary of Professor Fuller's remarks was not accurate. He was the expert witness for the Canadian Pharmaceutical Association and the evidence appears at the bottom of page 39. It is on that statement, since the witness has raised the drug question, that Mr. Carter asks the question.

The WITNESS: I still think, if there is any point of order for a witness—

The CHAIRMAN: There is none.

Mr. THATCHER: There is.

The CHAIRMAN: A member, yes. Not for a witness.

The WITNESS: I was partly answering a question there and I think I should be permitted to finish it. If you rule otherwise I will be bound by the ruling but I was asked about Bayer aspirins.

The CHAIRMAN: You were asked a specific question about Bayer aspirin.

The WITNESS: You asked me if somebody was not pushing prices up.

Mr. CARTER: You made the statement this morning and I cited those two instances and asked whether the consumer was not justified in his opinion that somebody was pushing prices up higher than they should be.

The WITNESS: The answer is to be found in the evidence I gave, that price maintenance breeds imitation of brands. I read to you from Mr. Nystrom to the effect that when you get a manufacturer producing a brand it breeds manufacture of comparable items which are not branded.

Mr. Gorsline told us today about a woman going in to buy a kettle. One may be $16.50 with a well-known name on it and another may have no name on it and it will sell at $1 or $1.50 less. The woman buys the $16.50 kettle—and that is free enterprise. She could have bought the cheaper which would not have had a brand name.

I suggest to you that if you go into a drug store and ask for aspirin or headache tablets and the druggist says: Here is Bayer aspirin in 24's at 29 cents, and here is ASA at some other price, and here is one I made up myself which I can sell to you for 10 cents—would you buy the 10-cent one? That is your choice—

The CHAIRMAN: Wait a moment, you have asked Mr. Carter a question.

Mr. CARTER: My answer is—

Mr. THATCHER: "Yes" or "no".

By Mr. Carter:

Q. If the druggist assured me the one at 19 cents was in every way comparable to the one at 79 cents I would buy the 19 cent product.—A. Yes, that is free enterprise. That is your choice.

The CHAIRMAN: That is why we have pure food laws. You have had only two questions, Mr. Carter, and you can have one more in view of the fact that other people have taken so long.

Mr. CARTER: The witness this morning introduced the principle of social control and I just wonder if he considered these two examples as examples of social control?

The WITNESS: The example I have given you—when you go into a drug store you make the decision on what you will buy.

Hon. Mr. GARSON: Is that social control?

The WITNESS: I am coming to that. If he quits buying Bayer aspirins because of the other one at 10 cents—and because there are one million others like you looking for a bargain in Bayers aspirin,—if you quit buying Bayer and buy the nameless packaged aspirins at 10 cents then the Bayer aspirin people will of necessity go out of business.

Mr. CARTER: How am I going to know unless it is equally featured? If he features both equally I am in a position to make a choice but if I do not know about the other one and he does not tell me, then how can I?

Mr. HEES: Go to a druggist that does.

The WITNESS: Mr. Hees, please—

The CHAIRMAN: I have trouble with him too.

The WITNESS: Then I have something more in common with the chairman. One of the parts of the British report which I read this morning said that they felt in their opinion that the manufacturer who made brands known, a free manufacturer, had an interest in maintaining that brand through to the purchaser; and that was an interest that he should protect.

The Bayer people have certain procedures to follow to make their aspirin up to a certain quality and there are millions of people who buy Bayer aspirin today all over Canada and the United States at prices higher than ASA, for instance, which is also very well known in Canada. You can see them side by side in any drug store.

Mr. CARTER: I have had sufficient on Bayer aspirins.

The WITNESS: I still have a headache.

The CHAIRMAN: Your last question, Mr. Carter.

Mr. CARTER: The witness before you said, I think, that efficiency of business did not increase with its size.

The CHAIRMAN: Order.

The WITNESS: Of a retail business?

By Mr. Carter:

Q. The efficiency of retail business did not increase with size?—A. That seems to be a fact.

Q. So it does not follow that business, because it is bigger, would be more efficient?—A. Figures indicate that it is less efficient.

Q. Some witnesses have maintained, and I think some members have expressed a fear, that this price maintenance if abolished would result in the big retail store business having an advantage over the small one?—A. They will have an advantage because they will have products which the small one will not have and which they cannot buy at competitive prices.

Q. You quoted the instance of the Beaver saw and you said if you went to Eaton's and bought a Beaver saw for $100, of that $100 $32 went to Eaton's overhead and operating costs?—A. That is right.

Q. It might be possible that you could go to a small independent store and pay $100 and out of that $100 only $20 would go for overhead costs?—A. That is right.

Q. So the little man would have an advantage of $12 over Eaton's?—A. On operating costs only.

Q. Yes, one more question Mr. Chairman and it is this: Are the little men to be prevented from passing on part of the benefit—that $12—to their customers?

The CHAIRMAN: That will be Mr. Carter's last question and you can take as long as you want to answer it.

The WITNESS: I will not be over an hour in answering.

The answer is this: He cannot pass it on because it costs him—27 from 35—7 per cent—it costs him 8 per cent more to buy the thing than it costs Eaton's. It more or less evens out. The big store buys cheaper and has a much larger gross profit but the big store has a higher operating cost. Therefore, when it comes to the end the net profit of the big store is 2·7 per cent.

Mr. CARTER: I think we can shorten it. Let us take the case where the little man does have the advantage, should he be prevented from passing that on to the consumer?

The WITNESS: It is a hypothetical question. He cannot have the advantage because he cannot have comparable buying power. He is faced with the costs of these goods of 64·7 per cent for the chain store as against 73·9 per cent—practically 74 per cent.

The CHAIRMAN: Mr. Jutras.

Mr. JUTRAS: Mr. Carter pretty well covered some of the points I intended to but I would like to get back to the question of the consumer, as Mr. Carter did. You mentioned this morning, and I thought it was interesting, that you had conducted a personal survey with the consumers—some kind of a Gallup poll. If I gathered your statement correctly you said that the overwhelming majority of the public was against price maintenance—

The CHAIRMAN: No, no; against legislation.

The WITNESS: I am afraid I may have misled the committee on this and I do not want you to think I made an extensive survey, but the point I was making was that I have been very much interested in this matter now for a couple of weeks. When I meet somebody for a cup of coffee I say: What do you think about price maintenance. And they say: I don't like price fixing.

They do not like price fixing by anybody. That is where I would have to give him the whole brief and take two hours to explain before they would really see the whole story and then get this glimmer of an idea of social control

of prices and understand this price maintenance. Just as Mr. Carter is willing to buy a substitute brand—and when you explain that all to the man of average intelligence he sees it entirely differently and says: that sounds all right.

The public is not informed on it and never will be, I suggest. It is too technical. Look at the difficulty we have had here.

By Mr. Jutras:

Q. If I may break in I do not quite agree that the opinion of the public on the matter is of no importance?—A. I did not say it was of no importance.

Q. You say they are not informed? It is true they are not informed as to how price maintenance is arrived, at or as to how it is enforced and all those details, but I submit the public is able and is in a very good position to judge the effect of the practice, and possibly we can and should attach a little more importance to that feeling.

Now, you admit that generally speaking the public, or Mr. Consumer, is against or does not feel favourable to this practice of price maintenance. Now, there may be a little more to it than to dismiss the man and say: Well, he just does not know. I do not think that is quite doing him justice.

I would like to interject this now. You referred this morning to the fact that there was a trust complex in the United States, and I might suggest there is possibly a bit of 'expert complex' in this country. Possibly that is one of the things that worries the consumer.

You say that he does not know, but maybe he is of a different opinion. Maybe he thinks that he knows?—A. Oh, they usually do.

Q. Well, even on this thing, maybe he does not like the idea that Mr. Manufacturer, Mr. Distributor, and Mr. Retailer are setting themselves up as experts who are to determine the products, and the quality of them, that he shall get? He knows or there is an inference that he has no say in the matter, and that is one of the points that worries me a bit.—A. May I answer at that point?

Q. Yes?—A. The answer is perfectly simple. He simply buys another product like Mr. Carter buys the nameless headache powder, and the Bayer people eventually feel the pressure of competition and they have got to bring their prices down or quit production. They cannot carry on business. The Bayer people have got to manufacture at a profit. The wholesaler has got to deal with it at a profit. The retailer has got to sell it at a profit or they do not stay in business. Now, you take...

Q. Mr. Dunn, just to shorten the discussion... —A. Please...

The CHAIRMAN: Just in fairness now...

The WITNESS: You asked me a question.

The CHAIRMAN: When the member is content with the answer I think he should have a chance to get one or two questions in.

The WITNESS: All I want to say is that he has an idea that the price is being fixed in a closed room with the manufacturer, the distributor and the retailer. All right, he just does not buy the product, so the product suffers and there is where social control of prices comes in. As I read to you earlier this afternoon, and as I said to Mr. Carter, standardization of quality and price breeds competition. That is why you can go into Simpson's and buy a Frigidaire, an electric refrigerator, or you can buy a Supreme, or whatever the name is, but nobody knows who made it. You can look at the two and decide you want to buy the cheaper one. Now, there is the competition against Frigidaire, which is a brand name that they advertise all over Canada. That is where the competition comes in. I do not want to upset your schedule of time, Mr. Jutras, but this question of the consumer as to what he thinks at this time on this thing, I do want to read what the British Committee...

The CHAIRMAN: We have on file, Mr. Witness, a brief from the Canadian Association of Consumers, from the four great labour congresses of Canada, from the Canadian Federation of Agriculture, and so we know what the Canadian consumer thinks, and there is no need to refer to what the British consumer thought of this practice in 1948. If you want to read the brief supplied by the Canadian Association of Consumers, then we would be glad to have your views on that.

The WITNESS: It comes into this question of the knowledgeableness of the public.

Hon. Mr. GARSON: Why? Are we all such a group of morons in this committee that we have to have a witness come from Toronto to explain to us what the British consumers think, or what the British report means? This is all before us in very simple language and we can read it ourselves.

The WITNESS: The reason I have stressed this British report is because it is not referred to from the beginning to end of the MacQuarrie report, except a little bit, about one-half inch, referring to the terms of reference. I think it is a significant document and I am asking this committee to consider it, and when a question like this comes to me, asking me what the consumer thinks, I think it is relevant and informative to hear what the British consumer thinks.

The CHAIRMAN: It is much more important to hear what the Canadian consumer thinks.

Mr. FULTON: Mr. Jutras asked the witness a question as to how the consumer felt, and in fairness be should recognize it was in reply to Mr. Jutras' question that the witness was answering. He surely has the right to answer; whether we agree or do not agree with his answer is a matter for us to determine.

Mr. JUTRAS: On a point of order. We had left this first question and we were down to a different point when the witness started out on this.

Mr. FULTON: I am sorry, I must have misunderstood you too.

Mr. JUTRAS: However, I have no objection if you want to go all over the world telling us of consumers' reactions, but the point and the thought I was making is that the consumer feels that price maintenance is a restraint on his method of expressing his wishes to the manufacturer, to the retailer and to the distributor. Now, you answered the question partly by saying that there is still competition. I do not quite agree with you that there is full competition. Of course you will agree with me that although there is competition it is a restricted competition under the practice of resale price maintenance. Let me take this example, for instance. That comes back to the consumer. . .

The CHAIRMAN: It is no more of an outrageous assumption than Mr. Hees made in his statement.

Mr. HEES: Nobody is objecting.

The CHAIRMAN: But I am sitting here looking at all of you.

Mr. JUTRAS: Let us get back to a concrete case that was brought up here yesterday. You know, of course—and this is an obvious statement—that the consumer as a whole loves a bargain. Now, possibly he is somewhat worried that if the practice of price maintenance becomes more general this will tend to disappear. I know you will say "Well, there will still be more competition at the manufacturing level", but still these bargains will be very much restricted if the practice tends to be generalized, and let me finish my

question, and that leads into the statement of Mr. McGregor that you questioned this morning, that the growth of the practice in the country was alarming, and I submit that is one of the people it is alarming, the consumer.

The WITNESS: It gets longer and longer. I hardly know where to begin.

Mr. CARROLL: First Mr. Jutras expressed an opinion of his own and he is asking you a question as to whether that opinion is correct. I think that is the question.

The WITNESS: You expressed the opinion that the consumer feels that under price maintenance he is not getting a bargain.

By Mr. Jutras:

Q. The consumer feels that under this practice he will have less and less to say as to the determination of the quality, the type, the price of the commodity that he wants.—A. One answer to that, of course, is the actual prices that we see now. I only know of a few products that have gone up as much in price maintained articles as it has in other articles. As Mr. Garson says, in the outlying places the transportation cost is absorbed by the dealer, but I think the fundamental answer to the whole thing is this, that the product cannot stay in the market for long unless all the parties who are in the distributive process are making enough money to stay in business. Now, we all like bargains, yes.

Q. Will you allow me one interjection? I will agree with you that far, that the product cannot stay on the market for as long, but I would say that under price maintenance it will stay a lot longer. That is the point.—A. I cannot agree with you. That is not my view.

The CHAIRMAN: Thank you, Mr. Jutras. Mr. Fulton.

By Mr. Fulton:

Q. Mr. Dunn, on page 31 of your brief you make reference to the fact that the independent retail hardware dealers compete on an unequal basis with chain stores and department stores for their share of the retail business in Canada, and you refer to table No. 2 to show the comparative gross profit figures as illustrative of the weapon of bulk buying power with which the chain and department stores compete against the independent dealer.

Now, I believe you brought with you a witness who has made a special study of that matter. Have you the witness to assist you?—A. Yes, I would like to ask Mr. Hougham to answer that.

The CHAIRMAN: Order, gentlemen. Mr. Dunn, would you introduce Mr. Hougham?

The WITNESS: I would like to introduce Mr. George Hougham, who comes with us as a consultant to the association. Mr. Hougham has had, I believe, about 37 years practical experience in the marketing field in Canada, having had a close association professionally with the Canadian Retail Federation and the Retail Merchants Association. Mr. Hougham is now retired, and appears in a consultant capacity from time to time for the Retail Merchants Association. We are so interested in this subject that we felt that his experience would help us in our contribution, so perhaps Mr. Fulton would ask the question now, and perhaps Mr. Hougham might be permitted to be seated.

Mr. George Hougham, New Westminster, B.C., Consultant, Ontario Retail Hardware Association, called:

By Mr. Fulton:

Q. I was just quoting the passage on page 31, where the subject of chain and department stores is introduced, and I want to ask you whether you can expand upon the statement contained there at page 31 and tell us whether, in

your opinion, elimination of price maintenance would, as has been alleged, benefit particularly the large department stores, or what is the situation in that regard?—A. I should think, Mr. Chairman and gentlemen, that it would improve their competitive relationships. Yes, I think so.

Q. Have you with you, either on paper or in your head, any figures, Mr. Hougham, or if you have no figures can you tell us with some degree of particularity what has been the trend with respect to the volume of business done by chain and department stores in Canada as compared to the United States, what is the general comparison between the volume of business done by the large chain and department stores in the two countries?—A. I should think, sir, my figures would perhaps hardly be applicable, but they may be indicative. If you would refer, as some of you must have done at some time or other, to the report of the Price Spreads Commission of 1934-1935, my recollection is that on page 207, I think it is, under the caption of the chapter on distribution, I think the statement is made to the general effect—I used to be able to quote this with a greater facility than I do now because I was involved in it at the time—but, subjet to those reservations, I think it can be found that the statement is that the concentration of economic power in the field of distribution in Canada is greater than for any other country for which statistics are available, and, still quoting from memory, I think it is said by way of comparison between two countries that some 34, I think it was, department stores in the United States at that time, and I recognize that that was some time ago, did approximately 17 per cent of the total departmental store business in the United States, but in this country three department stores did 80 per cent of the total department store business, and of that 80 per cent, one company did approximately 7 per cent of the total Canadian business. Whether those figures would be accurate in terms of today's volume...

Hon. Mr. GARSON: You do not mean to say that one did 7 per cent, you mean to say 70 per cent?

The WITNESS: No, 7 per cent of the total business of the country.

By Mr. Fulton:

Q. In other words, three department stores did 80 per cent of all department store business, but one of them did 7 per cent of all the retail business in the country. Is that right?—A. Yes, I think that is correct, but the report will correct me if I am wrong.

Q. Was that company named?—A. Yes, it was The T. Eaton Company.

Q. Do you know whether that company has since acquired other large retail outlets?—A. Oh, yes, it has.

Q. Where?—A. Notably in Vancouver, where they have taken over David Spencer.

Q. They have taken over the David Spencer Ltd. business all throughout British Columbia, have they not?—A. Yes.

Q. You are aware, of course, of the fact that The T. Eaton Company has indicated to this committee that they are opposed to the practice of resale price maintenance?—A. Yes.

Q. And I think you have said already that in your view the elimination of that practice would tend to benefit mainly the large department store?—A. I think that would be the inevitable tendency.

Q. Do you see any connection between those two sets of facts, The T. Eaton Company's attitude and your opinion which you have just expressed?—A. I do not care to impute motives or to make general inferences—I do not think this is amusing, Mr. Chairman—

The CHAIRMAN: No, it is certainly not. It is so unusual we are gratified to have you make such a straight statement.

The WITNESS: But I would think that perhaps—I know I should not be talking for The T. Eaton Company—but that is perhaps the reason they adopt that attitude, the traditional attitude that they do not want to have anybody tell them what to do. I think they feel they are capable of directing their own business activities and want the utmost freedom of operation. I do not want to impute anything they would possibly repudiate, but I would think one of the reasons they are opposed to resale price maintenance is that it is not effective, it is not completely effective. In other words, in order that they might be protected themselves from price competition they would have to, and do, employ a very considerable shopping force to watch their competitors to see that their competitors' prices are comparable with theirs, and for that reason they do not want to be tied to a contract which binds them but does not effectively bind their competitors. That would be my inference.

By Mr. Fulton:

Q. We have heard of your very considerable experience, Mr. Hougham, in this field. Have you any comment to make on the probable effect on prices of either the continuance of the present practice of price maintenance or the abolition of it? In other words, if this legislation goes through and is effective, what will be the probable effect on the cost of living and on prices generally?—A. Well, under the relatively prosperous economy that we are living in now, if that is what you may call it, I suppose there would not be any immediately discernible effect. I would think that likely would happen, but if we should regrettably return to anything that bordered on the conditions that prevailed in the dark thirties, I am afraid that the conditions would be demoralizing. If I may express an opinion—and it is only an opinion, sir—I think possibly one of the by-products of a situation of that kind might conceivably be this: one has heard—and I have been hearing it here and reading it in the press—the continual reference to the competition between the very large organizations and my friends the independent retailers, and I speak of them in that respect because they were my friends for a great many years, I think we overlook the fact that in a period of tremendous competition for volume induced by low purchasing power what happens is a competition between large organizations, not with the sinister intent of putting the independent retailer out of business but to sustain their own volume, which they must sustain in view of the tremendous overhead they have by virtue of their operations. What happens there? History records it, and it can again happen in retailing, particularly in this country, that is, when the giants are contending the little fellow gets trampled underfoot because he is in the way. Furthermore, a conceivable by-product of that can be a merger, and a merger leads into combines. I am not trying to paint you a fantastic, outlandish picture, and if I go further than that and suggest to you that from combines you get government expropriation, which in the age in which we live is not so far-fetched a picture.

Q. Am I correct in stating you were intimately associated with the Stevens' inquiry?—A. Intimate is an understatement.

Q. Am I correct in stating that the very conditions which were investigated and which were disclosed by the Stevens' inquiry were the conditions which brought about the adoption of the practice of resale price maintenance on an expanding scale, as a measure of self protection?—A. Yes, I think that is a fair statement.

Mr. DUNN: I feel I was rather less than helpful to Mr. Jutras and I wonder if now Mr. Hougham could express an opinion on the problem raised by Mr. Jutras.

Mr. CROLL: You tell me the problem.

Mr. DUNN: The problem, as I recall it, was the consumer felt that because one product or group of products were price maintained that he was being asked to pay a higher price because it was something over which he did not have any control.

Mr. JUTRAS: Not quite. It wasn't just the question of price. I expressed in general terms that the consumer felt he would have less to say not only in price but in quality and the type of goods he wanted. I mentioned it had lessened competition and my friend Mr. Hees disagreed at that time and you too. Then I submit under a system of no price maintenance at all you have competition among manufacturers and on top of that you also have competition in their margin to the retailer. I agree there is still some competition at the manufacturer's level but I submit most of the competition disappears at the lower level.—A. I am sorry I find the question a little obscure and if I do not answer it it is not because of any intention to evade it. As I study the resale price maintenance principle I look upon it not precisely as some others talk about it. I think of it in terms of price stabilization and while it may seem on a superficial examination to be designed to protect a segment of the economy only I would think in the long run it can stabilize the whole economy. I do not want to make a statement of my views in the matter except in so far as it may be helpful. I listened to my good friend Mr. Fred McGregor for whom I have the greatest respect. I listened to him as an exponent of the school of thought which is represented by laissez faire free economy. That school thinks resale price maintenance impedes progress and maybe he is right, maybe that is so, but I suggest to you, gentlemen, that like it or not, whether it suits our political philosophy or not, we have emerged from that type of economy into an area of planned economy. I am not advocating it I am trying to analyse it. In the realm of produce you have ample evidence of it, marketing laws of various kinds, and if I may be facetious about it you have 24-cent Kennedy milk. I do not mean to be disrespectful but I submit there is ample evidence that we have introduced a regulated economy not merely as a temporary expedient but as a permanent feature to our economy. Now, something deemed to be sound in primary product marketing, with the establishing of a floor price is not considered sound if the manufacturer does it. It does not seem to me that is quite fair.

Mr. CROLL: Are you confusing the producer with the manufacturer?

The WITNESS: I am placing them in comparable categories. You may disagree, but that is the way I feel about it.

By Mr. Jutras:

Q. Isn't your conclusion there it leads to fair trade laws rather than a system of price maintenance established by the manufacturer?—A. Very well, sir, if that is correct it may well be. Then I enter at this stage a most earnest plea to you as a committee and to this government not to throw the baby out with the bath. If you are determined to get rid of this principle then at least give these people some protection against the thing which they fear most, and don't do one without the other.

By Mr. Croll:

Q. Will you finish the answer to that question? If we are determined to pass this Act what do you suggest we ought to do in addition?—A. Mr. Chairman, if I had a complete answer I wouldn't be sitting here probably. I will endeavour to answer it honestly and I answer it with the reservation I do not know how practical it may be. Could you not include in your Combines Investigation Act, or if necessary in some supplementary legislation,

a permissive clause which would permit a manufacturer to take such action as deemed to be appropriate, and you must set the limits legally, if he found that his product was being consistently used as what we have come to know as a loss-leader. I recognize immediately the difficulty in defining a loss-leader and so on, but surely it is not beyond the width and wisdom of our legislators to find that answer.

Mr. CROLL: I would like to ask Mr. Dunn a few questions.

Norman A. Dunn, Counsel, Ontario Retail Hardware Association, recalled:

By Mr. Croll:

Q. Mr. Dunn, when you were referring to the California law what law did you have reference to?—A. It is the fair trade law.

Q. Is it the fair trade law or unfair trade law?

Hon. Mr. GARSON: It is the fair trade law.

The WITNESS: There are statutes in some states called Unfair Practices Acts and I must confess a very small knowledge of the details of these American statutes. They are different to the so-called fair trade laws. In a sense they relate to a certain type of product and go much further than our section 498(*a*). They refer to certain practices that are deemed to be vicious in eliminating competition.

By Mr. Croll:

Q. They have references to the practices Mr. Hougham spoke about between large department stores?—A. I think so, yes.

Q. Now, you told us you made a study of this price maintenance situation over a period of some ten days of intensive study?—A. I prepared a brief.

Q. Had you been connected with it before?—A. No, I had not had professional connection with it. I have been connected with it for the last month.

Q. You carried on some sort of Dunn poll, you went around asking people, I won't suggest you dunned them, but you asked them their views and they opposed price maintenance?—A. When the subject was first opened up, yes.

Q. And you talked them down?—A. No, I didn't have time.

Q. You were meeting the same sort of people I was meeting. Now, do you know Mr. Justice MacQuarrie?—A. No, not personally, but I know his position.

Q. You know who MacIntosh is?—A. Sure, he stopped the railway strike.

Q. You have heard of the other gentleman, Curtis?—A. Yes.

Q. And Maurice Lamontaine?—A. Just by name.

Q. They gave this eighteen months' study.—A. I didn't know that.

Q. That is a fact, they gave it eighteen months' study. In the light of that they came to certain conclusions and do you suggest you would set up your conclusions as against theirs?—A. The answer to that is to be found in my comments this morning. One of their conclusions with which I take great exception, and with the greatest of respect to them, is on page 19 where they say the general level of prices is higher than if competition existed, and they give as their reasons the first five findings of the Federal Trade Commission and omit the sixth one which I read to you this morning. I think you got tired of me at that point, but I read it this morning where the Federal Trade Commission found as a fact that when price maintenance came into being there was a tendency for prices to be set at the level at which prices had been with the large-scale distributors. They quote five findings and omit the sixth and they say in the light of this evidence and the current information presented

to the committee it seems clear the general level of prices is higher with resale price maintenance than it would be if competition existed. I say that does not conform to the facts I have been able to find and it is defective because they do not quote the sixth finding.

Q. You have been able to find this in four weeks' intense study and they spent eighteen months examining all evidence?—A. I beg pardon, sir, that is begging the question. They omitted one of the findings I found and omitted a finding that would not support their statement.

By Mr. MacInnis:

Q. I am trying to find out what is the underlying basis of price maintenance?—A. The purpose of resale price maintenance, Mr. MacInnis?

Q. Yes.—A. I will try to be as brief as I can. Have you any shorter questions you could ask me now?

Q. You said in answer to someone that if the legislation was passed that the first result would be the price of maintained articles would go up?—A. Yes.

Q. You agree to that?—A. Yes.

Q. Now, if the price of maintained articles would go up then wouldn't your profits go up too?—A. Well, one thing that would happen immediately would be that Mr. Gorsline would charge in his transportation. Another thing is on electric light bulbs where now he is only getting 25 per cent, he is going to say, "I think I should get 33⅓ per cent if I am going to maintain a balance of business and stabilize my products".

Q. Because if you could increase the mark-up on light bulbs your profit would go up?—A. Yes.

Q. If that is going to be the result how is it going to put people out of business?—A. Up to this point, as Mr. Hougham has told us, it would not have very much effect but then you come to the United States experience. He raises his price and a week later a chain store or a large unit of some kind drops the price of electric light bulbs from 50 cents to 39 cents, what happens to the electric light bulb business—it just stops. People with their natural canniness will buy at the cheapest place. The merchandise channels into the big unit and eventually the small unit has not enough money and its profits are gone. Isn't it quite easy now for you to tell us the purpose of price fixing?—A. It is.

Q. It is to eliminate competition, isn't that the purpose of it? May I read you a passage from the report of the Royal Commission on Prices, it is at page 28:

> Resale price maintenance, like other forms of restrictive practices, does offer what appears to the manufacturer and distributor to be a happy relief from the unending struggle against the harsh correctives of the free market system.

Will you agree with that?—A. Yes, I told you what this harsh corrective was. It was a harsh corrective when the Ingersoll watch disappeared off the market and that was because of what you like to call free enterprise, free trade, and I point out in many cases it may be the result of ruthless trade, ruthless competition and ultimately will be ruinous to the product and harmful to the public. You see, it is a matter or words.

The CHAIRMAN: It is.

By Mr. MacInnis:

Q. I want to put you straight. I am not advocating free enterprise; you are the advocate of free enterprise and all I want you to do is to carry out free enterprise. Do you get the point?

I will quote now from your brief on page 21. You have there quoted from the report of the Lloyd Jacob Report in the old country?—A. Yes, on mark-ups.

Q. You quoted that because you approved of the sentiments of any parts you quoted?—A. I quoted it, in fairness, because I am considering the question of mark-ups, and I think it is fair that this committee should have it.

Q. Well, I think so too. Now, there has been great stress made in this committee on getting mark-ups for price maintained goods and non-price maintained goods. Let me read this from page 21 of the Lloyd Jacob Report——A. Page 21 of my brief?

Q. Yes.

> On the whole the margins allowed on price-maintained goods appear to be lower than those taken on free-price goods. The circumstances vary, however, from product to product and from trade to trade. We do not attach any great significance to the fact that margins on branded and price-maintained goods—especially on well known lines are generally lower. Indeed we should have been disturbed had this not been the case, for such goods do not ordinarily require inter alia the same sales effort as unbranded goods. There is therefore no comparison between the two classes of trade.

—A. I read that this morning.

Q. Do you agree with it?—A. On the whole, yes.

Q. Well then figures showing mark-up on price maintained goods and non-price maintained goods would not be of any value to this committee in coming to a conclusion?—A. They will show which are higher.

Q. But this paragraph states definitely that there can be no comparison. Is that not what the paragraph says?—A. I learned many years ago, Mr. MacInnis, that it is extremely dangerous to yourself and to everybody within earshot to take a sentence out of context and say: "That is it."

Mr. HEES: Hear, hear.

Mr. MACINNIS: Just a minute.

The WITNESS: You asked me a question so please let me answer it.

Mr. MACINNIS: You are accusing me of taking that sentence out of context.

Mr. FULTON: He did not.

Mr. CROLL: Yes, he did.

Mr. MACINNIS: I have taken your brief—

The WITNESS: You cite one sentence and you say there is, therefore, no comparison between the two classes of trade. You say, therefore, the figures are useless.

Hon. Mr. GARSON: Figures on those.

The WITNESS: Comparative figures on price maintained goods and others.

Mr. MACINNIS: Yes.

The WITNESS: I was relating that to the rest of this interesting report and you will see that this committee had discerned the reason why price mark-ups were lower on branded goods. They discuss with consumers the fact that consumers like to buy branded goods because they can buy them quickly, and make decisions quickly—and you have got to relate the whole thing.

Mr. CROLL: You did not do that; you quoted that and stopped; and started on a new thought.

The WITNESS: Mr. Croll, I said this morning, also when you were out, sir—

Mr. CROLL: I was out.

The WITNESS: I commended the Lloyd Jacob Report to the study of every member of this committee—from cover to cover; 122 pages of it. But sir, in an effort to make some kind of an intelligent presentation it was not feasible that I should quote the entire 122 pages and therefore, I attempted in some sort of logical fashion to take the parts that were related to these subjects under discussion. I endeavoured to be as fair as possible in doing so.

Mr. MACINNIS: If anything was taken out of context you must have taken it out, because I am quoting what you have here. I am pointing to the general conclusion drawn by it and let me read the last part again:

> We do not attach any great significance to the fact that margins on branded and price maintained goods—especially on well-known lines —are generally lower. Indeed we should have been disturbed if this had not been the case, for such goods do not ordinarily require inter alia the same sales effort as unbranded goods. There is, therefore—

and this is not out of context, it is the conclusion, the summing up of what they have to say "—there is therefore no comparison between the two classes of trade."

One is a protected trade and the other is competitive.

The WITNESS: I do not read that as their stating it as being unreasonable to compare the two classes. They say that at the point of sale a different operation takes place. When Mr. Carter goes in to buy Bayer aspirins, he knows about them, he has heard about them for twenty years and he buys them without question. However, before he buys the 10 cent aspirins he is going to have a lot of discussion: Is it going to be safe; is it going to be just as good—and that is why they say there is no comparison because they are two different kinds of trade.

Mr. MacInnis, that was one of the failings of the MacQuarrie report—they did not restrict maintenance to branded goods. I emphasize that this morning. In their definition of price maintenance they did not refer to its restriction to branded goods.

Now, sir, when you refer to branded goods, as you have in the part that you have read twice and which I read once this morning, there is an entirely different type of operation. The customer knows before he goes into the store he wants a mixmaster. It is a simple operation to sell him. It is a matter of having it there and you sell it. I am not an economist, as the chairman has said—and that is another thing on which I agree with the chairman—

The CHAIRMAN: I do not recall saying that, but somebody said it.

The WITNESS: I thought you said it sir, but someone said it.

However, the fact is when you go in to buy a branded article it is a simple operation to sell you. When a customer goes to buy an unbranded article he has to be sold; he has got to be told its qualities; who made it, who will service it; who will stand behind it—but that does not apply to a branded article. Therefore they say, and I agree with them—and I agree with it a little more than before we got into this—that there is no comparison between the two kinds of trade. One is a branded article well-known to the customer before he walks into the store, and the other is an unknown article, namely something which has to be sold to the customer—and there is no comparison. The fact remains, nonetheless, that it is interesting to note in the case of branded goods that since 1939 they have not risen half as much as the national commodity index. The other goods that are not price maintained and require more selling have risen as much as 163 per cent. That is a significant fact and I suggest every member of this committee should consider it well.

The CHAIRMAN: Your time is over, Mr. MacInnis, and you have only asked two questions.

Mr. MACINNIS: I am not going to ask any more questions but I will observe that I am only glad I did not ask ones with which Mr. Dunn did not agree; because God knows when he would have finished talking.

The CHAIRMAN: Mr. Harrison?

By Mr. Harrison:

Q. Mr. Dunn, I think you ought to be able to answer these questions?—A. Me, personally?

Q. Yes.—A. I thought I was going to get a rest.

Q. From your display here so far I do not contemplate that you will have too much trouble with my questions.

Mr. MACINNIS: You will have trouble with the answers.

The WITNESS: Thank you.

By Mr. Harrison:

Q. You made the statement this morning that price maintainance has been a natural economic growth?—A. Yes.

Q. What limits do you envisage to this economic growth?—A. Well, Mr. Harrison, that is the difficulty of our economic growth. You can only tell it from history up to this point, and you cannot always tell from history in the past what is going to happen in the future.

Q. What has been the history?—A. I mentioned one thing—this shipping ring which I got into this morning and did not know too much about, but I think I was reasonably sound on it. There was very acute competition for years, which practically put ships off the North Atlantic.

Q. I am speaking of price maintenance. What has been the history of price maintenance? How has it spread over the period of history.

The CHAIRMAN: In Canada?

The WITNESS: Are you limiting me to Canada?

By Mr. Harrison:

Q. Yes, because we are interested mainly in Canada.—A. Well, all right, but we have not got as many figures in Canada as in the States and that is why I sometimes bring in the States.

Q. What has been the history in Canada of price maintenance?—A. The history has been as I gave it to you, that there has been by and large an orderly marketing process on articles subject to price maintenance.

Q. Well, I mean the incidence of price maintenance?—A. Well the little survey we made for you on those two pages shows that since 1939 the price has gone up about 60 per cent to 70 per cent.

Q. I do not seem to get my point.

Mr. CROLL: The percentage of increase?

The WITNESS: I am sorry.

By Mr. Harrison:

Q. The actual amount by which price maintenance has been extended over the years?—A. Well I can answer that because, factually, we know or we make a very reasoned guess that it represents 7·89 per cent of the goods held in the average hardware store. We think it is 10 per cent to 15 per cent dollar-wise, and the Lloyd Jacob Report said 5 per cent to 10 per cent.

Q. How long has it taken that situation to come about?—A. Since about 1927.

Q. Then I come back to my question of what limits do you envisage to this economic growth of price maintenance? What are the limits? When will it reach its total 100 per cent of business or will it ever reach that?—A. Well, the

pattern up to the present time has shown, as I endeavoured to show from those five points in Nystrom—that with items that have those qualifications there is a tendency. On items which are very simple to purchase, such as the can of peas I mentioned this morning, there has been very, very little indication of price maintenance going into that field.

Q. I just want to know when you think we will get to a total of 100 per cent price maintained—if ever?—A. No, never.

Q. Just what are the limits?

Mr. FULTON: Are we not here really asking the witness to get into a field in which I do not think he is qualified to speak?

The CHAIRMAN: He has been in quite a few fields where I do not think he was very well qualified.

Mr. HARRISON: What is your idea of the amount that it will expand?

The WITNESS: I am going to ask Mr. Hougham to answer.

Mr. HOUGHAM: I do not think that anybody can answer that question.

By Mr. Harrison:

Q. The second question I would like to ask about—and you said before it was a hypothetical one but it may become a real one—is how would you deal with a combine of manufacturers who are in a position to control prices at the retail level, although they have varying prices in the wholesale level? If you were in Mr. Garson's shoes how would you go about controlling such a combine at the manufacturer's level?—A. All I can say is I have every confidence in Mr. Garson's assistants, under his guidance, working out ways and means of catching a combine or, what they said back in 1873 was a conspiracy. Now, our present Act may not be good enough. It may not be tight enough.

Q. How can he obtain a conviction by proving a conspiracy at the retail level—which could be brought about by a tight enough combine of manufacturers?—A. All I can say is I think our present endeavours relate more to vertical agreements than to combines pure and simple, or grades of them. I can only say I leave it to, as Mr. Hougham said, the wit and something else of Mr. Garson and his department, in which we have the greatest confidence. They should be able to develop a formula to catch some of these combines which are not just clearcut combines under the Act as it stands now. If they are combines they are conspiracies nonetheless. As Lord What's-his-name says, If they are horizontal agreements or open or outside of the law let the Act be tightened up.

The CHAIRMAN: Mr. Harrison, there are just five minutes and since Mr. Garson is last on the list and has not had a chance to question, would you give him your last five minutes?

Mr. HARRISON: I can if he wishes.

Hon. Mr. GARSON: It is all right.

By Mr. Harrison:

Q. Along that line has it ever appeared to you that was the possible direction of this proposed legislation?—A. That does not appear so to me at all, because I do not admit for one moment that there is anything alarming about vertical agreements as being an aid to horizontal agreements. If it is a horizontal agreement, open or outside, then I say cut it down. If it is a vertical agreement I say do not make it illegal just because somebody thinks it provides a breeding ground for horizontal agreements.

Q. I think my next question has been anticipated a little bit by some of the previous members, which is natural as I am at the end of the list.—A. I hope Mr. Garson's have all been anticipated.

Q. Do you think the discontinuance of price maintenance will afford lower prices to the consumer?—A. The continuance?

Q. The discontinuance? If we go through with this legislation will it afford lower prices?—A. Not on the evidence as I see it. I think that immediately some things would be higher. It would be the same thing I went into with Mr. MacInnis. There would be the question of price cutting wars and products being discontinued.

Q. Would it not then follow there would be no loss of profit and therefore increased ability to stay in business by way of enacting of the proposed legislation?

The CHAIRMAN: You have just said that prices will not fall?

The WITNESS: I said prices won't fall so your reasoning is—

By Mr. Harrison:

Q. You tell me the prices won't fall, so they will increase. Will it then not follow that there would be no less profit; there would be a gain of profit, and therefore increased ability to stay in business.—A. Mr. Harrison, I went into that at some length with Mr. MacInnis. There would be a temporary increase in prices in spots, and then the secondary stage will come and the big purchasing powers or certain units will swoop down and some of the boys will go by the boards—and some of the products.

Q. Another point you mention here was efficiency of the chain stores as compared to that of the small stores. If the difference in efficiency of chain stores as compared with the small retailer is as marked as you say—I think you said some 32 per cent overhead as against 20 per cent—and if that difference is only offset by bulk buying of the chain, if price maintenance is abolished do you think the chains would have an advantage? I think your answer to that previously would have been yes, would it not?—A. My answer goes back to the same thing—that even the chains cannot stay in business unless they can make a profit.

Q. That is right?—A. However, they would have an advantage. They can cut prices on certain articles to get people into their stores and do a lot of business, but they have to restore those prices back to economic levels and they must make enough profit to stay in business. That applies to the T. Eaton Company as well as to the crossroads store.

Q. Eaton's have the advantage of being able to buy at a discount?—A. Yes.

Q. Well is not the remedy in the hands of the manufacturer—to protect himself? Supposing a situation develops where a lot of small retailers are afraid that their sales will be channelled to the chain stores?—A. Yes.

Q. Is not the remedy in the hands of the manufacturer and he can protect the retailer by withdrawing those discounts from the larger chains?—A. But you see, Mr. Harrison, as I said already even one company such as the T. Eaton Company with 7 per cent of the total—is that it?—

Mr. HOUGHAM: In 1935.

The WITNESS: That the three stores do.

Mr. HOUGHAM: 80 per cent.

The WITNESS: 80 per cent?

The CHAIRMAN: Of department stores?

Mr. CROLL: Yes.

The WITNESS: What is the total percentage of the three stores—can you tell us?

Mr. HOUGHAM: No.

Q. Mr. Hougham has said already one company, the T. Eaton Company, had 7 per cent of the total retail sales in Canada, and that three stores had 80 per cent of the department store business. What is the percentage of the total business of the three stores?

Mr. HOUGHAM: I couldn't tell you.

Hon. Mr. GARSON: What is it now?

The WITNESS: Have you got any figures from Eaton's, Mr. Garson?

Hon. Mr. GARSON: No.

The WITNESS: That is all I have from reading the proceedings of this committee a motion was defeated to get more recent figures. My direct answer, Mr. Harrison, is, assume for the purpose of this discussion that one company does 7 per cent of the total business of Canada. It would be a hazardous business for any manufacturer to say, "We will not sell to them," because there are many manufacturers in Canada that are small. They are not all big firms like General Electric and the C.I.L., and they have their share of the Eaton business and they are not going to say, "To help this case along we are not going to sell to Eaton's at all."

Q. You are speaking of the present, but will this system increase greatly?—A. It will get worse, it will be dangerous to the public.

The CHAIRMAN: We will adjourn until 10.30 tomorrow morning.

The committee adjourned.

APPENDIX A

A Submission

to

THE JOINT COMMITTEE OF THE SENATE AND HOUSE OF COMMONS

ON

COMBINES LEGISLATION

Prepared on behalf of

THE ONTARIO RETAIL HARDWARE ASSOCIATION

by

NORMAN DUNN

Barrister and Solicitor, 67 Yonge Street, Toronto

The Chairmen
The Joint Committee of the Senate and the House of Commons on Combines Legislation
Ottawa, Canada.
House of Commons,
Gentlemen:

Position of the Ontario Retail Hardware Association

The Ontario Retail Hardware Association was pleased to learn that the decision had been taken to refer proposed amendments to the Combines Act to your Committee for consideration, notably the matter of Resale Price Maintenance. This subject being one of the greatest importance in the economy of our nation, and being of more than ordinary concern to the retail hardware trade, this Association takes this occasion to make certain submissions to your Committee in the earnest hope that, sharing our view as to the importance of the matter, your Committee may be pleased to give the most earnest consideration to the matters which we feel compelled to bring to your attention.

The Ontario Retail Hardware Association was organized in 1906 for the purpose of furthering the interests of the independent retail hardware dealers throughout Ontario and the Association was incorporated under the laws of the Province of Ontario on the 17th day of July, 1922. While the Association in its inception, had a provincial objective, developments have indicated that the Association has a broader function in the national sphere as has been made evident by the fact that a number of retail hardware dealers in other provinces have become members, there being no other comparable association in existence in Canada. The Association therefore feels that it can speak out only for the retail hardware trade in Ontario but in a very real sense, in representation of the retail hardware trade throughout the nation. For your information the Association numbers among its active members a total of 1,471 retail hardware dealers or approximately 96 per cent of the retail hardware dealers in the Province of Ontario and on a national scale, this membership represents, including the members from other provinces approximately 40 per cent of the independent retail hardware dealers of Canada.

The Ontario Retail Hardware Association, while affiliated with the Canadian Retail Federation, having problems more specific than those of the Federation, finds it necessary to dissociate itself from the Canadian Retail Federation

with respect to the matters being considered by your Committee, and the Ontario Retail Hardware Association accordingly begs to make the following submissions for your careful consideration believing, as stated above, that our Association represents in a true sense the interests of every retail hardware dealer throughout Canada, in all a total of some 4,200-4,300 independent retail hardware merchants.

Position of Retail Hardware Merchants in the Canadian Economy

The retail hardware merchants have a position of unusual importance in the Canadian economy. They represent a very large number of relatively small shopkeepers whose retail business in 1950 aggregated $192,006,800.00.[1] They are engaged in a kind of trade in which the experience of older economies has demonstrated the independent retailer to be the best servant to the public. Accordingly, while retail hardware chain stores exists, it is clear that this type of merchandising unit has not developed to the extent in the hardware trade that it has in certain other trades, notably the grocery and variety trades A competent American economist places the percentage of hardware business handled through the independent dealer as high as 95·5 per cent.[2] The reason for this is to be found in certain characteristics of the trade which are unsuitable for centralized chain store management on the whole. These characteristics which, while favouring the growth of independent dealers, but which, at the same time, present the independent dealer with grave problems of survival in the competitive retail field, constitute in themselves cogent reasons why the independent hardware merchant is vitally concerned with problems of pricing at the retail level. The characteristics to which we have referred and which apply most particularly to the hardware field have been listed by Nystrom as (1) relatively large investment per store, (2) wide range of stock, (3) large element of personal service connected with handling the products, (4) relatively slow stock turn-over, (5) considerable technical knowledge required in handling these products.[3] These very characteristics mean that the retail hardware merchant has a heavy stake in the economy of the country and must look for orderly selling of his merchandise from a long range viewpoint in order to succeed. It is a business for the long pull and there is no place in it for the retailer who desires to make a quick profit on a sudden turn of events or by short term manoeuvres.

The retail hardware merchant is in fact the housekeeper to the nation. His is the responsibility of providing a wide and varied range of merchandise necessary for the fitting, equipping and maintaining of the nation's homes in safety and comfort. He has been an aggressive merchant who has brought to the consumer's reach a range of merchandise, which, with the growth and the complexity of our life, and with the rapidly rising standard of living of our people, has resulted in a phenomenal growth in the number and diversity of articles handled from the day of the ironmonger of old. Indeed as the retailing function of the hardware man has broadened the trade has been the parent of many entirely new specialty trades, such as electrical appliance shops, wallpaper stores, plumbing and heating contractors, and many others.

Over and above all of these, the hardware retail merchant furnishes numberless specialized services for the consumer, the making of minor repairs to household equipment, maintenance of household and farm buildings, rental of specialized tools ranging from lawn rollers to extension ladders, to mention only a very few. It should be remembered also that the merchandise handled by the hardware merchant in very many instances requires a degree of

[1]Dominion Bureau of Statistics, Retail Trade Bulletin, January, 1951.
[2]Nystrom, Marketing Handbook, page 238.
[3]Marketing Handbook, page 237.

assembling, testing, and fitting before it can be used by the customer. Again, at the point of sale, many decisions of a technical nature have to be made before the customer is satisfied. Here the retail hardware merchant becomes not merely a salesman but in fact a friendly counsellor and adviser to persons in all walks of life on the many and varied problems relating to the building, repairing, refurbishing or equipping of their homes.

For the most part the merchandise carried by the hardware dealer is heavy and often bulky so that delivery is a question of the greatest importance, particularly in a country such as Canada with such large, thinly-populated areas relatively remote from large distributing centres. The following table which has been prepared from the records of the Association serves to illustrate graphically the way in which the enterprise of the retail hardware merchant has developed to assure the consumer a substantial degree of choice in retail dealers since effective competition at the retail level extends down to the very smallest community.

TABLE No. 1

Density of Retail Hardware Outlets
in Communities of Various Sizes

Population	Total No. Towns	Total No. Stores	Average Member Hardwares per town
1,000 and under	87	426	4·9
1,000 - 2,000	70	147	2·1
2,000 - 5,000	62	169	2·7
5,000 - 10,000	26	88	3·4
10,000 - 25,000	22	145	6·6
25,000 - 50,000	5	32	6·4
over - 50,000	5	344	68·8

What is Resale Price Maintenance?

We note with regret that the definition of resale price maintenance suggested by the MacQuarrie Report[4] is in a measure misleading in that it does not refer to "brand" or "trade-mark" articles and in that it refers only to a maximum price. It is submitted that the definition given by the Federal Trade Commission in the United States[5]

> Resale price maintenance is the marketing policy under which the manufacturer as owner of a commodity identified by brand, trade-mark, trade name, copyright or patent places restrictions on the price at which that commodity shall be sold by purchasers and sub-purchasers.

might well be adopted by your committee.

It is to be noted that resale price maintenace is an entirely lawful marketing practice under the Common Law. Only in the United States of America was the practice found to be illegal and there only by virtue of the unique provisions of the Sherman Anti-Trust Act of 1890, under the provisions of which the courts held that neither a patent nor a copyright nor a trade-mark gave a product a proprietory right which the manufacturer could enjoy when his manufactured product had reached the hands of a retailer. An epidemic of "cut-throat" competition in that growing country at the turn of the century produced a demand throughout the entire United States for legislative action to permit resale price maintenance on a vertical basis where branded or trade-

[4] At page 7.
[5] 70th Congress House Document No. 546, January 30th, 1929, page 2.

marked merchandise was involved as the economists and subsequently the legislators of that country soon found that a highly reputable brand of merchandise, developed often at great expense and with great expenditure of technical skill and scientific experiments, a brand of merchandise which had great consumer acceptance and which was being marketed at a price highly desirable from the viewpoint of the consumer, could be destroyed in a comparatively short period of time by ruthless deep-cutting of prices by certain large scale retail organizations, notably chain and department stores. This price cutting, it was found, developed, first of all, a state of complete chaos in the market for the products, and, at the secondary stage, a point where the consumer's faith in the product has been shattered and in the result, the product disappeared from the market, in many cases, to the great loss of the consuming public. The instance of that well-known product, The Ingersoll Watch, was in fact largely instrumental in the aroused demand for fair trade legislation in the United States. Since that time legislation in forty-five of the United States and in inter-state trade has provided a legal framework for resale price maintenance and has, in effect, restored the ancient Common Law position under which resale price maintenance was a lawful, economically sound, marketing practice. It is the earnest submission of the Ontario Retail Hardware Association that this legal position in Canada should not be changed by legislation unless the Parliament of Canada has the clearest proof that resale price maintenance as employed in Canada up to the present time has been in fact detrimental to the public interests. Your Committee will, therefore, be giving careful consideration to the effect of resale price maintenance as an instrument of the marketing function in the Canadian economy. This Association representing as it does more than 4,000 independent retail hardware dealers throughout Canada, feels that it has factual information which merits your consideration.

Extent of Resale Price Maintenance in the Hardware Trade

We note the observations of the MacQuarrie report[6] that attention was not centred on individual cases of maintained prices on the ground that if resale price maintenance were restricted to a limited number of goods the problem would not deserve the Government's consideration. It is our submission that an enlightened approach to the impact of resale price maintenance on the Canadian economy requires an investigation of specific instances in which resale price maintenance is practised and that it is only by a consideration of a number of such specific instances that an appreciation of the over-all picture can be reached.

This Association maintains an extensive price index for the guidance of the retail hardware merchants throughout Canada as part of its service to members and it was, therefore, possible for us to reach a rather specific conclusion as to the extent of resale price maintenance in the hardware industry. This Association maintains a price index comprising approximately 26,530 items widely demanded by retail hardware merchants (not including specialized items such as wheel goods, sporting equipment and the like). A sampling of our price index indicates that of this total, approximately 2,094 items are subject to price maintenance of varying intensity. This indicates that of all items normally carried by the general run of retail hardware merchants, a maximum of 7.89% are under some form of price maintenance indicated or stipulated by the manufacturer. A precise appraisal of the percentage of dollar sales is more difficult to obtain but it is the view of this Association after consultation with representative members that the percentage of total sales in the retail hardware

[6] At page 17.

industry of items under some form of price maintenance would be from 10% to 15%. By comparison it is interesting to note that in the United Kingdom it is estimated that resale price maintenance in the hardware trade involves between 5% and 10% of the stock held by the average ironmonger.([7])

Place of Resale Price Maintenance in the Hardware Business

Some members of your Committee may well wonder as did the members of the MacQuarrie Committee[8] if a practice so limited in extent in relation to the total volume of retail hardware business is deserving of the Government's consideration. We believe the answer is to be found in a study of the general characteristics of goods which are subject to resale price maintenance in the hardware business and we suggest that the marketing practice of having retail prices stabilized by agreement between manufacturer and retailer has an importance to the retail hardware merchant out of all proportion to the percentage of hardware business involved in price maintenance procedures at the present time. A survey of members of our Association revealed the informative fact that the great preponderance of articles which are subject to resale price maintenance are articles of a consumable or expendable nature. In other words, there is a tendency for resale price maintenance to prevail in that portion of the retail hardware merchants' business which comprises more or less frequent "repeat" business. More stable items which are subject to a very irregular demand by any particular household have developed a much smaller degree of price maintenance. It has been the experience of members of this Association that price-cutting both of the deep cutting variety and the moderate variety has a strong tendency to shake the confidence of the consumer in the general line of merchandise carried by the retail hardware merchants with the result that the practice creates a definite falling off in demand for a broad range of articles both price maintained and free priced items. A survey of members of this Association has produced the definite feeling on the part of retail hardware merchants that while the "loss leader" practice is disastrous to the retail merchant who has invested heavily in items often of the slow moving character, even the practice referred to in the MacQuarrie Report as "normal price reduction" causes customer dissatisfaction with adverse results far beyond the small price reduction which may have occurred in the case of the limited number of goods sold by the competitor in the particular line on which reductions were introduced. This Association urges your Committee to consider the serious consequences of even "normal price reduction"[9] so far as the retail merchant is concerned.

The impact of resale price maintenance on the economy of the United Kingdom was studied extensively over a long period of time by the Committee which reported to the Boards of Trade in June 1949. Elsewhere in this memorandum we quote the findings of the British Committee on the impact of resale price maintenance generally on trade and industry. At this time, we desire to place before members of your Committee certain observations of the British Committee with particular reference to the hardware trade.

The British Committee heard considerable evidence on the effect of "price-cutting" particularly in relation to Items where a certain amount of technical knowledge was necessary at the point of sale and we think it convenient at this point to quote the Committee's summation of the evidence in this connection as it developed in their hearings:

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[7] Report of the Committee on Resale Price Maintenance, London, England, June 1949, page 69.
[8] At page 17.
[9] MacQuarrie Report, page 20.

Evidence Of Consumers

50. For technical articles involving after-sale service the inclusion in the initial price of an allowance to cover a certain amount of "free" service for a defined period was generally approved. The representatives of the women's organizations told us that they felt that the practice gave an incentive both to the manufacturer and to the distributor to ensure that the articles reached the consumer in a satisfactory working condition in order to minimize expenditure in servicing. At the same time it provided a guarantee that additional and perhaps substantial outlay would not be required for a known period ever if the article turned out to require a considerable amount of attention. They felt that the convenience of knowing that future expenditure would not occur for a stated period outweighed the disadvantage of paying for service which in some cases might not be required.[10]

84. The disruption of trade in popular lines which is brought about by these activities appears to bear particularly heavily on the retailer who, by carrying in addition a wide range of relatively slow selling lines and in some trades by offering skilled technical advice to his customers, provides a service whose value may not be recognized until it has disappeared. Furthermore we see no reason to doubt the validity of the argument advanced by some manufacturers that the uncertainty brought about by prolonged price-cutting may make it difficult and sometimes impossible for them to maintain the quality and continuity of production of their branded goods. These manufacturers have stressed the importance of maintaining a regular and reasonably stable home market for British brands whose reputation is well established in export markets and of preventing fluctuations or deterioration in their quality.[11]

We were told that in the hardware trade the manufacture found resale price maintenance of value in stabilizing the market, and that this stability encouraged him to provide sales propaganda in the form of instruction leaflets, model boards, etc., particularly in the case of goods involving some new principle in their design of operation. It appears that many goods which at present are subject to resale price maintenance in this trade are those requiring technical service during and after sale, which may be given free or for a fixed charge.

In the past price-cutting has usually started at the retail end in a period of reduced demand and has, we understand, ultimately resulted in the manufacturer being asked to supply cheaper goods. We were told that as a result the quality of branded articles had been debased, particularly in the late 1920's and early 1930's. Examples of this debasement quoted to us were builders' ironmongery, digging forks, aluminum hollow-ware, brass fittings and certain electrical goods.[12]

The following is the summation by the British Committee of the evidence adduced by dealers appearing before that Committee. This Association asks your Committee to consider the following summary of dealers' evidence as it came to the British Committee in the light of the special position of the retail hardware merchant in the community, which we have already outlined. Your Committee will note that the special problems faced by the retail merchant, emphasized as they are by the problems of delivery of hardware items to customers in sparsely settled sections of a country such as Canada, were carefully considered by the British Committee. The dealers evidence before the British Committee was summed up by the Committee as follows:[13]

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[10] Report of British Committee at page 10.
[11] Report of British Committee at page 17.
[12] Report of British Committee at page 69.
[13] Report of British Committee at page 7.

Evidence Of Dealers

36. The early history of resale price maintenance in this country is one of distributors' attempts to organize themselves in such a way as to bring collective pressure on manufacturers of branded lines to fix and enforce retail prices for their goods. The bulk of the evidence which we have received from distributors has been presented to us by associations representing independent traders and it is clear that, at the retail end, the organized pressure for the prescription of minimum prices comes in the main from the specialist shopkeepers. These shopkeepers, many of whom take a very considerable pride in the service which they perform for the public, strongly support the principle of retail distribution by specialists. They argue that only the retailer who is an expert is in a position to offer his customers the full range of articles some of them very slow-selling, within the particular field in which he has chosen to specialize and to give them the benefit of his experience in the form of skilled advice or technical service. They believe also that these facilities cannot be maintained in conditions of acute price competition, in which they claim that it is not always the most useful who survive. These traders have long and bitter memories of cut price wars which, they say, put out of business firms which were of real value to the community but whose value was not recognized by the customer until it was too late.

The British Committee gave careful consideration to the evidence of manufacturers of specialty goods, particularly those which have a relatively long life and whose production involves a high degree of technical skill. The evidence of manufacturers as presented to the British Committee with respect to this type of manufactured item was summarized by the British Committee as follows: [14]

Evidence of Manufacturers

45. In the second place, there is a class of article to which, because of its nature, manufacturers have a strong incentive to apply prescribed minimum prices. These articles, which may for convenience be called "technical" products, include motor cars, refrigerators, vacuum cleaners and other goods which have a relatively long life and whose production involves a relatively high degree of technical skill. These goods depend for their successful performance upon technical advice and selection at the time of sale, on skilled maintenance after sale and on the availability of the proper parts for replacement. Manufacturers of technical products rely for their continued sales on the goodwill generated in their customers by a successful performance over a period of years and are anxious to ensure that only properly equipped distributors handle their goods. The costs of such skilled distributors, many of whom give a certain amount of free after-sales service, are of necessity relatively high and they would find it difficult to compete on the basis of selling price alone. Some manufacturers, therefore, appoint as agents a limited number of distributors who must conform to specified standards, and give these agents exclusive sales rights, within particular areas. Others attempt by less direct means to assure their distributors of a reasonably stable and profitable trade and prescribe and strictly enforce minimum prices and margins. In these trades the lowest cost distributor is not necessarily the most efficient and manufacturers seem to be convinced that neither they nor the public derive any real advantage from price competition among distributors.

[14] Report of British Committee at page 9.

Having considered many lines of merchandise in relation to the problems of distribution, and in particular retail sales, including among others the hardware trade, the British Committee came to the final conclusion that resale price maintenance as a vertical arrangement or contract between manufacturer wholesaler and dealer was not against the public interest and accordingly recommended that the Government of the United Kingdom take no action by way of legislation to curb this marketing procedure.

The conclusion of the British Committee and their recommendations are we suggest, the strongest evidence that on an exhaustive examination of this problem in a country whose laws conform so closely to the laws of Canada, no case could be made out for interfering with the Common Law right of manufacturers by contract to stipulate the retail prices at which their branded goods should be sold. Their conclusions and recommendations were in the following terms: [15]

> 162. We take the view that the manufacturer of a branded article remains responsible for the quality of the goods sold under his own brand; he cannot, therefore, be indifferent to the terms on which his goods are sold to the public. Our evidence has shown that well-known branded articles are particularly liable to be used as loss-leaders by distributors and we are satisfied that their use in this way has not brought any permanent advantage to manufacturers, distributors or the shopping public as a whole. Resale price maintenance offers a convenient means of protecting brands against misuse by distributors in this or other ways.
>
> 163. We recommend that no action should be taken which would deprive an individual producer of the power to prescribe and enforce resale prices for goods bearing his brand.

Has resale price maintenance any tendencies adverse to the public interest?

Up to this point we have directed the attention of your Committee to the importance and value of resale price maintenance in the retail hardware trade along more or less positive lines. It must be admitted, however, that the well established marketing practice of resale price maintenance has opponents who allege that the practice adversely affects the public interest. The studies of the subject which have been made in the past do not reveal any substantial body of opinion opposing resale price maintenance from among to ranks of manufacturers wholesalers, retailers or, as has been shown from the evidence adduced before the British Commission, even from representative consumer organizations. It is clear that opposition to the marketing practice of resale price maintenance comes almost entirely, either directly or indirectly, from sources close to the federal administration in the United States whose ideas have been coloured for two generations by the political appeal of the Sherman Anti-Trust Act of 1890 and its associated statutes. This Act marked the turning away of American Law from the Common Law which established and still preserves in Canada the right of individuals engaged in business to enter into a contract with another individual for the purpose of lawfully preserving property rights, in this instance, the rights relate to the proprietory rights to a brand name, trademark or trade name. Subsequent thinking in the United States has lead to a way of thinking that lurking behind every discussion as to the price at which merchandise should be sold is a "trust" or a combination in restraint of trade. It is to be regretted that the MacQuarrie Committee appeared to fall, in some measure, into this line of thinking when it stated ([16]) "Resale price maintenance

[15] Report of British Committee at page 33.
[16] at page 17.

facilitates and makes more effective horizontal agreements (open or tacit) among the manufacturers". It is our submission that a fair judicial view of the matter would be that conduct which is in fact a horizontal agreement in restraint of trade should, of course, be dealt with under the provisions of the Combines Act if the public interest is adversely affected. If the existing provisions of the Combines Act are not adequate to provide ways and means of preventing less formal types of combinations in restraint of trade, then let the legislation be appropriately amended for this purpose, but do not let any veiled suggestion that vertical arrangements for resale price maintenance may somehow provide a breeding ground for illegal horizontal agreements in restraint of trade and that because of this fact alone vertical agreements for resale price maintenance are contrary to the public interest. We urge your Committee to give the most serious consideration to this phase of the problem and in the hope that we may render every possible assistance to your Committee we propose to refer to certain so-called adverse effects of resale price maintenance in the light of documentary material which we have been able to obtain. It is our hope that in submitting the limited amount of documentary material which is feasible in this memorandum, the occasion may be afforded your Committee for an exhaustive examination of statistical information to be entered on so that your Committee will be acting on the broadest base of factual information rather than on the flimsy grounding of the opinion only.

Resale price maintenance does not mean high prices

The MacQuarrie Report stated,[17] "The general level of prices is higher with resale price maintenance than it would be if competition existed". We submit with great respect to the personnel of the MacQuarrie Committee that this statement cannot be justified by existing statistical material and furthermore, that it would not have been a reasonable conclusion from the material referred to in the previous pages of the Report had the Committee quoted the sixth and final finding of the Federal Trade Commission which was as follows:[18]

> 6. The manufacturers of the price-maintained brands of drugstore items covered in this study generally named minimum prices that were within the range of prices actually charged by their large-volume customers just prior to the time they placed their trade-marked products under minimum resale price contracts.

Oxenfeldt comments as follows:[19]

> If resale price maintenance resulted in a substantial and prolonged change in distributors' margins, it would almost certainly have a parallel effect on prices to the consumer. As already indicated manufacturers tended to set the minimum retail price on their product close to the price at which many mass distributors had been selling it and therefore below the prices charged by the independents. Retailers' margins—even including those of the average independent—did not decline, however. Manufacturers tended to lower price to the retailer when they priced their products under resale price maintenance. The Federal Trade Commission concluded:
>
> ...reductions made by some druggist in prices of some price-maintained commodities in 1939 were in reality reductions in manufacturer's prices of such magnitude that retailers, after reducing prices, were realizing as large or in some cases, even larger margins than were realized previously when the items were sold at higher retail prices.

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[17] at page 19.
[18] A. R. Oxenfeldt, Industrial Pricing and Market Practice, New York, 1951, at page 427.
[19] at page 428.

Furthermore, the British Committee inquired extensively into the comparative mark-up on price maintained items as against items which were not subject to price maintenance. The following conclusions of the British Committee on retail mark-up are, we believe of great interest and value:[20]

> On the whole the margins allowed on price-maintained goods appear to be lower than those taken on free-price goods. The circumstances vary, however, from product to product and from trade to trade. We do not attach any great significance to the fact that margins on branded and price-maintained goods—especially on well-known lines are generally lower. Indeed we should have been disturbed had this not been the case, for such goods do not ordinarily require inter alia the same sales effort as unbranded goods. There is therefore no comparison between the two classes of trade.

Our Association felt that your Committee would profit from actual experience in the hardware trade and we, therefore, entered upon an examination of the actual price pattern on a group of well-known items carried in hardware stores across the nation with a view to determining the relationship of the price trend in leading items to the retail commodity price trend generally and to the cost of living trend. These are Canadian figures from the actual experience of our industry. We emphasize that for the purpose of preparing these submissions time would only permit of a survey of a very limited number of items. In consultations with experienced hardware dealers who are members and executive officers of this Association an arbitrary list of items was prepared for the purposes of this study. This list was chosen as being representative of well-known items, in most cases, fast moving items, but, in some instances, items moving on a much more conservative scale. All the items which were thus arbitrarily chosen for study have been included in the table of figures which we now present and we should hasten to assure your Committee that should your Committee desire to pursue the study of this matter further, this Association will render every possible assistance as it is the belief of experienced members of the retail hardware trade that the price trend in price maintained items has been conservative in relation to the price trend of the national commodity index and in relation to the cost of living index.

The following table shows the price rise in terms of percentage during the period 1939 to 1951 and it is to be noted that in the case of the items with respect to which price maintenance exists, the price rise has been notably less than has been the price rise of items which are not subject to resale price maintenance. These tables also show the price rise for the national commodity index and the rise in the cost of living index figures both of which cover the same period with the exception that it was not possible for us to get an average 1935 to 1939 figure as the base point and we have accordingly taken the 1939 figure as the base point on this table.

TABLE No. 1

Price trend and *retail mark-up* in hardware items showing price maintained items and items not subject to price maintenance and showing the *national commodity price* and *cost of living index rise* for the corresponding period.

(Prices shown are price maintained retail or retail normal in the trade where items not price maintained. Adjustment made covering increase in sales tax where sales tax applicable).

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[20] Footnote to British Report on page 14.

	1939	1951	% increase	Retail mark-up in % of retail price
Paint (Gallon outside white)				
Price Maintained				
Imperial Varnish "Floglaze"	4.35	7.40	70·1	21·6
Lowe Bros.	4.45	7.45	62.9	21·4
Canadian Industries Limited "CIL"	4.20	7.45	77·4	22·1
Not price maintained				
Scarfe's	4.00	7.35	83·7	22·4
Average 1951 price				
Flashlight batteries (each)				
Price maintained				
National Carbon No. 2 "Eveready"	.15	.196	30·7	31·2
Floor waxes (1 pound paste)				
Price maintained				
Edward Hawes "Hawes"...	.45	.5194	15·4	17·0
Boyle Midway "Old English"	.49	.6075	24·0	25·8
Electric light bulbs (60 watt. bulb)				
Price maintained				
Canadian General Electric.	.20	.196	—2	25·0
Aluminum cooking utensils				
Price maintained				
Aluminum Goods Mfg. "Wear Ever" (#141 double boiler)	2.15	3.88	80·4	33·4
Supreme Aluminum "Standard" (#402 double boiler)	1.55	2.70	74·2	33·5
Not price maintained				
General Steel Wares "Triumph" (#53 double boiler)	1.45	2.99	106·2	33·1
Hand tools				
Not price maintained				
Nail hammer 51½ Stanley 16 oz. bell faced	1.50	3.19	112·17	33·2
Hand saw Disston D-8 26"-8 point	4.00	7.01	75·3	33·6
Brick trowel Rose #110 Philadelphia pattern	2.90	5.35	84·4	33·6
Level #1294 Stanley 24" carpenter	.70	1.82	158·8	33·5
Carpenters planes				
Stanley #4 smooth	4.75	10.10	112·6	33·3
Stanley #78 rabbet	3.75	7.99	113·1	32·2

National price trends (D.B.S.)

	1939	1951 (Sept.)	% increase
All commodity prices	100	221·6	121·6
Food	100	251·1	151·1
Clothing	100	206·9	106·9
Home furnishings	100	199·1	99·1
Cost of living index	100	189·8	89·8

Resale price maintenance is not an undesirable restriction on competition

Ample authority can be found in the current economic literature that resale price maintenance retains that "social control of prices" which the McQuarrie Report considers to be of great public importance.[21] It is not the complete picture to declare that price maintenance merely transfers competition from price to service. We have already indicated the small percentage of hardware items which are subject to price maintenance. The experience of our members throughout Canada is that there are numberless instances of price maintained items selling in direct competition with items of comparable quality which are not subject to price maintenance. The true position is that the only element of competition which is eliminated by price maintenance is the competition which the retailer suffers against his own inventory of a given brand of goods which occurs when a competitor cuts prices on that particular brand as a "loss leader." In that situation, a retailer having an investment in branded goods on his shelves finds competition from his own goods which represent an investment on his shelves at a cost often higher than the loss leader price offered by his competitor. We suggest that no responsible person in the public service would be rash enough to say that this type of competition is beneficial to the public on a national basis or that a legal instrument for eliminating this type of competition by loss leadering is contrary to the public interest. In fact, as we have shown, the British Committee has categorically gone on record that this type of ruthless competition is in fact against the public interest. It follows that a legal contract which prevents this ruthless competition is in itself in the public interest.

From many authoritative observations of competent economists, we take only one in this memorandum to illustrate the extent and pace of the competition which would remain even if a very large percentage of retail items were subject to resale price maintenance:[22]

> Extent of Resale Price Maintenance Under the Laws-Contracts of this nature have been used to a considerable extent in the drug liquor and specialty fields although their use in the packaged food field is relatively rare. The fixing of minimum resale prices by the manufacturer protects wholesale and retail margins so that there is likely to be distributor support for his particular brand. Fixing the minimum price, however, makes it possible for uncontrolled competitive products to be sold at lower prices. If all national brands were placed under minimum price contracts, the private brands of chains, mail-order houses, and other large retailers would furnish the price competition which is necessary to protect the public.
>
> Effect of Fair Trade Laws—When Fair Trade contracts were first used, the immediate effect was to increase the price of controlled merchandise in the cut-price stores and to decrease prices in the neighborhood independent stores, because this latter group was then able to meet competition at minimum contract prices. Later, the price retailers tended to push their private brands with greater success than previously. This opportunity to push private brands was rapidly seized by key retailers. The result has been that a real price competition has existed between brands so that no manufacturer can ignore the competitive price situation in utilizing minimum price contracts.

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[21] MacQuarrie Report at page 7.

[22] P. H. Nystrom, Marketing Handbook at page 590.

Resale price maintenance does not establish a private system of law

Reference is made in the McQuarrie Report to the fear that resale price maintenance might tend to establish a private system of law allowing no appeal to the Cours of Justice.[23]

It is submitted that this fear is illusory. A resale price maintenance agreement is no more a "private law" than any other valid contract existing between two citizens of Canada. It is elementary that when two persons enter into a contract, they become bound by the "private law" of the particular contract which (while not being for an illegal object) may well represent a variation from the Common Law relating to such a situation. In fact, that is the purpose of a contract. It is equally elementary that when any disagreement arises as to the interpretation of such a contract or as to the rights of either of the parties thereto, the parties have access to the courts for appropriate relief. This is as old as the Common Law. Its application to resale price maintenance agreements is as new as the decision of the Honourable Judge Marier in the Superior Court of the Province of Quebec for the District of Montreal, decided the 14th day of November 1951, in the action brought by Charles Duquette and Jean Duquette against Charles E. Frosst & Company. This decision has received attention in the daily press within the past week. In this case a firm of druggists claimed to have been damaged by certain provisions in a resale price maintenance agreement. An injunction was sought, which was tantamount to an order of mandamus requiring the defendant, a pharmaceutical manufacturing firm, to continue making deliveries of its products notwithstanding breaches in the resale price maintenance agreement by the plaintiff. The decision of the court was that an injunction should not be granted and emphasis was made that the contract was one to be interpreted by the court in accordance with the law applicable to contracts. Nothing could be clearer than that all resale price maintenance agreements, like all other contracts, are subject to the jurisdiction of the courts of the ten provinces of Canada for the determination of any disputes or matters of interpretation.

Resale price maintenance does not discourage economic efficiency

The McQuarrie Committee states that it is the view of that committee that "resale price maintenance may perhaps contribute more to discourage efficiency than to protect small business". ([24])

It was the feeling of this Association that this passing reference to inefficiency in retail outlets was deserving of careful analysis on a basis of existing statistics. It has been possible to refer to statistics showing the relative operating efficiency of retail hardware stores in both Canada and the United States as against the operating efficiency of chain stores and department stores in the United States. Corresponding figures for independent variety stores in the United States are also shown. In the available studies we have chosen base years as close as possible to the base years in the other related studies.

The following table has been compiled from the sources indicated with respect to the individual types of stores or trades as the case may be.

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[23]MacQuarrie Report at pages 18 and 21.

[24]MacQuarrie Report at page 20.

TABLE NO. 2

Comparative Efficiency in Independent, Chain and Department Stores.

	Dept. Stores U.S.A. 1949 (25)	Chain Variety Stores U.S.A. 1943 (26)	Hardware Stores U.S.A. 1950 (27)	Hardware Stores Canada 1950 (28)	Independent Variety Stores U.S.A. 1943 (26)
Sales	100·0%	100·0 %	100·0%	100·0%	100·0 %
Cost of Goods ...	64·8	63·68	71·8	73·9	66·84
Gross Profit	35·2	36·62	28·2	27·1	34·92
Operating Expenses	32·5	28·60	23·75	20·9	27·51
Net Profit .	2·7	7·72	4·45	6·2	8·91
Stock turn-over	4·4 times		2·35 times	3·08 times	

The foregoing statistics are submitted as conclusive proof that the independant retail hardware dealer needs no protection against inefficiency in his competition for a share of the retail business of Canada with chain stores and department stores. The comparative gross profit figures in Table No. 2 illustrate graphically the weapon of bulk buying power with which the chain and department stores compete against the independent dealer. It is in this field where, as we have stated above, the chain and department stores compete effectively with what are known in the trade as "private brands". Here is competition in its finest flower. Experience has shown, however, that with the horizontal growth of a retail outlet, operating costs increase at an abnormal rate so that when you examine the comparative operating expenses you find that the operating expenses of the independent dealer are very much lower than those of his competitors, the chain stores and the department stores. Where the figures are available from the studies referred to, the volume of stock turn-over annually is shown to illustrate the slow moving character of the stock of the hardware dealer in comparison to the chain and department stores.

Conclusion

The Ontario Retail Hardware Association offers the foregoing submissions and factual information in the belief that it presents the strongest evidence that resale price maintenance does not operate against the public interests in that it does not cause high prices, nor does it cause a reduction in efficiency, nor does it establish a private law which excludes the courts, but that on the contrary resale price maintenance, while affecting only a small percentage of the retail hardware business, nevertheless constitutes an accepted economic and legal procedure whereby a valuable part of the business conducted by retail hardware merchants can be conducted on an orderly basis with a continuing profit at a reasonable level, and with assurance to the consumer that there will be a high level of competition between branded items, on many of which price maintenance, exists as against "private brands", or items on which there is no

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[25]Source: Harvard University Graduate School of Business Administration, Bureau of Business Research, Bulletin No. 132.

[26]Source: Harvard University, Bulletin No. 120.

[27]National Retail Hardware Association (U.S.A.) Publication, Hardware Retailer, September, 1951, page 141.

[28]Hardware and Metal and Electrical Dealer, March 31, 1951, pp. 38 et seq.

price maintenance, and the further assurance that, particularly in the case of the brand lines, there will be no pressure on the manufacturer for debasement of equality.

As previously stated this Association desires to assure the Committee of its continuing interest in this important problem and of its willingness to render every possible assistance to your Committee in your enquiry into this matter by the furnishing of such further factual information as your Committee might consider helpful.

All of which is respectfully submitted,

by:

ONTARIO RETAIL HARDWARE ASSOCIATION
NORMAN M. DUNN,
Counsel Herein.

Toronto, November 26/51.

APPENDIX B

APPENDIX "A"

TO

THE SUBMISSION OF THE ONTARIO RETAIL HARDWARE ASSOCIATION TO THE JOINT COMMITTEE OF THE SENATE AND THE HOUSE OF COMMONS ON COMBINES LEGISLATION

December 3, 1951.

In May 1951 the Ontario Retail Hardware Association undertook a survey of typical Ontario towns for the purpose of learning the percentage mark-ups prevailing in communities of various size, and in particular to observe the extent of variations in mark-up, both from community to community and with respect to the mark-up indicated in the Ontario Retail Hardware Association Price Guide, which has, for approximately 30 years been maintained by the Ontario Retail Hardware Association as a source of reference for members. The mark-ups used in the Price Guide have been established by reference to the combined experience of members and directors of the Association as to the mark-ups on particular lines which have been found appropriate to enable retail dealers to carry on business at a normal profit.

This survey was conducted by the Association as a service to its members and the results of the survey were published for the information of members contributing to it, in September 1951.

The survey covered the following seven Ontario Communities:—

Town or City	Population 1951	No. of Hardware Dealers
1. Orillia	10,985	4
2. Grimsby	2,414	3
3. Niagara Falls	21,304	11
4. London	94,027	29
5. Windsor	118,584	30
6. Welland	16,004	6
7. Milton	1,964	3

The retail stores which supplied this information are, in our opinion, the leading Hardware Stores of the towns and we believe that the mark-ups shown are representative for that locality.

ONTARIO RETAIL HARDWARE ASSOCIATION.

SHEET 1

HOUSEWARES

(RETAIL MARK-UPS EXPRESSED IN PER CENT OF RETAIL PRICE)

Item	Mark-Ups by Towns							Average	O.R.H.A. Price Guide Mark-Up
	Orillia	Niagara	London	Grimsby	Windsor	Welland	Milton		
Aluminumware	33⅓	33⅓	33⅓	33⅓	33⅓	28½	33⅓	32⅔	33⅓
Brushes, House	33⅓	33⅓	33⅓	33⅓	33⅓	28½	35½	33	.....
Candles	33⅓	.....	33⅓	33⅓	.....	28½	.....	32¼	.....
Canners and Supp	28½	33⅓	33⅓	33⅓	31	28½	28½	31	.....
Carpet Sweep	37½	33⅓	33⅓	33⅓	33⅓	28½	33⅓	33⅓	35
Clean. Supp	33⅓	33⅓	33⅓	33⅓	33⅓	28½	33⅓	32⅔	.....
Cookers	33⅓	33⅓	33⅓	33⅓	.....	28½	33⅓	32½	33⅓
Cook. Utensils	28½	33⅓	33⅓	33⅓	31	28½	33⅓	31⅔	33⅓
Dairyware	28½	.....	.....	33⅓	.....	28½	28½	29¾	33⅓
Dec. Kitchen W	33⅓	33⅓	33⅓	33⅓	31	28½	33⅓	32⅓	33⅓
Dinner Sets	37½	.....	.....	33⅓	37½	28½	.....	34¼	.....
Enamelware	28½	33⅓	33⅓	33⅓	31	28½	33⅓	31⅔	33⅓
Faucets (Wood)	33⅓	33⅓	33⅓	33⅓	37½	28½	33⅓	33⅓	33⅓
Galv. Ware	28½	33⅓	33⅓	33⅓	28½	28½	25	30	31
Gifts and Nov	37½	.....	33⅓	33⅓	37½	28½	35½	34¼	.....
Glassware	33⅓	.....	33⅓	33⅓	37½	28½	35½	30¼	33⅓
House. Cutlery	37½	.....	33⅓	33⅓	37½	28½	37½	34⅔	33⅓
Ironing Boards	33⅓	33⅓	33⅓	33⅓	31	28½	33⅓	32⅓	33⅓
Kitchen Tools	33⅓	33⅓	33⅓	33⅓	33⅓	28½	33⅓	32⅔	.....
Ladders (House.)	33⅓	33⅓	33⅓	33⅓	28½	28½	31	31⅔	33⅓
Lamps (Kerosene)	33⅓	33⅓	33⅓	33⅓	.....	28½	33⅓	32½	30
Laundry Supp	33⅓	33⅓	33⅓	33⅓	.....	28½	31	32	.....
Mirrors	33⅓	33⅓	33⅓	33⅓	37½	28½	43	34⅔	.....
Oilcloth	.....	.....	.....	.....	.....	28½	.....	28½	.....
Ovenware	33⅓	.....	33⅓	33⅓	33⅓	28½	33⅓	32½	33⅓
Pictures	.....	.....	.....	.....	.....	28½	.....	28½	.....
Potteryware	.....	.....	.....	33⅓	37½	33⅓	35½	35	33⅓
Roasters	28½	33⅓	33⅓	33⅓	28½	33⅓	33⅓	32	33½
Shears and Sciss	37½	33⅓	33⅓	33⅓	37½	33⅓	37½	35	33⅓
Silverware and Sun	.....	.....	.....	33⅓	37½	33⅓	37½	35½	.....
Steelware	33⅓	.....	33⅓	33⅓	.....	33⅓	33⅓	33⅓	.....
Stemware	.....	.....	.....	.....	39½	33⅓	.....	36½	.....
Stoneware	.....	33⅓	.....	33⅓	.....	33⅓	35½	34	.....
Tableware	.....	.....	.....	33⅓	37½	33⅓	35½	35	.....
Tinware	28½	33⅓	33⅓	33⅓	33⅓	33⅓	33⅓	32⅔	33⅓
Toilet Tissue	28½	20	28½	33⅓	28½	33⅓	20	27½	.....
Wax Paper	.....	.....	.....	.....	.....	33⅓	33⅓	33⅓	.....
Window Shades and Sundries	.....	.....	.....	33⅓	37½	33⅓	.....	34¾	.....

SHEET 2

ELECTRICAL (INCLUDING LIGHT FIXTURES AND SMALL APPLIANCES)

(RETAIL MARK-UPS EXPRESSED IN PER CENT OF RETAIL PRICES)

Item	Mark-Ups by Towns							Average	O.R.H.A. Price Guide Mark-Up
	Orillia	Niagara	London	Grimsby	Windsor	Welland	Milton		
Coffee Brewers	33⅓	.....	33⅓	33⅓	33⅓	28½	33⅓	32½	33⅓
Corn Popper	33⅓	33⅓	33⅓	33⅓	33⅓	28½	.....	32½	.....
Cords and Sets	33⅓	33⅓	33⅓	33⅓	33⅓	28½	33⅓	32⅔	33⅓
Curling Irons	33⅓	.....	.....	33⅓	33⅓	28½	33⅓	32⅓	33⅓
Door Bells	33⅓	33⅓	33⅓	33⅓	33⅓	28½	33⅓	32⅔	.....
Dry Batteries	.....	33⅓	33⅓	33⅓	33⅓	28½	33⅓	32½	27
Elec. Blankets	33⅓	33⅓	.....	33⅓	33⅓	28½	33⅓	32½	33⅓
Elec. Drills	33⅓	28½	.....	28½	33⅓	28½	28½	30	30
Elec. Grinders	33⅓	28½	.....	20	33⅓	28½	28½	28⅔	30
Elec. Heaters	33⅓	33⅓	33⅓	33⅓	33⅓	28½	33⅓	32⅔	33⅓
Elec. Irons	33⅓	33⅓	33⅓	33⅓	33⅓	28½	33⅓	32⅔	33⅓
Elec. Mixers	33⅓	33⅓	.....	33⅓	33⅓	28½	33⅓	32½	33⅓
Elec. Roasters	33⅓	.....	.....	.....	33⅓	28½	33⅓	32¼	33⅓
Elec. Sundries	33⅓	.....	.....	33⅓	33⅓	28½	33⅓	32⅓	33⅓
Fans	33⅓	33⅓	33⅓	33⅓	33⅓	28½	33⅓	32⅔	33⅓
Fence Control	.....	.....	.....	33⅓	.....	28½	33⅓	31¾	30
Health Lamps	33⅓	33⅓	.....	.....	.....	28½	33⅓	32¼	.....
Heating Pads	33⅓	33⅓	.....	33⅓	33⅓	28½	33⅓	32½	33⅓
Hot Plates	33⅓	33⅓	33⅓	33⅓	.....	28½	33⅓	32½	32
Lamps (floor)	.....	.....	.....	.....	.....	28½	.....	28½	.....
Light Bulbs	28½	28½	28½	25	.....	28½	28½	28	27¼
Light Fixtures	.....	.....	.....	33⅓	37½	28½	43	35½	.....
Motors	25	.....	.....	20	25	28½	.....	24⅔	.....
Radio Equip	.....	.....	.....	33⅓	.....	28½	.....	31	.....
Solder. Irons	33⅓	33⅓	33⅓	33⅓	33⅓	28½	33⅓	32⅔	33⅓
Toasters	33⅓	33⅓	33⅓	33⅓	33⅓	28½	33⅓	32⅔	33⅓
Waffle Irons	33⅓	33⅓	.....	33⅓	33⅓	28½	33⅓	32½	33⅓
Welding Outfit	.....	.....	.....	.....	.....	28½	.....	28½	.....
Wiring Access	33⅓	33⅓	33⅓	33⅓	37½	28½	42	34½	33⅓
Flashlights	33⅓	33⅓	33⅓	33⅓	.....	28½	33⅓	32½	29

SHEET 3

SPORTING GOODS

(RETAIL MARK-UPS EXPRESSED IN PERCENT OF RETAIL PRICE)

Item	Mark-Ups by Towns							Average	O.R.H.A. Price Guide Mark-Up
	Orillia	Niagara	London	Grimsby	Windsor	Welland	Milton		
Ammunition	25	23	28½	23	25	25	23	24⅔	22½
Archery	.....	.....	.....	.....	.....	25	.....	25	.....
Athletic Goods	33⅓	.....	.....	33⅓	33⅓	25	33⅓	31⅔	33⅓
Barber Supplies	33⅓	.....	.....	33⅓	37½	25	.....	32⅓	.....
Base Ball	33⅓	33⅓	.....	33⅓	33⅓	25	33⅓	32	.....
Basket Ball	.....	.....	.....	.....	33⅓	25	33⅓	30½	.....
Bicycles and Repairs	.....	.....	.....	.....	.....	25	33⅓	29¼	.....
Boxing Gloves	.....	.....	.....	.....	.....	25	33⅓	29¼	.....
Camp Cots	.....	.....	.....	.....	.....	25	.....	25	.....
Camp Stoves	.....	30	33⅓	33⅓	33⅓	25	30	31	33⅓
Clocks	.....	31	33⅓	33⅓	.....	25	31	30¾	25
Croquet	33⅓	33⅓	.....	33⅓	.....	25	33⅓	31⅔	.....
Dog Harness	.....	33⅓	.....	33⅓	.....	25	33⅓	31¼	.....
Fishing Tackle	33⅓	33⅓	33⅓	33⅓	37½	25	35½	33	.....
Foot Ball	.....	.....	.....	.....	.....	25	33⅓	29¼	.....
Golf and Sundries	.....	.....	.....	.....	.....	25	33⅓	29¼	.....
Guns	25	25⅓	.....	.....	28½	25	25	25¾	25
Hammocks	.....	.....	.....	.....	.....	25	.....	25	.....
Hunting Clothing	.....	.....	.....	.....	.....	25	.....	25	.....
Hunting Knives	33⅓	33⅓	33⅓	33⅓	.....	25	35½	32⅓	.....
Jugs and Bottles	33⅓	33⅓	33⅓	33⅓	.....	25	33⅓	32	33⅓
Lanterns (Gas)	.....	30	33⅓	33⅓	33⅓	25	30	31	33⅓
Lawn Furniture	.....	.....	.....	.....	.....	25	.....	25	.....
Leather Items	.....	.....	.....	.....	.....	25	.....	25	.....
Luggage	.....	.....	.....	.....	.....	25	.....	25	.....
Oil (Gun)	.....	.....	.....	33⅓	.....	25	33⅓	30½	33⅓
Outboard Motors	.....	.....	.....	25	.....	25	25	25	.....
Pistols	.....	.....	.....	.....	.....	25	.....	25	.....
Pocket Knives	33⅓	33⅓	33⅓	33⅓	37½	25	37½	33⅓	.....
Rifles	25	25⅓	.....	25	28½	25	28½	26¼	25
Roller Skates	33⅓	33⅓	33⅓	33⅓	.....	25	33⅓	32	.....
Shot Guns	25	25⅓	.....	25	28½	25	28½	26¼	25
Skates	33⅓	33⅓	.....	.....	.....	25	33⅓	31¼	.....
Skiis	33⅓	.....	.....	33⅓	.....	25	33⅓	31¼	.....
Sleds and Toboggans	33⅓	33⅓	33⅓	33⅓	28½	25	33⅓	31¾	.....
Striking Bags	.....	.....	.....	.....	.....	25	.....	25	.....
Tennis	.....	.....	.....	33⅓	.....	25	33⅓	30½	.....
Tents	.....	.....	.....	.....	.....	25	25	25	.....
Traps (Animal)	.....	33⅓	.....	33⅓	.....	25	25	29¼	33⅓
Trap Shooting	.....	.....	.....	.....	.....	25	.....	25	.....
Velocipides	.....	31	33⅓	33⅓	33⅓	25	31	31¼	.....
Wagons	33⅓	31	33⅓	33⅓	31	25	33⅓	31½	.....
Watches	.....	28½	.....	33⅓	.....	25	28½	29	15

SHEET 4

BUILDERS HARDWARE AND SUPPLIES

(RETAIL MARK-UPS EXPRESSED IN PERCENT OF RETAIL PRICE)

Item	Mark-Ups by Towns							Average	O.R.H.A. Price Guide Mark-Up
	Orillia	Niagara	London	Grimsby	Windsor	Welland	Milton		
Garage Door Hdwe	28½	.....	.....	33⅓	28½	28½	33⅓	30½	27
Brads	.....	.....	.....	33⅓	28½	28½	37½	32	33⅓
Cabinet Hardware	.....	.....	.....	33⅓	28½	28½	33⅓	31	33⅓
Casters	33⅓	33⅓	.....	33⅓	28½	28½	33⅓	31⅔	.....
Cloth (Hdwe.)	33⅓	33⅓	.....	33⅓	28½	28½	33⅓	31⅔	35
Comb. Door Hdwe	25	20	.....	33⅓	28½	28½	25	26⅔	33⅓
Door Hardware	.....	.....	.....	33⅓	28½	28½	33⅓	31	33⅓
Eavestrough and Fitt	.....	.....	.....	.....	28½	28½	33⅓	30	33⅓
Glass Substitute	33⅓	33⅓	.....	33⅓	28½	28½	10¾	28	.....
Glass and Sundries	.....	50	.....	50	.....	.....	50	50	50
Galvanized Sheet	33⅓	33⅓	.....	33⅓	28½	28½	10¾	28	33⅓
Hooks and Eyes	33⅓	33⅓	33⅓	33⅓	28½	28½	33⅓	32	33⅓
Insulation	.....	.....	.....	.....	33⅓	28½	33⅓	31⅔	.....
Mail Boxes	33⅓	33⅓	33⅓	.....	33⅓	28½	.....	32⅓	.....
Padlocks	37½	33⅓	33⅓	33⅓	33⅓	28½	33⅓	33⅓	33⅓
Ridge and Valley Iron	.....	.....	.....	.....	33⅓	28½	33⅓	31⅔	33⅓
Roof Coating	33⅓	33⅓	33⅓	33⅓	33⅓	28½	33⅓	32½	14½
Roofing	28½	20	28½	20	33⅓	28½	16⅔	25	15
Sash Hardware	33⅓	33⅓	33⅓	33⅓	33⅓	28½	33⅓	32⅔	33⅓
Screen Door Hdwe	33⅓	33⅓	33⅓	33⅓	33⅓	28½	33⅓	32⅔	33⅓
Screws	33⅓	33⅓	33⅓	.....	33⅓	28½	33⅓	32½	40
Shelf Hardware	33⅓	33⅓	33⅓	33⅓	33⅓	28½	33⅓	32⅔	33⅓
Tacks	33⅓	33⅓	33⅓	33⅓	33⅓	28½	33⅓	32⅔	40
Weatherstrip	33⅓	33⅓	33⅓	33⅓	33⅓	28½	33⅓	32⅔	33⅓

SHEET 5

TOOLS AND HARDWARE

Abrasives	33⅓	33⅓	33⅓	33⅓	31	28½	43	33⅔	33⅓
Axes	33⅓	33⅓	33⅓	33⅓	33⅓	28½	33⅓	32⅔	33⅓
Belting Supp	.....	31¼	.....	33⅓	.....	28½	33⅓	32¼	33⅓
Bits	33⅓	33⅓	33⅓	33⅓	33⅓	28½	33⅓	32⅔	33⅓
Bolts	33⅓	33⅓	33⅓	33⅓	37½	28½	33⅓	33¼	40
Braces	31	33⅓	33¼	33⅓	33⅓	28½	33⅓	32⅓	33⅓
Brushes (Horse)	33⅓	33⅓	.....	33⅓	.....	28½	33⅓	32⅓	.....
Cap Screws	33⅓	33⅓	33⅓	33⅓	37½	28½	33⅓	33¼	40
Chains and Rep	33⅓	.....	.....	33⅓	.....	28½	33⅓	32⅓	33⅓
Chisels	33⅓	.....	33⅓	33⅓	33⅓	28½	33⅓	32⅓	33⅓
Clamps	33⅓	33⅓	33⅓	33⅓	.....	28½	33⅓	32⅓	33⅓
Clevices	33⅓	.....	33⅓	33⅓	33⅓	28½	33⅓	32⅓	33⅓
Cold Chisels	33⅓	33⅓	33⅓	33⅓	33⅓	28½	33⅓	32⅔	33⅓
Collars	.....	.....	.....	33⅓	.....	28½	.....	31	.....
Combs (Curry)	33⅓	33⅓	.....	33⅓	.....	28½	33⅓	32⅓	.....
Drills Hand	31	33⅓	33⅓	33⅓	33⅓	28½	33⅓	32⅔	33⅓
Engines (Gas)	.....	.....	.....	.....	.....	28½	.....	28½	.....
Fencing Acc	.....	33⅓	.....	.....	.....	28½	33⅓	31¾	33⅓
Fertilizer	33⅓	28	33⅓	28½	25	28½	28	29¼	33⅓
Files	33⅓	33⅓	33⅓	33⅓	33⅓	28½	33⅓	32⅔	33⅓
Forks	28½	33⅓	33⅓	33⅓	.....	28½	33⅓	31¾	33⅓
Founts Etc	.....	.....	.....	33⅓	.....	28½	33⅓	31¾	.....
Garden Hose	33⅓	33⅓	28½	33⅓	28½	28½	27½	30½	33⅓
Garden Tools	28½	33⅓	33⅓	28½	31	28½	33⅓	31	33⅓
Grease Cups	33⅓	33⅓	.....	33⅓	.....	28½	33⅓	32⅓	25
Grinders	33⅓	33⅓	33⅓	33⅓	33⅓	28½	.....	32½	33⅓
Halters	.....	.....	.....	33⅓	.....	28½	.....	31	.....
Hammers	33⅓	33⅓	33⅓	33⅓	33⅓	28½	33⅓	32⅔	33⅓

SHEET 5

TOOLS AND HARDWARE

(RETAIL MARK-UPS EXPRESSED IN PERCENT OF RETAIL PRICE)

Item	Mark-Ups by Towns							Average	O.R.H.A. Price Guide Mark-Up
	Orillia	Niagara	London	Grimsby	Windsor	Welland	Milton		
Harness Hdwe	.....	.....	.....	33⅓	.....	28½	33⅓	31¾	.....
Hay Carriers	.....	.....	.....	.....	.....	28½	.....	28½	.....
Horse Shoes	.....	.....	.....	33⅓	.....	28½	.....	31	33⅓
Insecticides	31	26	.....	33⅓	33⅓	28½	33⅓	31	20
Lanterns Kero	.....	33⅓	33⅓	33⅓	.....	28½	33⅓	32⅓	33⅓
Lawn Mowers	33⅓	28½	28½	28½	28½	28½	28½	29¼	25
Levels	33⅓	33⅓	33⅓	33⅓	33⅓	28½	33⅓	32⅔	33⅓
Machine Bolts	33⅓	33⅓	33⅓	33⅓	37½	28½	33⅓	33¼	40
Mason Tools	.....	33⅓	33⅓	33⅓	33⅓	28½	33⅓	32½	33⅓
Misc. Farm Supp	33⅓	.....	.....	33⅓	.....	28½	33⅓	32¼	33⅓
Nails	.....	28½	33⅓	33⅓	28½	28½	28½	30	25
Oil Cans	28½	33⅓	33⅓	33⅓	.....	28½	33⅓	31¾	33⅓
Oilers	33⅓	33⅓	33⅓	33⅓	.....	28½	33⅓	32½	33⅓
Planes	28½	33⅓	33⅓	33⅓	33⅓	28½	33⅓	32	33⅓
Pliers and Nipper	33⅓	33⅓	33⅓	33⅓	33⅓	28½	33⅓	32⅔	33⅓
Post Drills	.....	33⅓	.....	33⅓	.....	28½	28½	31	33⅓
Poultry Supp	33⅓	.....	.....	.....	.....	28½	33⅓	31¾	.....
Power Mowers	25	.....	.....	23	23	28½	23	24½	25
Pulleys	33⅓	33⅓	33⅓	33⅓	.....	28½	33⅓	32½	33⅓
Rivets and Burrs	33⅓	33⅓	33⅓	33⅓	.....	33⅓	33⅓	33⅓	33⅓
Rope and Acc	33⅓	33⅓	33⅓	33⅓	.....	33⅓	31	33	33⅓
Rules	33⅓	33⅓	33⅓	33⅓	33⅓	33⅓	33⅓	33⅓	33⅓
Saws	33⅓	33⅓	33⅓	33⅓	33⅓	33⅓	33⅓	33⅓	33⅓
Saw Tools	33⅓	33⅓	33⅓	33⅓	.....	33⅓	33⅓	33⅓	33⅓
Scoops	.....	33⅓	33⅓	33⅓	.....	33⅓	33⅓	33⅓	33⅓
Scrapers	.....	.....	33⅓	33⅓	.....	33⅓	33⅓	33⅓	33⅓
Screen Wire	33⅓	33⅓	33⅓	28½	37½	33⅓	33⅓	33⅓	33⅓
Screw Driver	33⅓	33⅓	33⅓	33⅓	.....	33⅓	33⅓	33⅓	33⅓
Screw Plates	.....	.....	.....	33⅓	.....	33⅓	35½	34	33⅓
Sharp. Stones	31	33⅓	33⅓	33⅓	33⅓	33⅓	33⅓	33	33⅓
Shoe Findings	.....	.....	.....	33⅓	.....	33⅓	33⅓	33⅓	.....
Shovels	28½	33⅓	33⅓	.....	28½	33⅓	33⅓	31¾	33⅓
Sprayers	33⅓	33⅓	33⅓	33⅓	33⅓	33⅓	33⅓	33⅓	33⅓
Stanchions	.....	.....	.....	33⅓	.....	33⅓	.....	33⅓	.....
Stock Spray	33⅓	.....	.....	33⅓	33⅓	33⅓	33⅓	33⅓	33⅓
Stove Pipe	33⅓	33⅓	33⅓	.....	28½	33⅓	33⅓	32½	33⅓
Squares	33⅓	33⅓	33⅓	33⅓	33⅓	33⅓	33⅓	33⅓	33⅓
Sweat Pads	.....	.....	.....	33⅓	.....	33⅓	.....	33⅓	.....
Tanks	.....	.....	.....	.....	.....	33⅓	23	28¼	.....
Tank Heaters	.....	.....	.....	.....	.....	33⅓	28½	30⅔	33⅓
Tapes	33⅓	.....	33⅓	33⅓	33⅓	33⅓	33⅓	33⅓	33⅓
Taps and Dies	33⅓	33⅓	.....	33⅓	37½	33⅓	33⅓	34	33⅓
Tin Snips	33⅓	33⅓	33⅓	33⅓	33⅓	33⅓	33⅓	33⅓	33⅓
Tools	31	33⅓	33⅓	33⅓	33⅓	33⅓	33⅓	33	33⅓
Tool Handles	33⅓	.....	33⅓	33⅓	.....	33⅓	33⅓	33⅓	33⅓
"V" Belts	33⅓	33⅓	.....	33⅓	.....	33⅓	33⅓	33⅓	37
"V" Pulleys	33⅓	33⅓	33⅓	33⅓	.....	33⅓	33⅓	33⅓	33⅓
Vises	33⅓	33⅓	33⅓	33⅓	33⅓	33⅓	28½	32⅔	33⅓
Wagon Hdwe	33⅓	.....	.....	33⅓	.....	33⅓	33⅓	33⅓	.....
Washers (Steel)	33⅓	33⅓	33⅓	33⅓	37½	33⅓	33⅓	34	40
Wheelbarrows	28½	33⅓	28½	33⅓	28½	33⅓	25	30	20
Wire (Galv.)	33⅓	33⅓	33⅓	.....	28½	33⅓	33⅓	32½	33⅓
Waterers	.....	.....	33⅓	.....	.....	33⅓	33⅓	33⅓	33⅓
Wrenches	.....	33⅓	33⅓	33⅓	33⅓	33⅓	33⅓	33⅓	33⅓

SHEET 6

PLUMBING AND HEATING

(RETAIL MARK-UPS EXPRESSED IN PERCENT OF RETAIL PRICE)

Item	Mark-Ups by Towns						Average	O.R.H.A. Price Guide Mark-Up
	Orillia Niagara	London	Grimsby	Windsor	Welland	Milton		
Water Heaters						33⅓	33⅓	33⅓
Bathroom Acc			33⅓			33⅓	33⅓	
Blow Torch		33⅓	33⅓			33⅓	33⅓	33⅓
Clearners		33⅓	33⅓			33⅓	33⅓	
Closets (Comb.)						33⅓	33⅓	
Closet Seats		33⅓	33⅓			33⅓	33⅓	
Electric Pump			20			33⅓	26⅔	33⅓
Faucets		33⅓	33⅓			33⅓	33⅓	33⅓
Lavatory and Sink Ftgs.			33⅓				33⅓	
Packing			33⅓			33⅓	33⅓	33⅓
Pipe and Fittings		33⅓				33⅓	33⅓	33⅓
Pipe Wrenches		33⅓	33⅓			33⅓	33⅓	33⅓
Range Boilers			33⅓			23	28¼	25
Shower Fittings			33⅓			33⅓	33⅓	
Sinks			33⅓			33⅓	33⅓	
Stops		33⅓	33⅓			33⅓	33⅓	33⅓
Water Plumps			33⅓			20	26⅔	33⅓

SHEET 7

PAINT, SUNDRIES AND ACCESSORIES

Decals			33⅓	33⅓	33⅓	33⅓	33⅓	
Finishes	33⅓	33⅓	31	33⅓	33⅓	33⅓	33	
Ladders	33⅓			33⅓	33⅓	33⅓	33⅓	33⅓
Paint Brushes	33⅓	33⅓	33⅓	33⅓	33⅓	33⅓	33⅓	
Paint Sprayers				33⅓	33⅓		33⅓	
Putty	33⅓	33⅓	33⅓	33⅓	33⅓	35½	33⅔	33⅓
Putty Knives	33⅓	33⅓	33⅓	37½	33⅓	33⅓	34	
Sand Paper	33⅓	33⅓	33⅓	37½	33⅓	33⅓	34	33⅓
Steel Brushes	33⅓	33⅓	33⅓	37½	33⅓	33⅓	34	33⅓
Stencils				37½	33⅓		35½	
Wall Paper	37½			37½	33⅓		36	

SHEET 8

MISCELLANEOUS ITEMS

Gloves	33⅓	33⅓	33⅓			33⅓	33⅓	33⅓
Seeds	33⅓	33⅓	33⅓			33⅓	33⅓	
Toys and Dolls		33⅓	33⅓			33⅓	33⅓	

APPENDIX C

CANADIAN ASSOCIATION OF CONSUMERS

BRIEF

Submitted to

THE JOINT COMMITTEE OF
THE SENATE AND THE HOUSE OF COMMONS

ON

COMBINES LEGISLATION

November, 1951.

To the Joint Committee of the Senate and the House of Commons on Combines Legislation

Mr. Chairman and Members of the Committee:

The Canadian Association of Consumers speaks for the consumers of this country. Its authority to do so lies in its wide membership of individual women from all parts of Canada, and the affiliation of fifteen National organizations, which participate in our work.

This is the third brief which we have presented to a Government Committee stating our opposition to the practice of resale price maintenance. We welcome this opportunity to restate our stand on this matter because we believe that this practice is detrimental to the interests of the consumer, and all Canadians are consumers. We hope that this discussion in Parliament will make Canadians more fully aware of the danger to our economy of special price-fixing privileges. The growth of the present practice in Canada has been due, in part, to lethargy. This lethargy can only be attributed to the fact that few Canadians have been aware of the nature of the practice, and of its effects on their own individual economic well-being and on the national economy as a whole.

The practice of resale price maintenance has now been condemned, after extensive investigation, as an exploitation of the consumer and contrary to the principles of a free market, in the recent statement of the Government of the United Kingdom and by the Federal Trade Commission in the United States. It has also been condemned in Canada in the findings of the MacQuarrie Committee.

The Canadian Association of Consumers opposes it because it believes that:

1. *Resale price maintenance leads to a higher general level of prices.*
2. *The interference of resale price maintenance with free market conditions has further serious results:*
   (*a*) establishment of a private system of law and punishment;
   (*b*) restriction of sales outlets and entry into trade.
3. *Resale price maintenance imposes on the general public penalties and disadvantages which far outweigh the rather doubtful benefits which the practice is claimed to confer on dealers and manufacturers.*

I. *Resale price maintenance leads to a higher general level of prices.*

It is in fact precisely designed to prevent reductions in price. Although many other arguments are brought forward in its defence, the only reason for the practice is to keep prices up. As Mr. McGregor told this Committee. "It is obvious that the effect is to keep prices, right across the board, higher than they would otherwise be." For once, in this tangled maze of retail trade practices, the words mean what they say.

A manufacturer setting maintained prices must set them high enough to give an adequate profit to the distributor with the highest costs. Under free market conditions, a distributor in a low-rent district would be expected to sell at lower prices than a distributor in the main business district. A retailer who has no delivery service, gives no credit and does not spend much on advertising should be able to sell more cheaply than a retailer who extends credit, delivers goods and advertises extensively. A store with a large turnover is expected to have lower prices than a small store with small sales. But for the items under resale price maintenance, the prices in all these stores are the same. And if prices are set high enough to give the high-cost retailer a satisfactory margin, they are set at a higher level than the low-cost retailer requires.

This is a severe penalty for the public. It seems clear to us that if retail prices were free the stores with lower costs could sell more cheaply.

This exploitation of the consumer is openly admitted in a statement by a businessman before the Akron Chapter of the American Marketing Association in 1948. Asked how a manufacturer fixes the resale price of his product, he said:

> The answer, I am afraid, is that lacking any very scientific approach, he does it by a process of trial and error. The retail price obviously has to be a compromise and since it is considered safer to put it a little too high than a little too low, it is usually a compromise on the high side.[1]

Some of your witnesses have told you that some products whose prices are maintained are cheaper than similar products which the retailer is free to price. But the products are never identical. They may be many reasons why their prices differ—consumer preference, national advertising campaigns, fancy packaging, and so on. Prices of different articles cannot be used in comparison.

Sometimes comparisons are made, too, of margins allowed to distributors. Sometimes, you have been told, the distributor operates on a much narrower margin for price-maintained goods than on price-free goods. But this comparison is of no help to us. With price-maintained goods, the manufacturer often bears a high proportion of the total cost including most of the advertising: in such cases, distributors can obviously operate with a narrower margin than they need to carry price-free goods which they must advertise themselves. Therefore, the only valid comparison that can be made is between prices of the same products with and without resale price maintenance. We cannot make any comparisons of this nature in Canada today, but, fortunately, some such comparisons have been made in the United States.

Vermont, Texas, Missouri and Washington, D.C. are the only areas in the United States where the so-called Fair Trade laws, permitting resale price maintenance are not operative. In January, 1949, the magazine *Fortune* published an interesting comparison of prices in Washington, D.C. with those of nearby Maryland, where resale price maintenance is legally permissible. We quote a passage from the article:

> Congressmen and lesser residents of the District of Columbia can lather up with a big tube of Barbasol for 29 cents; in fair-trade Maryland

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[1] Resale Price Maintenance—Interim Report of the Committee to Study Combines Legislation—Ottawa, 1951, p. 19.

the same tube would cost 39 cents. The Congressmen can regenerate the blood cells with Lilly's Laxton Pulvules for $2.29, instead of the fair-trade price of $3.25. A bottle of *Old Grandad* is $5.45 in Washington, D.C., $6.65 (before State tax) across the line. Headache powders are a dime instead of 19 cents.

"A percentage study of 117 brand-name items showed thirty-five cost about a third less in Washington than in Maryland, thirty-eight about one quarter less and twenty-nine about a seventh less.

In Canada, while we are not able to compare prices of identical products in areas with and without resale price maintenance agreements, there is material available showing the effect of the import of resale price maintenance into Newfoundland since Confederation in 1949. The Report of the Royal Commission on the Cost of Living in Newfoundland, dealing with the effect of resale price maintenance on hardware prices, states:

"In several hardware lines in which there is resale price maintenance, the setting of prices has thus required dealers to take mark-ups definitely higher than those that had prevailed under more open competition."

We reproduce below a table from the report, showing the effect on two lines of hardware of particular interest to Newfoundland fisher folk, and comparing wholesale and retail prices and mark-ups before and after the introduction of resale price maintenance.

TABLE LXV—PRICES AND MARK-UPS

St. John

—	Cost to Wholesaler	Wholesale Price	% Markup	Cost to Direct Retailer	Cost to Small Retailer	Retail Price	Markup Direct Retailer	Markup Small Retailer
Battery.....March 1949 No. 6 Dry Cell.....	·46½	·55	18·3%	·46½	·55	·60	30%	9·1%
Battery.....Jan. 1950 No. 6 Dry Cell.....	·47½	·60	26·3%	·47½	·60	·80	69%	33⅓%
Paint Brush.....March 1949 (Teal 2").....	8·20 Doz.	10·05 Doz.	22·5%	8·20 Doz.	·838	·95	41%	13·3%
Paint Brush.....Jan. 1950 (Teal 2").....	6·40 Doz.	8·80 Doz.	37·5%	6·40 Doz.	·733	1·10	106%	50%

SOURCE: Report of the Royal Commission on the Cost of Living in Newfoundland, 1950: p. 78.

The Royal Commission reported that after the import of price maintenance the mark-up to direct retailers on batteries (No. 6 Dry Cell) jumped from 30 per cent to 69 per cent, and on paint brushes (2" Teal) from 41 per cent to 106 per cent. In the latter case, the wholesale prices of these brushes dropped, but the retail mark-up jumped so much that retail prices rose.

The foregoing examples of the effect of resale price maintenance are fairly clear evidence that the practice not only achieves its object of stopping prices from dropping, but that it actually leads to a higher general level of prices. We are confirmed in this view by the number of recent cracks in the maintained price structure, following the announcement by the Government that it intended to introduce legislation banning resale price maintenance. Consumers have reported to us numerous cases where stores already have cut prices which

were ordinarily fixed. It is interesting in this connection to note two contradictory passages in an editorial in the Canadian Pharmaceutical Journal of November 1, 1951:

> We as pharmacists know that any legislation to prevent price maintenance will not lower prices . . . .

and, a few paragraphs later:

> Already, before the legislation comes down, some retailers are taking advantage of the publicity by cutting prices; there has been an outbreak in Hamilton and another one in London and Woodstock. In other words, the Government even by expressing its intentions has loosened a few stones in the dam.

As consumers, we look forward hopefully to more "outbreaks" of lower prices of this nature. It is our firm belief that the general price level of goods presently affected by resale price agreements would be significantly lower without this restrictive practice.

The Canadian Pharmaceutical Association appears to be one of the best organized of the groups supporting resale price maintenance. We view with considerable alarm their efforts to maintain or in some cases to raise the prices of many goods, both within and without the drug field, at all outlets. Your counsel has already introduced a report from the Canadian Pharmaceutical Journal of September 15th, 1951, which shocked us considerably. It reported how the Board of Commercial Interests of the Canadian Pharmaceutical Association "handled complaints of price cutting". We would like to remind you of this one:

> Case No. 3 was a complaint from Associated Pharmacies, Saint John, N.B., against the Nestle's Food Co., who have no policy of price stabilization and allow Lactogen to be sold through mail order catalogues and mail order offices at very reduced prices.
>
> We have had three interviews with Mr. Grout of the Nestle's Co. He will not agree so far to stabilize retail prices on Lactogen. The best we have been able to obtain from him is a promise they will do their best to have mail order catalogue prices advanced to regular prices.

We see in this case a total disregard of the interests of the public. Here a strong group of distributors was attempting to extend the area of resale price maintenance and to obtain uniform higher prices so that their profits would not be threatened. This quotation also indicates a strange and very disturbing perversion of the language. Apparently "price stabilization" to the Canadian Pharmaceutical Association, means raising prices uniformly at all outlets. We hope that other advocates of resale price maintenance do not use these words in the same sinister sense.

There is other evidence that the best interests of the consuming public are not always uppermost in the minds of distributors who think to find security in maintained prices.

The Canadian Pharmaceutical Journal, February 1st, 1946, announced:

> A meeting of retail druggists representatives held at Bigwin Inn last fall agreed upon a "Minimum net discount of 40 per cent for pharmaceutical products". Also agreed to was an adequate margin of profit relative to turnover for proprietary and patent medicines firms. The specific percentages agreed to were 33⅓ per cent for patent medicines and 40 per cent for cosmetics. A plan was suggested for giving a "seal of approval" on all invoices of manufacturers who "conformed". The approval would be given by the B.C.I. (that is, the Board of Commercial Interests we have just referred to).

(In parenthesis, we find ourselves objecting to the retailers' habit of quoting mark-ups as percentages on selling costs. The mark-up, it seems to us, should be reckoned on the cost-price: otherwise the very phrase loses its meaning. When the Canadian Pharmaceutical Association speaks of 33⅓ per cent on selling price it means 50 per cent cost. Fifty per cent on selling price means 66⅔ on costs. We think everybody would understand what was happening very much better if the committee always considered mark-ups and margins as percentages of costs.)

The druggists have been able to obtain the margins mentioned above. In the June, 1951, issue of the National Merchandiser, the house organ of the National Drug & Chemical Co., the manufacturer advertises a new price policy, already brought before you by Mr. McGregor, offering a minimum 40 per cent profit to druggists over and above discounts on orders. All druggists will receive this profit regardless of their need.

If any druggist refused to accept this profit we have little doubt he would be made to conform. The Canadian Pharmaceutical Association keeps its members in line by the method exemplified in the Journal of September 15th, 1951, from which we have just quoted:

> Case No. 2 from the Manitoba Retail Druggists' Association was in regard to retail outlets in Winnipeg, one of which was a large drug outlet, not bringing prices into line with the new suggested minimum prices. The Manitoba Retail Druggists' Association worked diligently on this problem, principally locally. We co-operated with them by promptly contacting manufacturers whose lines were involved.
>
> We have on file letters from the manufacturers we wrote, assuring us they have been successful in having up-to-date minimum prices established in Winnipeg on their lines.

We have been wondering why such an apparently flagrant breach of the spirit of the anti-Combines law cannot be prosecuted under the present law. From what has been said in this committee we understand that if the retail druggists' association sought themselves to enforce minimum prices on one of their members they would be guilty of an offence under the Combines Act. They are immune to prosecution only because the enforcement is done through the manufacturer's legal right to fix a resale price on his products. It seems to us that in such cases resale price maintenance is providing a cover under which retail organizations can operate what is almost indistinguishable from a combine in restraint of trade.

We believe this cover should be removed: individual retailers should be left free both by manufacturers and by their own colleagues to fix their own retail prices. The Canadian public must benefit.

II. *The interference of resale price maintenance with free market conditions has further serious results:*

(*a*) Establishment of a private system of law and punishment.

(*b*) Restriction of sales outlets and entry into trade.

Establishment of a private system of law and punishment:

We believe that most Canadians wish to keep our economy working as freely as possible. This means that apart from certain measures necessary to protect the public, buyers and sellers of goods should be allowed to compete freely on the market, and that anyone desiring to enter business for these purposes should be allowed to do so, and that once in business, dealers should be free to determine the prices at which they will sell their goods. Resale price maintenance prevents any price competition in the resale of the products

subject to its control. If the distributors of price-maintained goods do not maintain the prices set by the manufacturer they are often punished by being denied further supplies.

The very conception of one manufacturer being allowed to impose his prices on thousands of individual retailers, after he has sold them his goods, is repugnant to all our ideas of freedom, particularly when it is associated with the threat of a particularly brutal form of punishment—witholding of the supplies on which the retailers' livelihood depends.

As spokesmen for the consumers who suffer from every extension of such "special privileges", we want to see them stopped before they spread any further. We protest particularly against the argument which would put the price-fixing arrangements of sectional interests for their own profit on the same level as Government action.

Thus the Canadian Pharmaceutical Journal for November 1st, 1951 said:

> The Government puts a floor on the price of wheat and the Provincial Governments set the price at which milk may be sold.

The Governments are accountable to us, Canadian consumers. If there is any price-fixing to be done they are the people to do it. The Government prints money: if private individuals do so it is the criminal offence of counterfeiting. If private organizations of retailers or manufacturers arrogate to themselves the right to fix prices, they are, we think, just as surely arrogating a power which belongs only to Government.

Restriction of Sales Outlets and entry into Trade:

To see the logical end of resale price maintenance it is necessary to go to a country where the practice is more widespread and longer-established than it has yet become here. Such is the United Kingdom, where the retailers' organizations themselves have recognized that its logical end it to restrict the people who may enter any particular trade.

Mr. McGregor has already quoted part of the following statement from the secretary of the British National Pharmaceutical Union. We would also like to draw your attention to the final paragraphs which Mr. McGregor did not read:

> In our country all proprietary medicine vendors have to be licensed and we woke up to the fact that the number of those vendors was increasing at the rate of eight to nine thousand per year... It is a fact that owing to the success of the price-maintenance movement initiated by the P.A.T.A., 38 years ago, the prices of proprietary medicines are, in fact, maintained and the 20 to 30 per cent profit which these articles yield has proved a tremendous temptation to other shop-keepers to invade the proprietary medicine business. Grocers and other traders with large turnovers in household goods are accustomed to a gross profit of 12½ to 15 per cent; hence any goods selling at a protected price which yields 25 per cent gross are regarded as extremely profitable merchandise lines to be cultivated.
>
> Hence you will see that the success of our own war to prevent price cutting within our own ranks has produced an army of competitors in our own business...
>
> My organization decided that it would be reasonable to ask manufacturers of proprietary medical and surgical goods to restrict their channel of distribution to the chemists' trade.
>
> We ask the propritors of these articles to sign an agreement for seven years, undertaking only to sell these goods through chemists. In return we, on behalf of the chemists, undertake to give those goods a free market and the utmost possible sales assistance, plus a really friendly atmosphere in the shops.

> On the other side, we ask all our members to refrain from giving window, counter or other displays of any kind to the goods or advertising material of any article within our specification which is not upon our list.[1]

In 1945 the Secretary of the Motor Trade Association of Great Britain, one of the most effective and tightly organized of the groups having as its aim the strict maintenance of resale prices, writes as follows:

> If, however, the functions of the association are limited to resale price maintenance in the narrower sense, this object will, for this very reason, be defeated.
>
> It seems reasonable to assume that a static policy of rigid and effective price maintenance will ultimately destroy itself, because the increase in numbers under the price protection umbrella will eventually produce the same low profit and no-profit conditions which arose under price cutting.
>
> It follows, therefore, that some form of limitation is to be advocated whereby a control may be exercised on those seeking to enter the retail side of protected industry. This is by no means novel.[2]

Similar demands for the restriction of entry have also been voiced by the National Leather Goods and Saddlery Manufacturers' Association (*The Economist,* 8/5/1943), Retail Fruit Trade Association and Cosmetic and Toilet Preparations Trade Association of G. B. (*The Economist,* 3/6/1944), Electrical Contractors' Association (*The Economist,* 17/6/1944), National Federation of Grocers' and Provision Dealers' Associations (*The Economist,* 16/9/1944).

In Canada we have not yet reached quite the same point; but we seem to be heading in that direction. Our druggists are already seeking—as their representatives told you in this committee—to restrict the outlets for goods which they would like to confine to drug-stores. In some cases, they have had success. We would ask you to note one particular case, which is of immediate concern to many of our members with young children.

Canadian grocery stores are not permitted to sell the infant cereals, Pablum and Pabena, both of them price-maintained. In the United States, over 90 per cent of the sales of these cereals are made in grocery stores, and it would be a great convenience to Canadian mothers to be able to buy the cereals for the baby of the family in grocery stores at the same time as the rest of the family supplies are bought. But we cannot do that. In the early months of 1950 the sales of these cereals in Canada were dropping. (Up to that time these products were sold through drug stores). In May of that year, Mead, Johnson & Co., Belleville, Ontario, the manufacturers of Pablum and Pabena, announced that it would "distribute its two baby cereals, Pablum and Pabena, to the grocery trade through food brokers." [3]

This announcement had barely been made, when the decision was reversed. While the announcement in the "Canadian Grocer" was in process of printing, so much pressure was put on the company that Mead, Johnson & Co. decided to continue to distribute Pablum and Pabena exclusively through drug stores. This decision was announced in the Canadian Pharmaceutical Journal of the same date. The druggists have made no secret of the pressure put on the manufacturer. As soon as it was learned that Mead, Johnson & Co. contemplated changing its distribution policy, telegrams were sent to all the key retailers across Canada informing them of the situation and asking them to wire the President of the parent Mead, Johnson & Co. in Evansville, Indiana. A meeting

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[1] Drug Trade News, September 13, 1937, p. 18.

[2] K. C. Johnson-Davies, Control in Retail Industry, (1945), pp. 7-8.

[3] Canadian Grocer, May 1, 1950.

of the President of Mead, Johnson & Co. and representatives of the drug association was arranged in Toronto on April 25th, 1950. The druggists report that in a brief presented to the manufacturers at that meeting, the Board of Commercial Interests of the Canadian Pharmaceutical Association stated:

> That undoubtedly the departure from the policy of drug-store-only sales would result in the development of ill-will for the Mead, Johnson & Co. among a considerable section of the drug trade.[1]

At that time, Mead, Johnson & Co. was introducing several new pharmaceutical products to the market. In negotiations with the company over the distribution of Pablum and Pabena, the druggists "made it quite clear that Canadian druggists' interests in these new products would be heightened by the knowledge that Mead, Johnson & Co. is continuing its present distribution policy".[2]

In this case the distributors of fixed-price goods were able to force the restriction of sales outlets, and protect their profits, regardless of the effect on the Canadian public.

III. *Resale price maintenance imposes on the general public penalties and disadvantages which far outweigh the rather doubtful benefits which the practice is claimed to confer on dealers and manufacturers.*

The foregoing sections have dealt with some of the penalties which resale price maintenance imposes on the public. We do not believe that any section of the economy secures sufficient benefit from this system to justify these penalties on consumers.

The statement is often made that resale price maintenance protects the small retailer, who would otherwise be put out of business by the bigger stores. We cannot agree with this statement. We consider that this practice creates only an illusion of safety for the little man. We know that the mark-up on price-maintained goods covers his costs and allows him a profit, but does he realize the effect of these same prices on the rest of his business?

By guaranteeing profits for the large retailers on a portion of their sales the system of resale price maintenance enables them to undercut the small distributors on price-free goods. This attracts customers to their stores and loses business for the small retailer.

We have already referred to the fact that the practice of resale price maintenance increases the number of outlets for price-maintained goods. These outlets are not only in small stores. We have noticed that in opening new departments, the chain stores carry a number of price-maintained goods in these new departments, (e.g., grocery stores (chain) now carry a number of toiletries such as tooth paste, hair shampoos, etc.) Can the trade stand these increased outlets? At the present time when incomes are high and sales are expanding it is difficult to convince the small retailer of the danger to his safety. But unless total sales continue to expand at a rate at least equal to the increase in the number of outlets, there is less business for each retailer. The result is that the cost per unit of sales increases, profits fall and the benefits of resale price maintenance to the small retailer disappear.

Some retailers, usually those in small communities, have expressed a fear that the removal of resale price maintenance will expose them to a prolonged price war. We do not feel this fear is justified. In small communities, success in retailing depends to a large extent on the personal ability of the retailer and on the service he gives to his customers. All stores compete under similar conditons: they know their clientele; they usually have about the same overhead expenses, variation in these depending on individual competence, and there is

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[1] Western Druggist, May, 1950.
[2] Canadian Pharmaceutical Journal, May 1st, 1950.

seldom any store with capital reserves adequate to finance a prolonged price-war. Retailers in small urban and rural districts are already meeting the competition from large distributors with their mail-order business. Local stores with their opportunities to display goods for their customers, and with their ability to give immediate satisfaction will always have an advantage over the mail-order distributor.

Manufacturers often support the practice of resale price maintenance because they claim it provides them with more outlets for their goods. Manufacturers feel that the more frequently consumers see their goods on display the more their sales will increase. We realize that the success of some of the modern merchandising method has been due, in part, to this factor. But the result of the policy of seeking more and more outlets is that the manufacturer fixes higher prices for his goods (to cover the costs of the high-cost retailers). This means the manufacturer deliberately chooses more outlets rather than lower prices. This is certainly not always to the advantage of the public. Even in these days of imperfect competition, we believe that lower prices will bring increased sales. It is not unlikely that a greater volume of sales at lower prices would more than compensate the manufacturer for less opportunity to display his goods.

It has been claimed before this committee that the system of resale price maintenance stabilizes production and employment in the manufacturing industry. How can this be so? With these price-fixing agreements, any fall in incomes and hence in the demand for these goods cannot affect their prices immediately. Retailers are not allowed to lower prices in an attempt to try and stimulate sales. The adjustment to the changed demand for the product has, therefore, to be made at the manufacturing level. In a period of falling incomes the whole burden of the drop in demand made under price maintenance is felt immediately at the manufacturers' level and his only possible response in the short run is to lower production and dismiss workers. Resale price maintenance, by making prices more rigid, thus makes for much wider fluctuations at the production level.

Some manufacturers claim that they need fixed prices for their trade-marked goods to secure the good will of the consumer. Manufacturers need to earn the good will of consumers by producing goods of good quality and by maintaining the quality. Consumers like goods sold under the trade mark of the manufacturer (sometimes referred to as branded goods). We like the system because we consider that manufacturers selling their products under trade marks are anxious to build up markets for their goods, and so aim to keep the quality of their goods stable. But this does not mean that we want the prices of these goods to be fixed. Few consumers would conclude that because the price varied from store to store that the quality of identical packages of branded goods also varied. The prices of many branded goods which are not price-maintained vary to-day from store to store. It is obvious that the costs of distribution vary from shop to shop and the consumer should have the choice either of buying in the store with lower costs (and paying less), or in the store with higher costs (and paying more).

Manufacturers of certain consumer durable goods claim that the practice of resale price maintenance is necessary to them, so that they can ensure good servicing of their products. We do not understand the connection. Consumer durable goods, especially household electrical equipment, have, to-day reached a high standard of performance. Few of these goods to-day require any servicing for a long period after they are put into use. The consumer would be better off if he paid a lower price for the article and paid his own service charges separately. Under the present arrangement he has to pay for service whether he needs it or not.

We have also noted the continual reference during your hearings to the danger of the "loss-leader" practice, and the confusion about what the phrase "loss-leader" means. All too often, it seems to us, your witnesses have used it as meaning what we call "healthy price competition." We are baffled, for example, by the statement of Mr. Preston, representing the Canadian Pharmaceutical Association, which is reported on page 151 of your proceedings.

> We assume that the minute the Government were to legislate against price maintenance every article that is now price-maintained would become overnight a loss leader.

This, and some of the other statements that have been made about "Loss Leaders", seem to us to be deliberate exaggeration of the problem. But we recognize that they may be a legitimate fear on the part of some small retailers lest bigger organizations with greater resources deliberately try to put them out of business by a predatory price-war. If this danger exists, we would draw your attention, and theirs, to Section 498A of the Criminal Code. It makes it an offence:—

> To engage in a policy of selling goods at prices unreasonably low for the purpose of destroying competition or eliminating a competitor.

We would have no objection to any strengthening of the law which may be considered necessary to prevent this or any other means of destroying competition. But in order to prevent predatory attempts by a bigger organization to ruin a smaller one, we cannot conceive it necessary to destroy all price competition at the retail level. That is what resale price maintenance does. If we are going to have laws to defend competition, let them defend it.

These arguments lead us to maintain that the practice of resale price maintenance hold no substantial long-run benefits for retailers or manufacturers to make up for the very serious penalities it imposes on the consuming public.

There have been claims that resale price maintenance benefits the consumer by making budgeting easier for the consumer who knows prices will not vary from store to store. We know of no consumer who would object to a revision of her budget because she found she could buy an automobile for $1,200 rather than $1,300. It is also claimed that resale price maintenance, by eliminating price competition between distributors, makes it possible for retailers to give consumers better service, and that service competition adequately replaces price competition as a protection of consumer interests. But service competition ultimately adds an additional charge on the price the consumer pays. We are confident that consumers would prefer lower varying prices to higher fixed prices, and would prefer to make their own choice between two stores—one with lower prices and one with better service.

To conclude, we summarize our arguments:

> We oppose the practice of resale price maintenance because we believe:
>
> 1. *That resale price maintenance leads to a higher general level of prices.*
>
> It creates a situation in which organized retailers almost inevitably exert a constant pressure on manufacturers for increased profit margins. It gives them a sanction—through the manufacturer's right to fix prices —which enables them to force all retailers to fall into a line with a set price policy. This pressure is always exerted towards keeping prices up, never towards bringing them down.

2. *That interference with free market conditions results in the establishment of a private system of law and punishment.*

From the reports of certain retail organizations we conclude that their methods of enforcing their own private rules about price maintenance are extremely effective; and we observe that such methods would already be illegal if they were not concealed behind the manufacturer's right to fix his own resale prices. The individual merchant is deprived of the right to decide his own prices: he is converted, whether he likes it or not, (in Mr. McGregor's pregnant phrase) from "the purchasing agent of the consumer into the selling agent of the manufacturer". If competition among retailers is thus to be eliminated, we, with most other Canadiens, will demand that the Government itself takes responsibility for fixing prices in the public interests, instead of private groups doing so in their own interests.

3. *That interference with free market conditions restricts sales outlets and entry into trade.*

We have shown that it has already had this effect in the United Kingdom, where resale price maintenance is more general than it is here. There are already signs that Canada is heading in the same direction. If Canadian retailers' organizations have not yet got to the point of restricting new entrants into the retail field, they have already started trying to restrict outlets for certain types of goods to their own stores.

4. *That it imposes on the general public penalties and disadvantage which far outweigh the rather doubtful benefits which the practice is claimed to confer on dealers and manufacturers.*

We have examined some of these claims at some length, because we do not wish to seem indifferent to the prosperity of our retailers and manufacturers. But we can only reach the conclusion that the advantages claimed for resale price maintenance are largely illusory and certainly short-lived. In the long run, we do not believe that the practice can benefit the small store against the large one; we do not believe it can benefit the manufacturer to be subject to increasing dominance by retail organizations; and we do not believe that resale price maintenance is the only—or even the best—protection for small retailers against predatory price-cutting (which is the only meaning we can give to the term "Loss-leaders").

The fundamental issue at stake in this question is the freedom of our economy. We believe that resale price maintenance restricts that freedom. It makes our economy more rigid; it restricts the freedom of individual merchants and it prevents price reductions in the articles affected. It removes from the consumer the protection of free competition and leaves him exposed to a system of private price fixing. We still believe that free price competition can effectively regulate prices. If any further regulation of prices is needed, such regulation should be done by the Government in the interests of all Canadians, rather than by private groups acting in their own interests.

In our free economy, price fixing by combines agreements is an offense: price fixing by private groups should be equally an offense.

On what basis can a particular group be given a right which conflicts with the basic principles of a nation's accepted free economy practices?

Respectfully submitted,

Mrs. W. R. WALTON,
President Canadian Association of Consumers.

APPENDIX D

BRIEF TO THE JOINT COMMITTEE ON COMBINES LEGISLATION

from

THE ALBERTA BRANCH, CANADIAN ASSOCIATION OF CONSUMERS

The Alberta Branch, Canadian Association of Consumers feels that Price Maintenance tends to keep the cost of distribution high.

We feel that the progressive retailer under this system cannot pass on to the Consumer any savings and thus increase his sales.

We think the consumer should pay a price related to the cost of the product and of the service he buys.

On the whole it keeps prices on certain articles far beyond consumer reach.

Respectfully submitted,

Mrs. W. E. STEWART,
Provincial President.

APPENDIX E

CANADIAN ASSOCIATION OF CONSUMERS
(Manitoba Branch)

BRIEF

Submitted to

THE JOINT COMMITTEE OF
THE SENATE AND THE HOUSE OF COMMONS

ON

COMBINES LEGISLATION

November, 1951

BRIEF TO THE JOINT COMMITTEE ON COMBINES LEGISLATION

From

THE MANITOBA BRANCH, CANADIAN ASSOCIATION OF CONSUMERS

The Manitoba Branch, Canadian Association of Consumers, advances the following arguments against Resale Price Maintenance to which there is a strong and wide-spread objection amongst consumers in our province.

1. The whole history of the growth of trade shows that the only protection for the public against exploitation lies in free competition. If such competition is excluded the safeguard of the public interest is lost. The resale price maintenance is a violation of this fundamental principle. So fundamental is this principle that the law endeavours to stop combines and monopolies. It has its root in the decision of the courts in the time of Queen Elizabeth that the monopoly for the manufacturer of playing cards granted by the Queen to a courtier was against the public interest and was, therefore, invalid.

2. Price Maintenance paves the way for combines and monopolies. Where the product is manufactured by a small number of companies it is a very simple thing for them, by a gentlemen's agreement, to fix a basic price. Without a fixed price at the retail level, it would be impossible to maintain a combine at the manufacturing level.

3. Resale price maintenance requires some method of enforcement. It is price control by private firms. Moreover, penalties are imposed on the retailers who fail to sell at the fixed price. Against such penalties there is no recourse at law. Further, Parliament has refused to establish a general system of price controls. Why, then, should some articles be subject to price control at the option of private interests!

4. The editorial in Saturday Night of November 24th, expressed concisely a basic reason for opposition to resale price maintenance.

> Once a manufacturer fixes prices the tendency of the organized retailers is to demand higher margins and be satisfied with lower turnover. Where retail prices are competitive they have to take lower margins and try for bigger turnover.

5. The power to fix prices opens the way to exorbitant profits limited only by what the manufacturer believes the consumer will pay for his product. If the law were to allow this practice of price maintenance the public interest could be protected against abuse only by an excess profits tax.

6. A fixed resale price pays for the brand name which has established and its maintained by extravagant advertising for which the consumer pays. If the quality is good the product will sell at a price commensurate with that quality and in competition with other products of the same nature. It has been proved to the consumer's disadvantage that—price does not always reflect quality.

7. Finally the Manitoba Branch, Canadian Association of Consumers endorses the findings of the MacQuarrie Report that "resale price maintenance constitutes a real and undesirable restriction on competition by private individuals".

Signed on behalf of the Manitoba Branch, Canadian Association of Consumers,

Mrs. C. K. NEWCOMBE,
President.

Miss AVIS CLARK,
Secretary.

APPENDIX F

CANADIAN ASSOCIATION OF CONSUMERS
ONTARIO BRANCH

BRIEF

Submitted to

THE JOINT COMMITTEE OF
THE SENATE AND THE HOUSE OF COMMONS

ON

COMBINES LEGISLATION

CANADIAN ASSOCIATION OF CONSUMERS
Ontario Branch

Ottawa, Ont.

November 30th, 1951

To: The Joint Committee,
Both Houses of Parliament, to consider the Interim Report of the MacQuarrie Committee on Price Maintenance.
Gentlemen:

The Ontario Branch, Canadian Association of Consumers present the following report to the Joint Committee set up to consider the Interim Report of the MacQuarrie Commission on Price Maintenance.

Organization:

The Ontario Branch, Canadian Association of Consumers joins with the National Association, Canadian Association of Consumers, in making representation with respect to "Price Fixing"—otherwise known as "Resale Price Maintenance".

Action Taken:

Upon learning of the decision of the Government to appoint a new committee to consider the subject of Resale Price Maintenance, we immediately wrote the Prime Minister, The Right Honourable Louis St. Laurent, Hon. Stuart Garson, Minister of Justice, Hon. Douglas Abbott, Minister of Finance and a number of other Ministers of the Crown, and all Ontario Federal Members of Parliament, urging their support of the proposed legislation.

Three Briefs:

The Ontario Branch, Canadian Association of Consumers, being the largest Provincial Branch, and Ontario being the largest and most diversified industrial Province, we feel we have a special interest and have given this legislation considerable study and publicity and are in favour of the recommendation of the MacQuarrie Commission. We have supported the National body of the Canadian Association of Consumers in the three briefs already presented to the three government committees set up to deal with Prices,—(Parliamentary Committee; Royal Commission on Prices and the MacQuarrie Commission)—and have urged each time Government legislation against Price Fixing.

Freedom of Price to Fluctuate Basic

The Ontario Branch feels that if we are to continue to have a system of free enterprise in Canada, *"The freedom of price to fluctuate is basic"*, and any fixing of prices works to the disadvantage of the consumer.

Women Control 85 per cent Buying and 51 per cent Vote

The Canadian Association of Consumers was organized four years ago and is organized on a *National, Provincial* and *Local* basis. It is a young and growing association of consumers supported by 56 of the largest National Women's Organizations in Canada. It is well known that approximately *85 per cent of the buying power* of the country is controlled by women buyers and women also control *51 per cent of the voting power.*

Surveys Research

To-day, through surveys, study, research, the Canadian Association of Consumers has become an authoritative voice that speaks for and represents all kinds and classes of consumers. We are non-political, non-denominational, non-racial. We have no axe to grind but work to improve the standard of living in all Canadian homes.

R.P.M. Works to Detriment Consumers

We believe Resale Price Maintenance acts to the detriment of Consumers for the following reasons:

(*a*) *Eliminates* price competition.

(*b*) *Operates to restrict* the supply of goods to the consumers at lowest possible price.

(*c*) *Discriminates* against the cash customer.

(*d*) *Deprives* the consumer of the free choice of the product which he wishes to purchase.

(*e*) It *tolerates inefficiency* in distribution.

(*f*) *Reduces incentive* of retailer to institute new methods of distributing merchandise which would reduce cost to retailer and in turn his price to the consumer.

(*g*) *Protests* the manufacturer, wholesaler, retailer, at the expense of the consumer.

(*h*) *Supply* and *demand* no longer are effective factors as the manufacturer can *regulate the supply* and *demand a fixed price.*

General Observations

The Woman Consumer To-day

The ordinary consumer to-day shows strain and frustration as she tries to plan and stretch her dollars and feels and knows that she is not getting the quality, standards and service she should be receiving from the industrial trade for the price she is required to pay. Many unfair and unjust practices confront her during her shopping and marketing for the home and family requirements. She is looking for service at lower prices, *not* higher, and feels Resale Price Maintenance *stops* store-keepers providing many services needed by the rigid fixed price system in use to-day. The enforced habit of having to carry parcels during the war has continued into the present. The trade clings to the protection and benefits afforded during the war, which have not changed sufficiently to post-war planning, e.g., delivery service, cash and carry, cash sales with no benefit to consumer compared to credit buying.

Lose Customers and Sales by R.P.M.

In that circumstance, by reason of price-fixing, the consumer is less and less patronizing the store, as she finds she may as well place her orders of merchandise by telephone as there is no variation in price with respect to similar merchandise. The merchant will find that he may be *losing* several sales on each telephone order by not attracting customers into his store.

Customer Resistance

The customer has to build up a real consumer resistance as she has to face continually very high prices and finds herself caught in the spiral of inflation. By price-fixing she sees every effort is being made by the trade to keep prices at the high level of to-day's fixed rate and it may take a long period of adjustment and corrective to establish good and friendly relations with the consumer.

Just and Unfair

A *just and unfair price* must be worked out by the trade, based on actual costs. The consumer's living costs must be returned to a more *normal* and *balanced* level if our economy is to become stabilized and safe from the forces of destruction that assail us on every side. Only at all levels of the trade and by all working groups within industry co-operating and working together will this be brought about.

Production Not Adequately Related to Price

Industry must see that present methods of Trade and Commerce are not geared to-day to the Atomic Age in which we live. When bread and milk, the two most basic and important nutritional food requirements in our diet, come into the realm of price-fixing, as consumers we feel we have just about had everything that the consumer can take. As they say: *"We have really had it"*. We hear where milk supplies are threatened to be cut off because an Independent Dairy (Ottawa) tries to experiment for the benefit of consumers and reduce the price of milk per quart by cash and carry method, in his milk bar. This case has had to be carried to the courts for protection to try out this experiment. This indeed shows how powerful and widely used trade restricted practices have become.

Releasing Curbs Brake Agreements

Governments, manufacturers, retailers, must release the curbs and brakes, private agreements, etc., of price-fixing that control prices to-day. They must be alert and eager to give the consumer some of the benefits in reduced prices. When Nature produces a bountiful harvest, etc., we find less and less is the consumer deriving any help from this all powerful and creative source. The *mark down* in prices lags far behind the *mark up*; and the consumer resents and is justly concerned when tax benefits are announced by Government to see the trade move in and at once expropriate any benefit, and say, with one voice, "It will all be taken up in higher wages, expansion plans", etc., etc., or other various sources, all divorced from a reduction in price to consumers. This kind of planning and thinking is not building the right relationship. The consumer must be able to purchase, if she so desires and needs, at the lowest possible price. *If the method is right the price will be right.*

Future Checking

We hope, gentlemen, when this legislation is enacted that it will not be necessary for either the Government or the consumer to have to police and check prices constantly in the stores regarding former resale price maintenance practices. Rather let all trade groups quickly accept the changes that are needed and plan for improved service to your *best customer*—"the woman consumer".

Delay of Report Benefits Trade

We are pleased to note that all members of the Chamber of Commerce and all retail members were not in agreement in the decision to ask the Government to delay the proposed legislation re resale price maintenance. This brief delay, etc., in receiving further evidence regarding resale price

maintenance has given the trade a chance to reduce and clear up some of the stock that has been piling up through recently reduced spending by consumers and the Christmas trade should help further reduce slow moving stock.

New Start

We hope the New Year will see a new, fresh start in putting our price merchandising affairs in order, where many new patterns of service and benefit will be worked out for the consumer.

Through the Canadian Association of Consumers, Canadian women are trying to take an intelligent and responsible part in the economic life of our country and they are trying to solve some of the problems facing us as a nation. We ask, also, that Government and business likewise respond to the challenge of our age and create in Canada the pattern for a better world of peace, prosperity and plenty for the future well-being of all citizens.

Sound Leadership

The Canadian Association of Consumers will continue to give sound leadership to all members and affiliated National Organizations who look to us to speak with an authorative voice. With faith and determination, Canadian Association of Consumers and all its Branches will carry out the purpose of our organization which are appended as follows:

Section 2, Constitution—Canadian Association of Consumers.
Purposes:

(a) To unite the strength of consumers to improve the standard of living in Canadian homes.

(b) To study consumer problems and make recommendations for their solution.

(c) To circulate information on matters of consumer interest and to secure and evaluate opinions.

(d) To bring the views of consumers to the attention of Governments, Trade, Industry, and to provide a channel for these to the consumer.

Respectfully submitted,

MRS. CLIFTON GRABAN,
President, Ontario Branch
Canadian Association of Consumers.

213 Wilbrod St.,
Ottawa, Ont.

APPENDIX G

BRIEF TO THE JOINT COMMITTEE ON COMBINES LEGISLATION

from

THE NEW BRUNSWICK BRANCH, CANADIAN ASSOCIATION OF CONSUMERS

Speaking on behalf of the Executive of the New Brunswick Branch of the Canadian Associaiton of Consumers, we strongly support the Federal Government in its proposed legislation regarding resale price maintenance.

The economy of Canada is founded on competition, and the retailer should be allowed to let the consumer share in the reduced prices which might result from such competition.

Moreover, in a democracy no individual or group of individuals should be allowed to make laws and enforce them.

Respectfully submitted,

Mrs. V. E. FALKJAR,
President, N.B. Branch,
Canadian Association of Consumers.

Dr. JESSIE I. LAWSON,
Secretary, N.B. Branch,
Canadian Association of Consumers.

Saint John, N.B.,
November 29th, 1951.

APPENDIX H

BRIEF TO THE JOINT COMMITTEE ON COMBINES LEGISLATION

from

THE SASKATCHEWAN BRANCH, CANADIAN ASSOCIATION OF CONSUMERS

The Saskatchewan Branch of the Canadian Association of Consumers, in accord with the opinion of the National body, has long been opposed to the practice adopted by many manufacturers of fixing a minimum re-sale price, below which retailers may not sell without risking a cut-off of further supplies or other disciplinary action.

The C.A.C. considers this practice unfair, economically unsound and a factor in the high cost of living. Through our National Association we have repeatedly requested legislation to make it illegal. We re-iterate that request at this time.

We have reviewed the MacQuarrie Report and its recommendations and find ourselves in agreement with the basic opinion these express. Summarized, these state that re-sale price maintenance is an undesirable restriction on competition by private agreement. Its tendency is to discourage economic efficiency. It is a manifestation of a restrictive and monopolistic practice. It does not promote general welfare. It is becoming more widespread. For these reasons and others the MacQuarrie Committee recommended that the practice be made illegal. We concur with these recommendations.

The Saskatchewan Branch of the C.A.C., urges that action be taken to ban this practice with a minimum of delay and at this Session of Parliament if at all possible.

Respectfully submitted,

MRS. C. M. SUGGITT,
Provincial President.

APPENDIX I

CANADIAN ASSOCIATION OF CONSUMERS
(Quebec English Branch)

B R I E F

submitted to

THE JOINT COMMITTEE OF
THE SENATE AND THE HOUSE OF COMMONS

on

COMBINES LEGISLATION

November, 1951.

BRIEF TO THE JOINT COMMITTEE ON COMBINES LEGISLATION

from

THE QUEBEC ENGLISH BRANCH OF THE CANADIAN ASSOCIATION OF CONSUMERS

The Quebec English Branch of the Canadian Association of Consumers wishes to place on record before the Joint Committee of the Senate and the House of Commons on Combines Legislation, its opposition to the present practice of resale price maintenance. In doing so it speaks for its twenty-seven local branches and, as far as can be ascertained, for its full membership of 1,800 members, all of whom have been circularized with a full explanation of our attitude in the matter, and none of whom have registered a contrary point of view.

Our provincial association believes that the practice of resale price maintenance violates the basic principles of our free marketing system, and that this fact alone should condemn it, whatever may be the arguments of expediency and group protection advanced in its favour. We submit that this price maintenance practice creates, at best, conditions and temptations for the industries employing it that favour monopolies and that substitute an individual's personal decision for the normal play of free price competition. At its worst, it exploits the consumer in low-income sectors of the country, by imposing price-levels on them that have no relation to the real overhead expenses of their local retailers. Price maintenance may be merely bad in principle for the wealthier consumer; it is bad in practice for all those whose low or average incomes makes slight economies of major importance.

As consumers, we would like to protest against the arguments that the housewife prefers to buy at fixed prices. We have found no evidence of such an odd attitude among consumers, who are just now striving desperately to

stretch their budgets to cover essentials and who judge an article by their own experience for its past quality, not by the fluctuations in its price. In questioning our members, we have found no case either where shoppers prefer the costly burden of services they have not required as a substitute for the price competition they know is their main protection against competition.

As consumers, and in many cases wives of retailers, we are anxious to keep the small retailer in business. We believe however, that the principles which protect the public and promote both efficiency and progress within our competitive economy, cannot be safely set aside, even for the protection of any one group, through that group's own decision. Even if the consumer benefited by the present practice, and we submit that in the aggregate they do not, we feel that the freedom of our market, the confidence consumers are entitled to place in the unhindered play of the competitive system that protects them, and their right to reap the benefits of a retailer's economies in the management of his affairs, are basically more important than a temporary advantage, resting on faulty principles.

The relationship of the retailer and consumer makes him as much an agent of the consumer as of the manufacturer. It is only in such a role that he can win the confidence of his customers and flourish. This relationship is violated when he is obliged to sell "brand" articles at a price above his normal margins of profit, merely to give luster to a manufacturer's "name" goods.

In conclusion, we would like to submit that price maintenance exploits even those who profit by it, since we are all consumers. That outlawing it would cause no proven damage, since the fears expressed by those who defend it have so far been chiefly forebodings, without actual evidence to justify them; and that maintaining the practice would cause its dangerous and rapid expansion throughout our economy. For these reasons we urge the Joint Committee on Combines Legislation to recommend the immediate banning of resale price Maintenance.

Respectfully submitted,

Mrs. H. E. VAUTELET,
Provincial President,
Canadian Association of Consumers.

APPENDIX "J"

WOODWARD STORES LTD.
Vancouver, B.C., Canada

Telephone Tatlow 5231—Cable Address "Woodwards"

In your reply please quote REF

James Sinclair Esq., M.P.,
Chairman:
Special Committee on Resale Price Maintenance,
Houses of Parliament,
Ottawa.

Sir:

For many years the Woodward organization has sought by every means in its power so to conduct its business that it can offer the best merchandise to customers at the lowest possible prices. This we believe to be the major purpose of the merchandising profession.

Price maintenance however has made it impossible for the merchant to reduce his prices below an arbitrarily fixed minimum, and has nullified his

constant search for new techniques which will enable him to sell for less. We wish therefore wholeheartedly to endorse the recommendation of the MacQuarrie Commission against resale price maintenance.

Experience has taught us that business interests are best served by placing first and foremost the interests of the public. Whoever else may benefit from maintained prices it is not the public. It is possible that certain manufacturers may benefit by their ability to command a predetermined price for their product, whatever its quality may be. It is possible that certain retailers may derive advantage from the restriction of effective competition. But it is also sure that the consumer is frequently denied savings he might have enjoyed through the efficiency which only competition can promote. The use of competitive méthods in bringing merchandise to the public is a powerful weapon against inflation.

Many forms of retail outlet are to be found in Canada. There are stores where customers serve themselves in order to save, and stores where they may receive exclusive individual attention. There are stores where they may order by telephone, have delivery, purchase at the same price for credit as for cash, and there are stores where none of these adavantages are offered. Is it reasonable to compel them all, irrespective of the amount of service they offer and irrespective of their widely different operating costs, to sell their product at the same price—and that price the highest the market will bear?

The whole of our Canadian economy is geared to a free enterprise system. It is the basis of our political creed. The man in the street has faith in it. He believes that sooner or later unfettered competition and the laws of supply and demand will defeat the bogey of inflation. The freezing of competitive selling is the very antithesis of free enterprise. For these reasons we oppose and have opposed it in principle and practice for 60 years.

We strive to sell merchandise in an efficient manner and at minimum margins consistent with good business. This too is the aim of many manufacturers with whom we do business and who have built up for their products an enviable reputation respected by retailers and consumers alike.

It is no more to the interest of the retailer than of the manufacturer to sell acceptable merchandise unprofitably. In free competition with other lines a product invariably finds its own level, and the manufacturer who has earned a good name will continue to enjoy the patronage of the consuming public.

Many products that have no resale price set by their manufacturer have sold successfully and profitably over a long period. There is no reason why the merchandise sold at maintained prices today would not enjoy a similar success when freed from resale restrictions.

Much of our merchandise is not price controlled; yet the practice is growing and as it grows, so surely is the stimulus of competition eliminated. So too grows the prevalence of excessive trade-in allowances, of premiums and prizes offered with major purchases to present an illusion of extra value. Sound business ethics demand that savings effected by competent merchandising be passed directly to the public.

The foregoing brief is respectfully submitted for your consideration.

W. WOODWARD.

APPENDIX K

Reason for Judgment, C. Duquette et al vs. Chas. E. Frossi & Co. Superior Court, Montreal.

CONSIDERING that the sending of a catalogue like that filed, as Exhibit P-11, by respondent to petitioners by name constitutes a pollicitation or an offer of sale and that the sale may become perfect by the sending of the order;

CONSIDERING, however, that this offer of sale was made on condition that the purchaser sell the products purchased from respondent at the prices indicated in the said catalogue, and that petitioners were aware of this condition and had complied with same since some twenty years;

CONSIDERING that if this condition is legal, respondent had a right to refuse the order seeing the violation of this clause by petitioners by selling certain products of respondent at lower prices than those indicated in the catalogue, and that if this clause is illegal, the contract depending on same is null and void, and petitioners may not demand execution of same by an order of this Court;

CONSIDERING furthermore that the principal conclusions of the petition for an injunction are not consistent with the provisions of section 957 C.C., the purpose of which is to prevent the commission or the continuance of an act, but not to request the execution of certain definite acts and that the other conclusions are not, for the moment, within the province of this Court;

CONSIDERING that the injury caused to petitioners, if there is such injury, is neither great nor irreparable and that they have a proper and effective recourse by a damage action that belongs to them by right if respondent has not abided by the undertaking to which it was bound;

CONSIDERING that the balance of the disadvantages would rather be to the detriment of respondent whose whole commercial policy and organization for the past fifty years would be greatly shaken, if not destroyed, by an order of injunction as demanded by the petition;

CONSIDERING that the request for an injunction, if it is granted, would have the effect of deciding the merit of the case by ordering the execution of a contract, that is to say exactly what petitioners seek to obtain by the action that must accompany the order of injuncion;

CONSIDERING that the petition of petitioners is unfounded both in fact and in law;

ON THESE GROUNDS:—

DISMISSES the said petition, with costs.

HOUSE OF COMMONS

Fifth Session—Twenty-first Parliament
1951

(Second Session)

JOINT COMMITTEE OF THE SENATE AND THE HOUSE OF COMMONS

ON

COMBINES LEGISLATION

Joint Chairmen—The Honourable Senator A. L. Beaubien
Mr. James Sinclair, M.P.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 15

FRIDAY, DECEMBER 7, 1951

INCLUDING SECOND AND FINAL REPORT

OTTAWA
EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY
1951

ERRATA

The submission of price information made to the committee by the Canadian Electrical Manufacturers' Association on November 30, and printed as Appendix "G2" to the Minutes of Proceedings and Evidence of Monday, December 3, contains percentage figures relating to profits and losses. In the submission, as printed, there is no indication as to which figures represent losses, and a reader would assume that all are "profit" figures.

The complete submission, corrected to indicate "loss" percentages, is reprinted as *Appendix E* to this day's Minutes of Proceedings and Evidence.

REPORT TO THE SENATE AND HOUSE OF COMMONS

FRIDAY, December 7, 1951.

The Joint Committee of the Senate and the House of Commons on Combines Legislation begs leave to present the following as its

SECOND AND FINAL REPORT

Your Committee, having considered in accordance with the terms of reference the Interim Report on Resale Price Maintenance of the Committee appointed to study the Combines Legislation, recommends to the House and Senate that a Bill along the lines of the bill hereto annexed be introduced to carry into effect the recommendations of the said Report.

Certain groups appearing before the Committee have expressed the view that one of the consequences of prohibiting resale price maintenance will be to enable large and powerful retailing interests to engage in a policy of selling goods at unreasonably low prices for the purpose of destroying the independent retailer. This Committee does not think that under present conditions there is any substantial likelihood of such policies being engaged in but would recommend to the government, in the event of such policies being practised, the vigorous enforcement of Section 498A of the Criminal Code which reads as follows:

> Every person engaged in trade or commerce or industry is guilty of an indictable offence and liable to a penalty not exceeding $1,000.00 or to 1 month's imprisonment, or if a corporation, not exceeding $5,000.00 who
>
> (*a*) is a party or privy to, or assists in, any transaction of sale which discriminates, to his knowledge, against competitors of the purchaser in that any discount, rebate or allowance is granted to the purchaser over and above any discount, rebate or allowance available at the time of such transaction to the aforesaid competitors in respect of a sale of goods of like quality and quantity;
>
> The provisions of this paragraph shall not, however, prevent a co-operative society returning to producers or consumers, or a co-operative wholesale society returning to its constituent retail members, the whole or any part of the net surplus made in its trading operations in proportion to purchases made from or sales to the society;
>
> (*b*) engages in a policy of selling goods in any area of Canada at prices lower than those exacted by such seller elsewhere in Canada, for the purpose of destroying competition or eliminating a competitor in such part of Canada;
>
> (*c*) engages in a policy of selling goods at prices unreasonably low for the purpose of destroying competition or eliminating a competitor, 1935, c. 56, s. 9.

97116—1½

Your Committee is of the view that if other types of predatory price cutting, the possibility and the nature of which cannot at the present time be foreseen, take place, the Government should then consider placing before Parliament further amendments of the Combines Investigation Act or the Criminal Code prohibiting such other types of predatory price cutting and providing adequate penalties for them.

A copy of the minutes of proceedings and evidence of the Committee is appended.

All of which is respectfully submitted.

A. L. BEAUBIEN,

JAMES SINCLAIR,

Joint Chairmen.

PROPOSED BILL

An Act to amend the Combines Investigation Act.

His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

1. The Combines Investigation Act, chapter twenty-six of the Revised Statutes of Canada, is amended by adding thereto, immediately after section thirty-seven thereof, the following section:

"Dealer" defined.

37A (1) In this section "dealer" means a person engaged in the business of manufacturing or supplying or selling any article or commodity.

Resale price maintenance.

(2.) No dealer shall directly or indirectly by agreement, threat, promise or any other means whatsoever, require or induce or attempt to require or induce any other person to resell an article or commodity

(*a*) at a price specified by the dealer or established by agreement,

(*b*) at a price not less than a minimum price specified by the dealer or established by agreement,

(*c*) at a markup specified by the dealer or established by agreement, or

(*d*) at a markup not less than a minimum markup specified by the dealer or established by agreement,

whether such markup or minimum markup is expressed as a percentage or otherwise.

Refusal to sell or supply goods.

(3) No dealer shall refuse to sell or supply an article or commodity to any other person for the reason that such other person

(*a*) has refused to resell or to offer for resale the article or commodity

(i) at a price specified by the dealer or established by agreement,

(ii) at a price not less than a minimum price specified by the dealer or established by agreement,

(iii) at a markup specified by the dealer or established by agreement, or

(iv) at a markup not less than a minimum markup specified by the dealer or established by agreement, or

(*b*) has resold or offered to resell the article or commodity

(i) at a price less than a price or minimum price specified by the dealer or established by agreement, or

(ii) at a markup less than a markup or minimum markup specified the dealer or established by agreement.

Penalty.

(4) Every person who violates subsection two or three is guilty of an indictable offence and is liable on conviction to a penalty not exceeding ten thousand dollars or to two years' imprisonment, or if a corporation to a penalty not exceeding twenty-five thousand dollars.

Inquiry.

(5) The Commissioner has authority to institute and conduct an inquiry into all such matters with a view of determining whether this section has been or is being violated and to make a report thereon in writing to the Minister, and for such purposes the Commissioner has all the powers, authority, jurisdiction and duties that are conferred upon him by this Act, including sections sixteen and seventeen, with respect to an inquiry as to whether a combine exists or is being formed.

(6) A report of an inquiry under this section shall be dealt with in the same manner as a report of an inquiry or investigation under this Act as to whether a combine exists or is being formed.

2. The part of subsection two of section thirty-nine A of the said Act that precedes paragraph (*a*) thereof is repealed and the following substituted therefor

(2) In a prosecution under section thirty-two or *thirty-seven A* of this Act or under section four hundred and ninety-eight or four hundred and ninety-eight A of the Criminal Code:

ADDENDUM:

Minutes of Proceedings, Thursday, November, 29, 1951, page 417, line 8: *Also present for the House of Commons* should include *Mr. Croll.*

MINUTES OF PROCEEDINGS

FRIDAY, December 7, 1951

The Joint Committee of the Senate and the House of Commons on Combines Legislation met at 10.30 o'clock a.m. The Joint Chairmen, the Honourable Senator A. L. Beaubien and Mr. James Sinclair, M.P., were present, Mr. Sinclair presiding.

Also present:

For the Senate: The Honourable Senators Burchill, Dupuis, Golding, Hawkins, Horner.

For the House of Commons: Messrs. Blair, Boucher, Carroll, Carter, Cauchon, Croll, Dickey, Mrs. Fairclough, Messrs. Fleming, Fulton, Garson, Harrison, Hees, Jutras, MacInnis, Mott, McLean (*Huron-Perth*), Roberge, Shaw, Stuart (*Charlotte*), Thatcher, Welbourn.

In accordance with the second recommendation contained in the Fifth Report of the Sub-Committee on Agenda and Procedure, concurred in on December 5, the Committee proceeded to a discussion of Mr. Croll's notice of motion relating to loss leaders.

At 12.05 o'clock p.m., strangers were excluded and the Committee continued its deliberations in camera.

The Committee proceeded to consideration of the proposed draft bill tabled by Mr. T. D. MacDonald on November 14, which was printed as *Appendix A* to that day's Minutes of Proceedings and Evidence.

Mr. Stuart moved that the Committee adopt, as its Second and Final Report to the House, the following:

Your Committee, having considered in accordance with the terms of reference the Interim Report on Resale Price Maintenance of the Committee appointed to study the Combines Legislation, recommends to the House and Senate that a Bill along the lines of the bill hereto annexed be introduced to carry into effect the recommendations of the said Report.

Certain groups appearing before the Committee have expressed the view that one of the consequences of prohibiting resale price maintenance will be to enable large and powerful retailing interests to engage in a policy of selling goods at unreasonably low prices for the purpose of destroying the independent retailer. This Committee does not think that under present conditions there is any substantial likelihood of such policies being engaged in but would recommend to the government, in the event of such policies being practised, the vigorous enforcement of Section 498A of the Criminal Code which reads as follows:

> Every person engaged in trade or commerce or industry is guilty of an indictable offence and liable to a penalty not exceeding $1,000.000 or to 1 month's imprisonment, or if a corporation, not exceeding $5,000.00 who
>
> (*a*) is a party or privy to, or assists in, any transaction of sale which discriminates, to his knowledge, against competitors of the purchaser in that any discount, rebate or allowance is granted to the purchaser

over and above any discount, rebate or allowance available at the time of such transaction to the aforesaid competitors in respect of a sale of goods of like quality and quantity;

The provisions of this paragraph shall not, however, prevent a co-operative society returning to producers or consumers, or a co-operative wholesale society returning to its constituent retail members, the whole or any part of the net surplus made in its trading operations in proportion to purchases made from or sales to the society;

(*b*) engages in a policy of selling goods in any area of Canada at prices lower than those exacted by such seller elsewhere in Canada, for the purpose of destroying competition or eliminating a competitor in such part of Canada;

(*c*) engages in a policy of selling goods at prices unreasonably low for the purpose of destroying competition or eliminating a competitor, 1935, c. 56, s. 9.

Your committee is of the view that if other types of predatory price cutting, the possibility and the nature of which cannot at the present time be foreseen, take place, the Government should then consider placing before Parliament further amendments of the Combines Investigation Act or the Criminal Code prohibiting such other types of predatory price cutting and providing adequate penalties for them.

Mr. Croll moved in amendment thereto that the recommendations contained in the second and following paragraphs be struck out and the following substituted therefor:

1. That no dealer shall sell or offer for sale directly or indirectly any commodity at a price les than 5 per cent above cost.

2. That this provision shall not apply to the following sales:
   (*a*) of goods damaged or of goods which form the balance of a line which has been discontinued or is out of season
   (*b*) of sales for charitable purposes or relief agencies
   (*c*) of perishable merchandise which must be sold promptly in order to forestall deterioration and consequent loss
   (*d*) of merchandise sold in bona fide clearance sales if advertised marked, and sold as such
   (*e*) of merchandise sold upon the final liquidation of any business and is advertised, marked and sold as such
   (*f*) under the Bankruptcy or Winding-Up Act or by judicial order.

3. "Cost" means invoice cost to bona fide dealer or replacement cost, whichever is lower, less cash or quantity discounts, plus excise duties and sales taxes, if any.

4. "Directly or indirectly" is intended to include trade practices by way of evasion of the Act such as
   (*a*) combination sales of commodities
   (*b*) inflated trade-in allowances
   (*c*) concealed price reductions in premiums and discounts and other sales practices, such as "loss leaders".

5. That it be made an offence, and dealt with under the Summary Convictions Section of the Code.

At 12.45 o'clock p.m. the Committee adjourned until 3 o'clock, p.m. this day.

AFTERNOON SITTING

The Joint Committee of the Senate and the House of Commons on Combines Legislation met in camera at 3.00 o'clock p.m. The Joint Chairmen, the Honourable Senator A. L. Beaubien and Mr. James Sinclair, M.P. were present, Mr. Sinclair presiding.

Also present:
For the Senate: The Honourable Senators Aseltine, Burchill, Dupuis, Golding, Hawkins.

For the House of Commons: Messrs. Blair, Boucher, Carter, Cauchon, Croll, Dickey, Fleming, Fulton, Harrison, Hees, Jutras, MacInnis, Mott, McLean (*Huron-Perth*), Roberge, Shaw, Stuart (*Charlotte*), Thatcher, Welbourn.

The Committee resumed discussion of Mr. Stuart's motion and Mr. Croll's amendment thereto.

And the question having been put on the said amendment, it was negatived.

Mr. Fulton then moved, in amendment to Mr. Stuart's motion, that all the words after the words *Your Committee* in the proposed report to the House be struck out and the following substituted therefor:

(1) was appointed to consider the MacQuarrie Committee's report on resale price maintenance and appropriate amendments to the Combines Act based thereon;

(2) it became evident early in our proceedings that not sufficient time was available to enable the Committee to call all the witnesses and study all the evidence it would be necessary to hear and study in order to arrive at a sound conclusion on these matters;

(3) your Committee, having been much impressed by the very real concern felt by retail merchants over the danger to them from unfair competition and "loss-leadering" practices by powerful chain and departmental stores if price maintenance is eliminated, is of the opinion that if any legislation is ever to be enacted against the one type of practice it must be accompanied by complementary legislation against the other;

(4) your Committee has been unable, in the time at its disposal, to study and work out legislation which it can confidently recommend as being constitutional and effective to meet the danger of "loss-leadering";

(5) your Committee therefore reports that it is not in possession of sufficient evidence on which to base legislation and recommends that further careful consideration be given to this whole subject, and particularly to the question of Fair Trade Laws along the lines of those in force in the United States of America, as a proper and workable solution of the problem.

After discussion, and the question having been put on the said amendment, it was negatived.

And the question having been put on Mr. Stuart's motion, it was agreed to.

In accordance with the recommendations contained in the Fourth Report of the Sub-Committee on Agenda and Procedure, concurred in on November

30, and in the Fifth Report of the said Sub-Committee, concurred in on December 5, the following documents are printed as appendices to this day's Minutes of Proceedings and Evidence:

Appendix A: Brief submitted to the Committee by the National Council of Women.

Appendix B: Brief submitted by the Great Western Garment Company Limited.

Appendix C: Brief submitted by the Retail Merchants Association of Saskatchewan.

Appendix D: Brief submitted by the Bulova Watch Company Limited.

At 3.48 o'clock p.m. the Committee adjourned *sine die*.

A. L. BURGESS,
Clerk of the Committee.

EVIDENCE

DECEMBER 7, 1951.

10.30 a.m.

The CHAIRMAN: Gentlemen, we have a quorum.

Mr. MACINNIS: Mr. Chairman, just a remark on a small controversial point before we begin. As the House convenes today at two o'clock, I assume we will adjourn at 12.30.

The CHAIRMAN: Fine. If we do not finish our business we can always move an adjournment to three o'clock or seven o'clock.

Our order of business today is, first of all, an open committee according to our last committee decision on procedure, to hear a discussion from members of the committee, five minutes apiece, on Mr. Croll's notice of motion relating to loss-leaders which will be found at page 417, or page 452 of our proceedings.

Mr. CROLL: Mr. Chairman, the resolution appears on page 452 of our proceedings. I am not going to read it, in the interest of time, but I point out that at this stage the time has come—

Hon. Mr. GOLDING: Would you mind reading it? I have not brought mine here with me today.

Mr. CROLL: The time has now come for us to unwrap our position and emerge from behind the committee curtain and give our views on the MacQuarrie report and its consequences. I take the historical position of the Liberal party on trusts, cartels and combines, I am against them, and I am reminded of the words of the late Mr. King, repeated by Hon. Mr. St. Laurent on a few occasions, that when special interest conflicts with general interest, the Liberals stand for the general interest. So this gives us an opportunity now to lower the boom on the price fixers. I believe that the committee will recommend the report, which will be followed by legislation, the result of which, I believe, will be to set free the retailer and the consumer and give real meaning to the words "free enterprise". I do not think parliament can longer sanction conspiracies or combines, whether they be horizontal or vertical. Parliament cannot allow a system of private law with kangaroo courts. I appreciate that the loss-leader is difficult of precise definition. Most of us can recognize one when we see one, but it is very hard to define. But in its effect it causes minor dislocations, it misleads the consumers and diverts business from the fair price dealers. In broader effect, it wipes out competitors and concentrates power in big business and big centres, and big business gets bigger and bigger. Mr. Hougham, who was before the committee yesterday, made a statement that stayed with me, I quote:

> When giants contend, the little fellow is trodden underfoot.

I believe that the retailer is not wedded to resale price maintenance and the evidence has indicated there is no great profit motive. He makes better profit out of other items. Nevertheless, he supports it in self-defence and self-preservation. It is a defence mechanism for him to stave off what he considers the predatory economic enemy, the department, the chain and the mail order houses. The retailers collectively through their organizations have checked these giants on resale price maintenance. They have said to them "If I have to maintain this price everybody else must maintain this price", and they have been effective in that respect.

I think the small retailer is second only in interest to the consumer. The consumer comes first. I do not believe he is expendable, I believe it would be a great social loss if we abandoned the small retailer. We cannot abandon him because his species is very necessary to the community. If we let loose the predatory price cutters they can have a Roman holiday cutting prices. I believe they will create havoc in the trade. It will be a short lived holiday for the consumer because in the end it will be expensive to the consumer.

This resolution is made with the hope of bringing in a companion resolution to combat loss-leader practices, which will protect the community from monopolies and from controls of avenues of distribution and production. Granted this resolution is far from perfect, and there is much room for improvement in it, but I would ask the members who have views on it not to punch it full of holes but to suggest something better. I am not going to talk about how you are going to enforce it and obtain convictions, but I know in the United States they have had some success in bringing to an end this practice that I think should not prevail. If it does no more than say to those to whom it needs to say, "The government does not approve of such practices," in effect it may say to them, "Live and let live."

I do not think we should leave our committee without in some way getting across to the people of this country that there is no immunity for price cutters, that we are not looking for temporary objectives, what we are looking for is reduced prices that will stay reduced and at the same time give to the retailer and consumer a fair deal and give the manufacturer a fair profit.

Mr. Chairman, I would ask the members to read the resolution again and I ask their support for this resolution because I think it can do more good than harm.

Mr. JUTRAS: I welcomed Mr. Croll's motion last Thursday, because I thought it was desirable for the committee to arrest its attention on that particular phase which is detrimental to the interest of all concerned with the possible exception of the promoter of combines.

I confess I am no judge of the form of formula before us, and as a matter of fact it didn't receive much support from the witnesses who appeared before us, but I was impressed in both the bread and match cases by the fact that they achieved their end greatly through the device of price cutting. On the other hand, I am sure, particularly after the evidence submitted to us, that resale price maintenance is no answer to that problem. As a matter of fact it vests full control in the manufacturer's hands and therefore facilitates the establishment of such organizations.

Nobody in this committee, I am sure, wants to see the little merchant discriminated against or placed in an economically impossible situation. I for one would like to give him some assurance of his survival even after price maintenance has been removed.

Mr. FLEMING: I just have this word to say, I do not think we need to spend any time speaking against monopolies. We are all against monopolies, conspiracies and cartels. We did not need evidence about loss-leaders to convince us of their undesirability. I think we are agreed there is no doubt it is a thoroughly vicious practice. What I understood we were dealing with was the proposal of Mr. Croll to pass legislation to outlaw that aspect of the problem.

Now, the questions naturally arise in reviewing a draft of the kind Mr. Croll has submitted, is it going to to achieve its purpose, is it workable, is it constitutional? I presume the Department of Justice must have studied this draft with that in mind. I think we should have now from the Minister of Justice some statement presenting his view and the view of his department

in regard to this draft legislation. Is it in the view of the department constitutional, is it enforceable, is it workable?

Hon. Mr. GARSON: Are you referring to Mr. Croll's amendment?

Mr. FLEMING: Yes, that is what I understood we were to discuss this morning. We are not discussing the whole question of the reference to the committee. We are dealing with the draft legislation submitted by Mr. Croll on November 29, and I think the committee is entitled at this point to the assistance of the Department of Justice on those aspects of Mr. Croll's draft.

The CHAIRMAN: The minister is here as a member of the committee.

Mr. FLEMING: We should not think of dealing with any matter such as this without assistance from the Department of Justice. For instance, we were considering simple amendments to a bill this week in the Radio Committee and members said they would not think of touching them until we called in some law officers of the Department of Justice. This is a matter of very great importance and I think members of the committeee, whether we are lawyers or not, all want at this point the assistance of the Department of Justice based on a study of this draft of Mr. Croll's which was put in a week ago yesterday.

Hon. Mr. GARSON: First of all I would like to make clear that no study has been made by the Department of Justice or anybody else that I know of of Mr. Croll's amendment. It came before the committee before I heard anything about it and I think all the committee members here saw it at exactly the same time. With great deference I think Mr. Fleming is getting the cart before the horse because the first thing the committee has to decide is whether in principle it favours the prohibition of loss-leaders, and then I think it has to decide, as the point of substance involved, whether it considers loss-leaders as cost plus 5 per cent or cost plus mark-up or merely the invoice cost price. And it is only,—as I am sure my hon. friend who is a lawyer will realize himself,—it is only after the client in these matters has made up his mind as to the substance he wants to have put into the draft that the lawyer addresses himself to the form in which that substance is to be put.

On the question of whether or not it is constitutional, I think I can give my friend assurance that we have had a judgment of the Privy Council affirming the constitutionality of the Combines Investigation Act, which states that certain economic offences fall sufficiently within the ambit of the criminal law, and therefore within federal jurisdiction. So the committee does not need to concern itself very deeply about constitutional aspects.

Whatever the committee makes up its minnd to do, if you will instruct the Department of Justice I think we can produce a good statute which will be constitutional, intra vires, and which will hold water. But on these other points which have to be decided first of all, in view of all the accusations which have been made in this committee that the government is rushing this through and dominating the committee and imposing its will on the committee, I think it might be preferable to let the committee discuss the matter and see what conclusions it could arrive at. I would be glad to review those conclusions when they are defined rather than to be accused of giving any hint to the effect that the government members of the committee should or should not favour any loss-leader legislation.

So far as the difficulties of enforcement are concerned, the committee members are in a pretty good position to judge for themselves what they might be. They have heard a number of witnesses and I do not think there were any two of those witnesses who agreed on what would be a proper definition of "loss-leader" or anyone who would be brave enough to attempt to define it at all. The witness said that a definition might be this, that, or something else.

Now, if you are going to prohibit something you must first of all obtain a clear idea of what it is you are going to prohibit. The committee members have all heard the witnesses the same as I have, and I shall not presume to offer them any advice as to what judgment they should reach upon that evidence. Unless or until the committee reaches some opinion on this point, I do not think there is any occasion for me to make any pronouncement concerning it as minister.

If we can reach an agreement on what we think a loss-leader is, and if we can all agree that we should prohibit it, then perhaps we should get Mr. MacDonald to come back so that we could say to him: "here is what we have in mind. Do you think you can make it stick? Do you think you can enforce it?"

If you want my opinion—it would be a rather vicarious one because I am not the person directly engaged in enforcement—I think the first point we have to decide in this committee on the basis of the evidence we have heard, is what is the substance we are going to put into this provision.

A lawyer cannot draft an agreement until his client tells him what he wants to have put into that agreement. So I think we must first of all decide what we have in mind as a loss-leader. I can assure the committee that if the committee makes up its mind as to what substance it wants to have put into this provision, we can whip it in shape in short order.

Mr. FLEMING: Mr. Chairman, whatever merit there may be in the minister's argument, it strikes me that it raises a problem about the procedure we are embarked on this morning. I was sitting in another committee at the moment when the last motion was passed dealing with the procedure to be followed this morning. I think the statement made by the minister does not quite agree with my understanding of what we are to deal with here this morning. I thought that Mr. Croll's resolution was to go right away into the discussion this morning, and that when it had been discussed, the committeee would then go into executive session with regard to the broader subject referred to it, which is what I understood the minister to say should be disposed of first.

Hon. Mr. GARSON: Oh no, no!

Mr. FLEMING: You say that we should consider Mr. Croll's proposal only in relation to the larger question. I wish we could get this clarified because I hope we are not going to run into another wrangle or misunderstanding about procedure. We do not want anything of that kind. I have come here under another impression than the one the minister has indicated as being the proper course to follow in the discussion.

The CHAIRMAN: As a matter of fact, I would much prefer to have it done in our own committee rather than in public, but Mr. Croll and Mr. MacInnis felt this matter of loss-leader had arisen so often in the discussion that there should be an opportunity for members to indicate their interest in it in a discussion. What is a loss-leader? Is it this definition of Mr. Croll's in the first paragraph, cost plus 5 per cent?

The other thing which occurs to me is that when a committee recommends legislation to the House, then once the House is seized of it, it is for the House and the Department of Justice actually to turn it into actual drafting language of a statute.

The hon. Mr. Garson indicated his own feeling that the end to be achieved by this is constitutional under the Combines Act.

Mr. MACINNIS: I do not think there should be any difficulty in regard to procedure in this matter. What we have now before us is a motion or resolution which we will discuss in this part of the committee that we are in. We will discuss the principle of it as if we were discussing the principle of a bill on

second reading. Then, when we come to the in camera part of the meeting, if we have approved this resolution, then that is a part of what we will discuss in camera and we will discuss the ways and means of giving effect to it.

The CHAIRMAN: That was my understanding.

Hon. Mr. GARSON: The committee will make up its mind.

The CHAIRMAN: We are not going to make up our minds in public.

Hon. Mr. GARSON: I appreciate that; we are not going to make up our minds in public. A matter of this kind will involve very practical points, and we will be very glad to provide facilities to put them into the form of legislation.

Mr. FLEMING: We are all thinking about expediting our task where we can, and if the only principle involved is whether we are for or against the practice of loss-leaders, I do not think the committee need spend a very long time at this stage of its proceedings.

The CHAIRMAN: That is why I indicated the 5 minute procedures.

Mr. FLEMING: I feel everybody thinks that the loss-leader is a vicious practice. The other point which I thought we were to discuss was whether legislation of the kind introduced by Mr. Croll would achieve the purpose. But if that is a matter for discussion at a later stage of the committee, I do not think we need to spend very much longer on this part of it.

The CHAIRMAN: Mr. Croll took only 4 or 5 minutes to indicate his position.

Hon. Mr. GARSON: May I suggest that it is hardly enough for us to say that we are against loss-leaders. We are against loss-leaders no doubt, and we are against sin.

Mr. MACINNIS: Who is?

Mr. HEES: Are you not against sin?

Hon. Mr. GARSON: I think that back of the discussion of the principle involved, we have got to say what the loss-leader is that we are against; and until we all agree upon the loss-leader that we are against, all our talk about being against loss-leader is just vapor.

Mr. FULTON: Well, doesn't that statement of the minister show the importance of having Mr. Fleming's question answered? In Mr. Croll's motion we have before us not a statement of general principle, upon which I agree we would have to have a definition of terms, but a specific proposal for legislation in concrete form, because the proposal is in concrete form and not in mere general terms.

What we want to know from the minister or from the Department of Justice is not a statement as to principles, but whether this specific proposal is in fact constitutional and workable so that it would be proper for the committee to recommend this specific proposal to the House. That is what Mr. Fleming's question was.

Hon. Mr. GARSON: I would point out to my honourable friend something I apparently have not got over to them yet, that what should be the substance of the definition of a loss-leader is for the committee to decide; and with due appreciation of the compliment that my honourable friend pays me, I do not claim any greater ability to determine this than any other member of the committee. Now, as to whether it is constitutional or not, I must confess we have never considered these proposals of Mr. Croll's seriously from that standpoint. We have not gone into them. Yet what I said a few moments ago still stands—that when the committee makes up its mind as to what, in substance, it regards as a loss-leader, I do not think we will have any difficulty in drafting legislation to prohibit it, legislation which is constitutional in every way.

The CHAIRMAN: Mr. Fleming can now start with his five minutes.

Mr. FLEMING: As I understand what the minister has said, this question is how we work out or try to achieve what Mr. Croll has set out to do, which, I think, is generally endorsed by members, namely to try to curb this vicious practice of loss-leaders. That is something that has to be worked out in keeping with that other assignment of the committee, that is something we have to do when we come into our executive session. Now, we are only discussing the principle of Mr. Croll's proposals, that is what you have indicated we are doing now, Mr. Chairman, the principle being to attack this vicious practice of loss-leaders. I think we need spend no more time on that but go into our executive session and get to the meat of the problem.

The CHAIRMAN: That is what I thought we should do, but the members voted it down.

Mr. DICKEY: On a point of order, it is not only the general principle of whether or not you are against loss-leaders—Mr. Croll has put forward a suggestion and I thought we were to have five minutes to express in general terms whether we thought that this particular expression of opposition to loss-leaders was what members would support.

The CHAIRMAN: Every member who wants to is going to have five minutes to say what he wants to say, and then at the end of that time we are going into executive session. Whatever you say during your own five minutes is your own responsibility.

Mr. HEES: Mr. Chairman, I believe that if this legislation to abolish price maintenance passes, the small retailer must be protected against the loss-leaders, and I believe that it is very important that the legislation against loss-leaders must be workable and enforceable legislation. First of all, as has been said here, this committee must try and decide what is a loss-leader, and that is a very, very, big question and will take a lot of time to decide. I believe that a great deal of study must be given by this committee to this important legislation on the question of what is a loss-leader, and that we should devote ourselves to such a study without closing our proceedings today. I believe, also, that this committee should give serious study to the fair trade laws of the United States. These fair trade laws must be satisfactory to both consumers and retailers because they are accepted by the consumers and retailers in 45 of the 48 states, and their economy and way of life and of doing business is almost identical with our own, and there are about 12 times as many of them as there are Canadians. I do not want to pattern what we Canadians do on what people in the United States do, but it gives us a wonderful opportunity of studying what we might do here in the way of successful legislation, because we have there a pattern of fifty years of actual practice in the United States to study, and I think we should take full advantage of it. I think we must remember that resale price maintenance was outlawed in the United States in 1900, which is over 50 years ago. During the next 30 years the situation produced by outlawing price maintenance was found to be unsatisfactory by consumers and retailers, with the result that in 1931 the first fair trade law appeared in California, and between 1931 and the present day 44 more states added it to their laws, so that today there are 45 of the 48 United States applying fair trade laws. As I say, that is very, very impressive to me because, as I said yesterday, there are far more consumers than there are retailers, and if the fair trade laws had not proved to be successful or satisfactory to consumers, they would certainly have been thrown out and not brought in by an ever-increasing number of states in the United States, so, for my money, they are very successful and practical legislation that has been O.K.'d by the great majority of consumers and retailers in th United States. I believe that we might find, as the United States has found over the last 50 years, that fair trade laws are greatly preferred to simply abolishing resale

price maintenance, and I believe that this matter requires a great deal of further study by this committee, because we simply cannot afford to bring in either unworkable or unenforceable legislation.

Mr. CROLL: You think you cannot deal with it now, is that what you mean?

Mr. HEES: I think we should study your proposal a great deal more. In principle, I am 100 per cent for it, but I want to make sure that before I give my O.K. to this specific type of legislation that it will be the best type of legislation to protect the retailer.

Mr. FULTON: And actually will protect him.

Mr. HEES: And actually will protect him, and I also want to give consideration to the question of whether fair trade laws are not preferable to outlawing price maintenance. The people of the United States have overwhelmingly endorsed these fair trade laws, and that, to me, is very, very impressive. I think we are doing a very foolish thing in this parliament in view of the path taken by the country to the south of us, with 12 times our population and having 50 years to work the thing out, and I believe we are conceited to think that what we are attempting to do now is better than what has been evolved in the United States.

The CHAIRMAN: Thank you, Mr. Hees. Mr. MacInnis.

Mr. MACINNIS: I think I can be very brief in this. I should say, first of all, that I am in favour of the principle enunciated in Mr. Croll's resolution, that I am against the use of loss-leaders in merchandising in much the same way as I am opposed to scabbing on the trade union field.

I realize that there will be great difficulty in formulating effective legislation in this regard, but that is no reason why we should not attempt it once the principle is accepted. We heard, as has already been stated, a great many definitions of a loss-leader during the sittings of this committee. Not many of them, in my opinion, would be satisfactory as a definition in law, but if we approve of the principle and refer the matter to the Department of Justice for action, I do not see that there is any reason why we would not get effective legislation, although I am quite sure there is no time now to draft that legislation. I think the department would have to have more time than is available before this parliament adjourns or prorogues. That is all, Mr. Chairman.

The CHAIRMAN: Thank you, Mr. MacInnis. Mr. Fulton.

Mr. FULTON: Mr. Chairman, I agree with Mr. MacInnis that the principle of outlawing or banning loss-leadering practices is acceptable, and say that if parliament is going to pass legislation to eliminate resale price maintenance then it must pass legislation to eliminate loss-leadering. But when I say I accept that principle I do not go along with Mr. MacInnis to say you can find a principle in Mr. Croll's motion. I wish you could. That is the difficulty I think the committee is confronted with. Mr. Croll's motion does not assert a principle and stop there. It contains a definition of loss-leadering, and my difficulty is to convince myself that Mr. Croll's definition—at least his proposal here—will, in fact, do what we are all anxious to do, and that is to afford a real protection to the merchant.

Now, I am not going to go further into the detail of that at this point, but I want to go back to say this: Mr. Croll referred us to a statement made yesterday by Mr. Hougham, a most impressive statement as he said. I was equally impressed by another statement made by Mr. Hougham which, I think, is a principle that this committee should be guided by. Mr. Hougham's statement was this:

> Do not throw the baby out the window with the bath water.

He was referring there in that homely and very forceful simile to the necessity of protecting the retail merchants and not being carried away by a desire to

accomplish something which I do not believe we have any evidence to show will be accomplished by this legislation. In other words he was saying: While you may be moved by a desire to benefit the consumer, if you allow that desire to influence you to eliminate price maintenance, without doing anything else, then in so eliminating it you will be throwing the retailer out the window to the wolves, to cut-throat competition on the part of the big departmental and chain stores.

I must say that in my opinion, we have not actually any sufficient or adequate evidence before us to prove the merits or demerits of price maintenance in its effects on consumer costs either one way or the other, but we certainly do have adequate evidence before us to show that the retailers are concerned, and justifiably concerned, and that we must be concerned for them, about the dangers which are opened up to them if resale price maintenance is eliminated and loss-leadering is allowed to take place.

Mr. Croll has expressed tremendous concern over the safety and welfare of the independent retailer. Every one of us shares that concern, but I take the view that if we are going to give effect to that concern, Mr. Chairman, we must satisfy ourselves that we have sufficient evidence on which to base the legislation which is proposed to the committee, both by the combines commissioner in the draft he submitted and by Mr. Croll, as a safeguard to the retailer. If we passed the combines commissioner's suggested act without being absolutely certain that Mr. Croll's suggestion will protect the retailer, then we have thrown the baby out the window with the bath water, have thrown the retailers to the wolves by this unfair Act, thrown them open to unfair competition at the hands of the big departmental and chain stores. I am of the opinion that, unfortunately, we have no allowed ourselves to obtain evidence either on the question of the merits tion will protect the retailer, then we have thrown the baby out the window with the bath water, have thrown the retailers to the wolves by this unfair Act, thrown them open to unfair competition at the hands of the big departmental and chain stores. I am of the opinion that, unfortunately, we have not allowed ourselves to obtain evidence either on the question of the merits or demerits of price maintenance, on the one hand, or evidence sufficient to enable us to form a sound conclusion as to how, or even whether, we can control and eliminate loss-leaders if we throw out price maintenance, on the other hand. That is my concern. We have not allowed ourselves to go far enough into the question with the help of practical retailers and merchants and statisticians, and with the help of experts in legislation, so that we can safely say that we know that if we throw out price maintenance we can also eliminate loss-leaders, by legislation. I am not in a position to satisfy myself on that point, and therefore it is extremely difficult to make up my mind on Mr. Croll's proposal.

I believe the conclusions the committee should arrive at are along the lines of a motion which I propose at the proper time to move, in the following terms:

(1) Your Committee was appointed to consider the MacQuarrie Committee's report on resale price maintenance and appropriate amendments to the Combines Act based thereon;

(2) it became evident early in our proceedings that not sufficient time was available to enable the Committee to call all the witnesses and study all the evidence it would be necessary to hear and study in order to arrive at a sound conclusion on these matters;

(3) your Committee, having been much impressed by the very real concern felt by retail merchants over the danger to them from

unfair competition and "loss-leadering" practices by powerful chain and departmental stores if price maintenance is eliminated, is of the opinion that if any legislation is ever to be enacted against the one type of practice it must be accompanied by complementary legislation against the other;

(4) your Committee has been unable, in the time at its disposal, to study and work out legislation which it can confidently recommend as being constitutional and effective to meet the danger of "loss-leadering";

(5) your Committee therefore reports that it is not in possession of sufficient evidence on which to base legislation and recommends that further careful consideration be given to this whole subject, and particularly to the question of Fair Trade Laws along the lines of those in force in the United States of America, as a proper and workable solution of the problem.

The CHAIRMAN: Thank you, Mr. Fulton. Senator Horner.

Hon. Mr. HORNER: I am interested in the preliminary canter that Mr. Croll took before discussing his resolution, in which he made some remarks as to the policies of the Liberal party, and because of the very large number of my group here I think we should be allowed to reply.

The CHAIRMAN: You have five minutes, Senator Horner.

Hon. Mr. HORNER: My understanding of their principles, and it is evident in this endeavour, if they continue to press for the abolition of price maintenance, they are looking to the large centres where the large vote is congregated, and they can afford to ignore all the rest—that has been their chief principle as far as I know, the securing of votes, and that is being done by supporting the stand of the seven huge stores that are serving the people in the very large centres. What Canada is suffering from is not sufficient people living in the outlying districts. Now, as far as the resolution is concerned, I believe it is impossible. I certainly think that we do not have enough time at our disposal to bring in any resolution which will be workable or possible of enforcing with regard to loss-leaders, and, as everyone knows, a law not properly enforced and ignored breeds disrespect for all laws. You would have to have an army of snoopers; it would be impossible to enforce, in my opinion. I do not believe there is sufficient evidence before this committee. The customers of the small man at the crossroads are worthy of every consideration, and whether he buys a Frigidaire, or whatever it is, he ought to have the privilege of seeing what he is buying, but it would be just impossible for a retailer in a country village to stock them without a price maintenance commission, and he is there to service the article for the local purchaser. So I agree with the resolution moved by Mr. Fulton.

The CHAIRMAN: Mr. Fulton has not moved a motion.

Mr. FULTON: It will be moved.

The CHAIRMAN: Mr. Stuart, your five minutes now.

Mr. STUART: Mr. Chairman, my remarks will be brief. I think the big problem we have here under discussion is to get a clear definition of a loss-leader. That has been said many, many times and I just want to repeat it. I listened to the evidence here of every witness that came before this committee, and, I am just as far away from a definition of loss leader as I was when the committee was set up. Speaking frankly, my own personal opinion would be that if we discussed this for another month or six weeks we would still be in the dark as far as defining loss leader is concerned.

There is one thing that came to my mind when discussing this problem and it is the practice mentioned on many occasions of the Rexall drug store

1-cent sale. So far as I know, rather than doing a lot of expensive advertising over the radio and through the press, the Rexall drug stores take two or three or four days, or whatever it may be, and they offer to the public two articles for the price of one plus 1 cent. I am doubtful if, at the end of the year, they have spent any more in that way than the other drug manufacturers have spent in their advertising.

Now, if you get into a definition of loss leader are you going to prohibit the Rexall drug stores from carrying on that type of advertising within their own business? To me it is a problem, and, if you studied it for weeks and weeks, you would still wonder what a loss leader might be. Speaking quite frankly, I say that we have not a better definition now than when the committee was set up.

Another thing that came to my mind was the incident that occurred in London Ontario. There was a gas war up there and they were all trying to undersell each other at gasoline stations. One operator got the idea that he was going to offer a package of cigarettes with each ten gallon purchase. That was done, but immediately the jobber or the manufacturer of those cigarettes said: We are not going to supply you with any more tobacco. Whether that is a loss leader or not, I am still in the dark. Just where can you draw the line, and where can you define "loss leader"? I am doubtful if it can be done in months of sittings of this committee.

I have one other statement and I will be through. A loss leader I believe, under certain circumstances such as prevailed through the 1930's, would be a very, very serious problem. If we had an enormous quantity of goods with very little money to purchase those goods, I would be fearful of loss leaders and competition becoming so keen that it might be very harmful to the small dealer.

Under present conditions, with the defence program of this North American continent which we feel will continue for another two, three, four, five years ar longer, I believe we have little worry for the next two or three years. However, it might be well if perhaps we waited to see just what effect this legislation will have if it is adopted in the House of Commons. Then, we might be able to come to a better decision later on—to define what a loss leader is and put legislation through to take care of it.

I thank you.

The CHAIRMAN: Mr. Shaw.

Mr. SHAW: Mr. Chairman, you know Mr. Croll in introducing his resolution and speaking on it made specific reference to resale price maintenance and its abolition. I do not intend to do that.

I doubt very much if the resolution Mr. Croll has put forward gives that leeway, although I assume it is predicated upon the assumption that resale price maintenance will be abolished.

Mr. CROLL: It has to be.

Mr. SHAW: Mr. Croll used an expression which I shall refer to—he referred to the fact that traditionally business is operated on free enterprise. I sometimes wish that people would stop using that expression because there is no such animal, and there probably never will be. I think he means private enterprise.

I am bothered, as are others, with the definition of a loss leader. All those who have presented evidence before us gave their views. Mr. Croll has indicated that any sale at less than a 5 per cent mark-up on cost would be a loss leader. If I were permitted to question the sponsor of the resolution I would ask him to present evidence which motivated him in his thinking when he came to the decision that anything less than a 5 per cent mark-up on cost was a loss leader.

I am concerned about loss leaders and I think, through thte practice of loss leaders, big business is certainly able to make it extremely difficult, if not impossible for the smaller and weaker businesses to carry on.

Certainly the provincial governments have been concerned about this matter more than about resale price maintenance. I am informed of the fact that British Columbia and my own province of Alberta with which I am more familiar, have passed legislation on loss leaders and they used the 5 per cent mark-up on cost, although I do not know why.

I have no knowledge of any case ever having been dealt with under that legislation, and I do not know why. I understand, however, it is because of the impossibility of securing a conviction—but that is only my opinion.

I think, whether we abolish resale price maintenance or not, the time has come for us to deal with the loss leader. However, I say, as Mr. Stuart said, that first I want to know definitely what it is that we are going to undertake to legislate against.

Before making a final decision on Mr. Croll's resolution I think we have to know exactly why Mr. Croll came to the conclusion that any mark-up of less than 5 per cent on cost is a loss leader.

As I say, Mr. Chairman, I am not passing any comments on resale price maintenance at this particular moment, and I am dealing with the resolution.

I wonder too, Mr. Chairman, with the provisos in his resolution, provisos under which loss leadering can be practised in effect, whether we can pass legislation that is completely enforceable. I certainly agree with those who feel that if there is any doubt in our minds as to the enforcibility of any piece of legislation then it would be better to stay clear of it.

Let us define "loss leader". Let us find whether Mr. Croll's definition is correct and, if we are going to deal with his resolution we can proceed knowing whether a loss leader is represented by a reduction to less than 5 per cent on cost.

That is all I have to say.

The CHAIRMAN: Mr. Harrison.

Mr. HARRISON: I think Mr. Croll has certainly made a contribution to the discussion we have had in this committee, and I have no doubt but what he has made a contribution to the country as a whole. I think he said that he did not want us to throw any stones at the patricular motion that he make—it was something to use as a basis for expansion.

Mr. CROLL: For discussion.

Mr. HARRISON: It is a proposition for discussion until we can find something better.

The proposition of defining a loss leader is something that is going to cause us considerable worry and, when we have defined it, it is not going to be equitable in all cases. Mr. Hougham touched on the point yesterday when he said that the T. Eaton Company for example, wanted to be master of its own fate. That more or less applies to the small merchant as well.

For example, the merchants in Saskatchewan are often confronted with bad crop conditions and they have to liquidate their stocks to meet their obligations. They should not be prevented from doing so by any so-called loss leader legislation. They have invested their money freely and in a free economy, so they should be able, if they require to do so, to get it out.

We have to be pretty careful with a proposition of this kind and I doubt very much with the very difficult task we have of defining "loss leader" whether we are going to do ourselves or the merchants a great deal of good by going ahead with any loss leader legislation whatsoever. From what I have heard in this committee so far, in deference to Mr. Croll, and I realize his motives, and I think most merchants will realize he was trying to be

helpful to them and was sincere in that—and we know he was—at the same time I do not think that any so-called loss leader legislation, defining what "loss leader" is, will be equitable in all cases. So, I think I would be disposed to "throw the baby out with the bath water" as Mr. Fulton said.

Mr. CARROLL: I have very few words to say on this, Mr. Chairman. I do not think this committee is in a position to define what a loss leader is. I would suggest, if this committee wanted to pass this resolution on to the Justice Department, that there is one set of people in this country who are able to give us a proper definition of what a loss leader is. Those are the people who are administering the Act against combines.

Now, it would not be a very difficult thing for Mr. MacDonald, who has had the advantage of being in that department for years, and who has the advantage of his various predecessors and the work they have done for years. This matter of loss leaders must have been before them hundreds and hundreds of times. As far as I am concerned I would not undertake today to say what a loss leader is.

I presume that Mr. Croll is attempting to give a definition of what a loss leader is in the very first item where he says:

> Be it resolved that no dealer shall sell or offer for sale, directly or indirectly, any commodity at a price less than 5 per cent above cost . . .

Now, I am presuming that is Mr. Croll's real definition of a loss leader. Anyone who sells at less than that would be selling what is known as a loss leader.

On the other hand I think I should mention the other question—number 4(c)—concealed price reductions in premiums, discounts, and other selling practices such as loss leaders.

That brings us to a place where we have got to have a further definition; somebody has got to give a further definition of what a loss leader is.

I would suggest that the only other evidence given to this committee against loss leaders, generally speaking, was by those who were opposed to the Act that we have been studying, and most of them did say that if the Act were passed or recommended by this committee there should be some legislation dealing with loss leaders. I think they were on very fair ground there.

So, Mr. Chairman, I suggest that if this committee is against loss leaders they should recommend to the proper people the task of producing legislation either now or at some future time, and in that legislation will be a definition, a general definition of what a loss leader is. I think the people who at least should be in a position to give a proper definition of loss leaders are those who are conducting the Combines legislation or looking after the Combines legislation.

I am not against loss leaders in all cases. I am against some of my own leaders who in the past were lost, or I thought were lost—and I am not talking about political leaders there—

Some Hon MEMBERS: Oh, oh.

Mr. CARROLL: I perhaps might say that Mr. Hees would not be altogether too opposed to this practice of loss leaders in deals involving other than merchandise.

That is all I have to say Mr. Chairman.

Mr. BLAIR: Mr. Chairman, I was interested in Mr. Croll's amendment in regard to loss leaders but I feel myself at a loss to define exactly what a loss leader is.

I wish to assure the committee that when I came here I did so without any

idea of obstruction in any way, and with a mind unbiased with regard to this legislation. However, certain things have turned up which disturb me very much.

We have had people here give evidence on behalf of large organizations, retailers and so on, and we have had people come in favour of this legislation. So, we should be very careful when enacting any law, in view of the representations we have had.

We have not yet had evidence to show exactly that resale maintenance is wrong in some degree, and I am concerned about some of the types of trade in which I have been interested. I was not at all impressed by Mr. McGregor's representations in regard to the pharmaceutical trade. To my mind there still comes up the matter of standardization of products—the standardization of very important medicines and drugs.

This brings me back to something raised by some of the other members and on which I would like more information. I speak of American fair trade laws and in this regard I understand they are tied up with the matter of pharmaceutical products. As I understand them, if a man makes a certain product, a named brand—for instance a shirt—he goes and presents his statistics and gets a selling price. On the following day one of his competitors may go to the board with an article practically the same, but let us say that he approaches the board and says: I am prepared to sell this at a lower price. Perhaps the first man said $4 and the second man may say $3.75. I like the idea of competition among high grade named products. That idea appeals to me. Again I say I am not exhibiting any obstructionist tactics, but I think it is a matter altogether too important to be rushed through, and I used the word rushed advisedly. Personally, before I give an opinion on this matter I would like to have more evidence, and certainly I am very much taken with the trade laws as they have them in the United States. I know that Mr. Croll's amendment was moved in good faith.

Mr. CROLL: Hear, hear.

Mr. BLAIR: As far as I can find out, I am opposed to this practice of loss leaders. I think the term "vicious" was used concerning it, and I think it is a bad thing for the trade. At the same time, however, I have grave doubts whether the amendment as moved by Mr. Croll is workable. You cannot bring in laws legislating against something about which you do not know. I think the committee can see that I am absolutely at a loss in this matter. Therefore, the appeal I make to the committee is: having read about the American fair trade laws I would like a further investigation of those laws. It seems to me that it does away with some of the evils we have to face.

Hon. Mr. GOLDING: Mr. Chairman, I think Mr. Croll is to be congratulated on his effort to put before this committee this resolution for their consideration. I think he has spent a good deal of time and effort in it.

However, very briefly, I feel the legislation you are intending to pass, and which I imagine you will pass, is a condemnation of price fixing, and in this resolution you have price fixing, good, bad or indifferent or anything else, and I am going to make my contribution very brief. My good friend Judge Carroll spoke to the effect that every member in this committee realizes loss-leaders, this animal, whether you can describe it or not, is a vicious animal which operates in labour circles, professional circles, manufacturing, retail and every other line, and it is something I think every member of this committee would like to correct.

Now, I am not competent and I do not think many of the members of the committee here are competent to suggest or determine what sort of legislation you would have to have to correct it. I would suggest passing a resolution

asking the government to consider the whole matter and bring in legislation if they possibly can to deal with this problem of loss leaders. I understand some provision for legislation to that effect is being considered, and my friend Mr. Shaw has referred to that. I think every member of this committee would like to see some action taken along these lines and that is a suggestion I would like to make.

Mrs. FAIRCLOUGH: I am concerned primarily with the first clause, which sets the minimum price at 5 per cent above cost, and I would like to say I cannot see how you can name any one percentage to cover all trades in this country. For instance, 5 per cent on some food products is more than they are getting at present, and if we went down to 5 per cent on jewellery or refrigerators we would have real loss-leaders. The same thing would apply when you get into clothing; there are some types of seasonal clothing that are sold for a short period and then they are put away until the following year, and there is very little change in style. On the other hand you have things like women's gowns which change with every season and at the end of the season a great many reliable stores throw them on the bargain counter. I do not know how many of you have been in Filene's store in Boston, but they have huge signs advertising goods which have been on their counter for seven days are marked down so much, and for fourteen days they are marked down so much, and if I am not mistaken when you get to six weeks they give them away. I don't know whether they actually do it or not, but that is the way they advertise and the whole principle is there is always fresh goods on their shelves.

During the war when the Wartime Prices and Trade Board was operating they had the task of deciding what should be the selling price of practically everything that was sold in the country, and in their deliberations they were assisted by advisory boards of the trades concerned. They did not always take the advice of these boards but nevertheless each department had the advice of experts in the field in which they had jurisdiction and prominent members of the trades from coast to coast were encouraged to submit their representations to the administrator concerned. They were heard and matters which were entirely foreign to the administrators were discussed and taken into consideration in the formulation of policy. There were two features of mark-ups used by the Wartime Prices and Trade Board, there was the percentage mark-up, and there came into effect a little later on what was known as the dollars and cents mark-up, which was vigorously protested against by several sections of the trade because it didn't take into consideration at all the amount of the investment that the dealer or distributor had in his products.

To come back to this 5 per cent, I would like to say there is one commodity in the food field which cannot be termed particularly as perishable, yet it is a commodity which is used as much if not more than any other in the home, and I refer specifically to sugar. Now, this resolution provides for 5 per cent above cost, and most of the witnesses who have been here have based their percentages on selling price, which is the common practice today. If we base the mark-up on sugar between the retailer's cost and his selling price you will find that he makes 5·14 per cent mark-up if you figure the mark-up on his cost, but if you figure it on his selling price he only makes 4·88 per cent, which is under the 5 per cent, so you may say sugar is a loss-leader all the time if you are going to use this as a definition.

Now, I think there are a great many things enter into this. In some distributive trades the retailer pays freight and other costs in order to put his wares on his shelves. In other trades goods are delievered to the retailer at the cost of the distributor. All these things would have to be taken into consideration. Premiums are mentioned in this resolution, coupons are not.

I don't know whether Mr. Croll intended to include coupons when he spoke of premiums, but a premium I would say was making available an article in a different line from the article sold, while coupons entitle the purchaser to buy a second or third article in the same line at a reduced price or sometimes at no cost at all.

I am merely throwing out a few views for the consideration of this committee which I hope will point out the great difficulty we face in trying to lay down any one percentage mark-up to apply to a vast number of commodities.

Mr. CARTER: Mr. Chairman, as a rather young and inexperienced member of this committee I hesitate to express an opinion in the presence of so many distinguished parliamentarians, businessmen and lawyers, but fools rush in where angles fear to tread. I am going to venture the opinion this morning that we seem to have lost sight of the primary objective of this legislation. The primary objective of this legislation is not to combat inflation, not to reduce prices, not to lower the cost of living. We all hope it will have a beneficial influence on all these things, but as I understand it the primary objective of this legislation is to prevent combines from accomplishing through vertical arrangements, the things which in the past were accomplished by horizontal arrangements. That is the background against which we must consider the question before us now.

We are all sympathetic with the little man, whether he is a consumer or a small retailer or whether he is a small manufacturer. We are all sympathetic with the little chap and I think we are all grateful for Mr. Croll's efforts to express this sympathy in legal terms, but whether this proposal has a place in this legislation or not I am not able to say because I am not a lawyer. I do think, however, it should be considered against the background of our primary objective which is anti-combines.

The witnesses who have appeared before us have painted a very dark picture of their associates. If we are to believe most of them, the big business man, the big manufacturers of this country are ogres who are just waiting for an opportunity to pounce on the little fellow, to undercut him and short of nothing wipe him out of existence just to satisfy their own selfish impulses.

I for one find it hard to believe that the business men of this country are much different from the rest of us. If it is so I think there is great concern for the morality of the business men of this country, and then the problem before us is a moral one rather than a business or economic problem. I do not think you can find a legal answer to a moral question. If the problem is moral we must attack it on a moral plane, and although I agree with the sentiments Mr. Croll is trying to express, I think all we can do in this committee in our efforts to find a legal answer to Mr. Croll's problem is to express the opinion that we are against any such practice.

Mr. DICKEY: I think the question before us has been pretty well dealt with by other members of the committee. I want to say I support wholeheartedly the principle of Mr. Croll's motion. Mr. Carter spoke of the objective which underlies the proposal of legislation for resale price maintenance, and I think that the objective can be summed up by saying the objective would be to achieve benefit to the distributor, benefit to the consumers and over-all benefit to the community. Now, that is a laudable objective and something we should strive for, but in doing that we also should make sure we do not by curing one evil create another evil that may in the long run cancel out or become more important than the evil we have got rid of.

If there is one thing that is clear from the evidence I think it is that the retailers generally do fear the effect of wholesale price cutting, loss-leader competition and cutthroat competition may have in their businesses. I think it is also equally clear from their evidence that loss-leadering or this kind of

cutthroat competition is not a pressing problem with them and at least for the last few years they have not been injured either individually or collectively by cutthroat competition in the segments of their businesses which come under the present arrangements of price maintenance. In a very considerable number of segments of their businesses they are free from that particular practice. If legislation is passed which would remove from the Canadian economy in an effective way the present system of price maintenance in so far as it is now practised, I think we have to consider whether or not that will change materially the situation with regard to loss-leadering or price cutting because the theory of getting rid of price maintenance as I understand it is to re-establish competition in price. Retailers are afraid of price setting because of the damage it would do to themselves, and also because they believe that an unreasonable amount of price cutting would have the effect of destroying competition which now exists in the retail trade and the end result might not be very different. Therefore we have to consider what we can do not only to protect the retailer in the new situation but also assure the retailer there is no intention of throwing him to the wolves or selling him down the river, and we do not have any intention of trying to damage him.

Now, I have been worried about this thing, and I looked with great care at the present legislation in the Criminal Code, which is section 498(a) and has been referred to in some of the briefs. That section is quite a long section, but the thing that interested me on the question of resale price maintenance is this, and the section starts out:

> Every person engaged in trade, commerce or industry is guilty of an indictable offence—

And it goes on to refer to the penalties.

> —who engages in the policy of selling goods at prices unreasonably low for the purpose of destroying competition or eliminating a competitor.

Now, it seems to me it is obvious from what was said by other members of the committee that we perhaps are going to have to define loss-leaders in general terms, and we will have to consider whether this definition which is in the existing law may be as good a general expression of what we want to achieve as we can devise and perhaps what will be required will be more application of the present laws to situations which may arise in the future which, on the evidence we have had before us, has not been a problem for the last ten or fifteen years or more.

Mr. FULTON: How pleasant it is to hear Mr. Dickey praise a piece of legislation enacted by the Bennett government.

The CHAIRMAN: Splendid, Mr. Fulton. No doubt you will also endorse it. Are there any other members who want to speak on this?

Mr. CROLL: Do I get a few minutes in rebuttal?

The CHAIRMAN: Nobody else has had.

Mr. HEES: Give him a chance.

The CHAIRMAN: He does not want a chance. Now, at this point I want to refer to standing order No. 63, citation 552 of the rules of the House of Commons:

> Strangers are permitted to be present during the sittings of a Committee of the Commons, but they may be excluded at any time, and are to withdraw when the committee is discussing a particular point of order, or deliberating on its report.

The time has now come for us to deliberate on our report, so we will take a minute's recess while the strangers withdraw.

The committee will now sit in camera to consider its report.

APPENDIX A

BRIEF

Of The

NATIONAL COUNCIL OF WOMEN
of Canada

To

THE JOINT COMMITTEE

Of

THE SENATE AND THE HOUSE OF COMMONS

On

COMBINES LEGISLATION

JOINT CHAIRMAN

MR. JAMES SINCLAIR, M.P. · HON. SENATOR A. L. BEAUBIEN

November 24, 1951

This brief is presented on behalf of The National Council of Women of Canada which represents 23 nationally organized societies and 51 local councils spread across Canada with an overall membership of 600,000. The interest of National Council in the problem of resale price maintenance is not new. Council has concerned itself with this matter for many years. In 1948 it presented jointly with the CAC a brief to the Curtis Commission on Prices and in 1950 it endorsed the brief of Canadian Association of Consumers to the MacQuarrie committee. In both these briefs opposition to the practice of resale price maintenance was vigorously expressed.

Now, once again, council wishes to make clear that it is against the system of resale price maintenance because resale price maintenance is *not* in accord with our free enterprise system.

After careful study of all reports, and the reasons advanced in support of resale price maintenance by manufacturers, wholesalers and retailers, council feels strongly that resale price maintenance does *not* safeguard our free economy and does *not* increase economic efficiency but, rather, restricts competition by private agreement and tends to *discourage* economic efficiency.

Council would like, for the sake of emphasis, to summarize the chief arguments of Mr. MacQuarrie's report with which it finds itself in full agreement.

I. Resale price maintenance affects competition on two levels:

(1) Retail level—it eliminates competition. It permits retailers to agree separately with the manufacturer to sell his article at a fixed price. While it is illegal for dealers to make a price fixing agreement among themselves, this system of separate agreement has the same result and is, in our opinion, a perfect substitute for a cartel device.

(2) On the manufacturing level it tends to eliminate competition. Where several large firms dominate an industry a gentleman's agreement on prices, constitutes an unofficial but very effective combine, which cannot be broken by law.

II Resale price maintenance retards economic efficiency because—it produces an unsatisfactory price structure. It replaces free competition with an artificial arbitrary system. The manufacturer with no knowledge of the retailer's cost, and no financial investment in his business, maintains control over his operations.

III It discourages that efficiency in distribution which would result in lower prices, and is therefore incompatible with consumer interests.

IV The right to influence retail prices and business methods should be the prerogative of the consumer, *not* the manufacturer. It is not in the best interests of Canada or efficient business that *inefficiency* at any level should be subsidized by the consumer.

The Council concludes, as did the Report of the Royal Commission on Prices, and the Interim Report of the Special Committee to study the Combines Investigation Act, that the consumer should be completely *free to choose,* not only the product and type of service she wants but also that she should pay a price which is related to the cost of the product and of the service she buys.

Free Enterprise Competitive System

The National Council of Women decided to discuss further the impact of the Resale Price Maintenance system on the principles of our supposedly free economy by showing how the restrictions of this system violate the freedoms that the consumer should enjoy, i.e.

1. Freedom of choice—to choose between the same article with different prices.
2. Freedom to bargain.

and the freedom of the retailer to compete with prices and services against another retailer. With Resale Price Maintenance there is no freedom of choice for either party.

There are three ways in which controls may be applied:

1. By direct goverernment control which is imposed by the elected representatives of the people in their interests, i.e.

(a) Fixing freight and rail rates for railroads, establishing telephone rates.

(*b*) Provincial Boards to set price of milk.

(c) Emergency Controls, i.e. fixing maximum prices during a war.

2. The Control of retail prices by the Manufacturer. This practice or Resale Price Maintenance, as it is called, is the control *by* the manufacturer, in the interests *of* the manufacturer and the retailer without regard to the interests of the consumer.

The manufacturer even could set himself up as a lawmaker and take upon himself the right to punish the merchant who does not conform to the manufacturers' rules and regulations. He could do this by refusing to supply the dealer with the products he has ordered. In England the report of the Lloyd Jacob Committee said as follows: quote. "The proprietory articles Trade Association, which affected to a great degree the chemists and pharmacists of the country, has great power. If any attempt is made by the chemist to sell any article below the list price the whole 2,000 articles would be stopped. The association could fine chemists £25 for the first offence, £50 for the second." end quote. Such high handed practice by an association is assuming powers belonging only to criminal courts.

3. The competitive control of prices presently supported by the law of this country,

> If the practice of Resale Price Maintenance is allowed to continue it is in violation of this law because it puts limits on the free competition of prices by setting the same price on an article whether it is sold next door to the manufacturer or 2,000 miles away—whether it is sold in a beautifully carpeted store with escalators, delivered by a livried chauffeur and charged to a monthly account, or sold in a wooden floored country store and carried home in a shopping bag by the purchaser herself.

The consumer wishes to preserve the right to choose between price and-price-plus-cost-of-service.

Weight of Advertising—Resale price maintenance eliminates competition in prices and stimulates competition in advertising. Advertising adds to costs and increases prices.

Small Merchant—One of the chief defences for the resale price maintenance system is to the effect that it protects the small merchant. He can then exist even in competition with the growth of the chain store system. Our reply is that if only 5 per cent of his merchandise is covered then he has very little protection and is meeting competition on 95 per cent of his trade. If on the other hand he is protected to the extent of 30 per cent or more, then in the interest of free enterprise he has too much protection and greater competition would be beneficial to the consumer.

Loss Leaders—While Council agrees with the McQuarry Report in its statement "that the loss leader device is a monopolistic practice which does not promote general welfare, and therefore considers that it is not compatible with public interest." Council does not agree with the committee when it says "the committee does not think it imperative to make an immediate and hasty recommendation regarding that practice." Council believes that competition in free enterprise is a healthy state but it ought not to further loss leadering. In other words, what legislation is enacted, ought to specifically penalize loss leadering. Loss leadering not only causes price wars and puts business on a false basis, but is vicious to the manufacturer and (in the end to his employees) and ought to be legislated against. It also leads to insecurity on the part of the buying public. Perhaps this should be done in the same manner as combines investigation or as otherwise thought out but this must be dealt with. Any legislation that is connected on this subject must also have the full support and co-operation of the manufacturer and if he knows that his product will not be used as a loss leader, he will be less hostile to it.

It would be suicidal to our system of free enterprise if we did not support the proposed legislation to ban this system of resale price maintenance. If there is no ban on this practice what is to prevent resale price maintenance controlling 100 per cent of the merchandising of the country?

We would then have the manufacturer in control of all our merchandising, regulating its sale to suit his own self interest, penalizing the recalcitrant merchant, forbidding his freedom to bargain—in short a ruler in his own field.

Business is demanding freedom from controls by government but at this present time is fighting to reserve the right to impose its own type of control. In the case of the government, the people can turn the party out of power when controls become too oppressive. But the people have no power against the dictates of the manufacturer through the dealer.

The countries of this continent functioning under the free enterprise system of open competition in prices are the envy of the world. Let us retain this freedom.

Respectfully submitted.
Chairman of Economics,
Mrs. T. D. Clark Hamilton.
and
Chairman of Laws,
Mrs. F. E. Underhill.
Solicitor, (Hon.) NCW
Mrs. A. H. Lieff.
Enid Turner Bone,
(Mrs. A. Turner Bone),
President,
National Council of Women.

APPENDIX B

To: The Parliamentary Committee
on Resale Price Maintenance,
Ottawa, Canada.

Re: Resale Price Maintenance Legislation

1. The Great Western Garment Company Limited (hereinafter called "the Company") begs leave to record before the Committee its opposition to the proposed amendment to the Combines Investigation Act which would make unlawful the practice of fixed retail prices imposed by manufacturers.

2. The Company carries on business at Edmonton, Alberta, as a manufacturer of work clothing. It is the largest of its kind in Canada, and its products are distributed throughout the whole country. All its products are now, and have for many years past, been sold under brand names. In most cases the garment is marked in the factory with the retail sale price. This policy was adopted about 1935, and in the opinion of officials of the Company has resulted in mutual benefits to consumer and retailer.

To implement the proposed legislation would in the opinion of the Company's officials, and in the opinion of many reailers, as will be shown, be detrimental to the best interests of consumer, retailer and manufacturer alike.

3. To eliminate fixed retail prices, that is, retail prices established and maintained by the manufacturer or distributor, would throw merchandising methods back by 50 or 60 years, and would destroy standards of value now available to consumers.

Over a long period of time many manufacturers have realized that their own best interests are served by placing in the hands of the consumer merchandise of good quality at moderate prices fixed in relation to the retailer's risk in merchandising the items in question. Years ago many merchants followed the policy of a high, uniform fixed mark-up on all goods including less hazardous goods. In the result, the larger profit on such less hazardous goods enabled them to indulge in experiments in merchandising, and enabled them to handle more perishable goods, the loss on which would be borne by the profits on staple goods coming within the classification of necessities of life.

It is not possible for the average person to determine the true value of goods. He has no standard of comparison. It has been demonstrated by the history of past years that manufacturers and retailers render the highest service to the community by providing the consumer with good merchandise at a modest profit for each, and that in selling on the price fixed principle the consumer does have a standard of comparison.

It is within living memory that retailers did not mark the price on their goods in plain figures and that the consumer had to bargain if he were not willing to accept the quoted price as fair value. Brands were not known because the manufacture of work garments had just recently been taken out of the homes and placed in factories. In those days goods of uniformly high quality were extremely hard to find. Some manufacturers and retailers, however, realized that the consumer was entitled to goods that would give him the maximum possible service, and they refused to make or sell goods of inferior quality for the purpose only of profit without adequate consideration for the interests of the consumer. As a result, the method of dealing in branded merchandise arose and gained great popularity because the purchasers could thereby be assured of a uniform standard of quality at a fair price.

It is well known, and the point is evidenced by the report of the Commission, that an attack was made on this policy in the form of "loss leaders".

Consumers knowing the quality of the branded goods learned to wait for these "loss leader" sales to acquire their needs, and hence it became unsafe for the small merchant to carry the branded goods for fear of this "loss leader" practice. The natural result was a decline in the sale of branded goods, many of which disappeared from the market.

It seemed to this Company, and to many other manufacturers, to be highly important that work clothing and other staples should be accessible to the consumer at his local store. At the same time it was realized that this was not possible if the consumer could count on waiting for "loss leader" sales and acquire the merchandise at prices considerably below the fair prices prevailing at his local store.

Consequently many manufacturers of branded goods, including this company, marked the price to the consumer on the goods and policed this price. The price was fixed allowing to the retailer a profit commensurate with the risk involved in handling the line. The retailer was not allowed to sell at a price greater or less than the fixed price.

The prices fixed by this company were, and are still, lower than the prices charged by manufacturers of the same kind of goods without price fixing, and in the result this company's goods have increased in popularity enormously in recent years. It will be shown in evidence before the committee that the policy of this company has resulted in holding the price of work clothing both that manufactured by the company under their brand names, and others, to a lower level of prices to the consumer than would prevail today if the price fixing policy were not in effect.

It need scarcely be said that the interest of the manufacturer is to sell as much of his goods as possible, of a quality as high as possible, at a reasonable price, and by that method earn the goodwill of the public. Incidentally this method of merchandising places in the hands of the consumer a standard of value and a standard of comparison which could not possibly be available to him otherwise.

This company's policy is to provide goods to Canadian consumers of the best quality to be had anywhere in or out of Canada, and by fixing fair retail prices to see that these goods are delivered to the consumer at fair and reasonable prices, uniform throughout Canada, and provide to the retailer a mark-up

sufficient only to take care of his cost of doing business and a reasonable profit. To make big money he has to increase his volume. He cannot increase his profits by increasing prices.

In educating the company's retailers to this philosophy of doing business, that is, high quality merchandise at the lowest price possible, and thereby gaining consumer's patronage, the company in 1936 issued a portfolio to which reference will be made, describing this method of doing business. This portfolio was placed in the hands of the company's salesmen, who in turn discussed it with their retailers. Photostatic copies of it are supplied because it indicates very clearly the origin and reasons behind this company's policy.

The only resistance shown to this philosophy of merchandising from retailers has been that a limited number of them oppose the principle of the limited mark-up price on the garment, and even today there are certain merchants who buy the company's goods only because the consumers insist upon having the brand.

The company has experienced efforts on the part of retailers to discourage the sale of its brands and promote the retailer's own individual brands, or other brands on which the price is not fixed and on which the mark-up is substantially higher.

There is no overall in North America today made of cloth which is the equal to that which the company uses. Competitors however whose prices are not fixed charge approximately the same price for overalls of a demonstratively inferior quality, and up to $1.00 per pair more for goods made of still inferior cloth although of greater merit than those just referred to.

The National Garment Manufacturers Association of Canada is an organization of something over 100 members most of whom manufacture work clothing. There are also other manufacturers of work clothing not members of the Association. These manufacturers both in and out of the Association, with very few exceptions, sell their goods without any restriction on prices.

It is submitted that if the company's price fixing policy were detrimental to the consumers it could not happen as is the fact that more Canadians demand and wear the company's brand of work clothing than any other brand in Canada.

The public has the choice between buying work clothing upon which the price is not fixed, and buying that of this company and others who do fix prices. It can be demonstrated that the work clothing of this company is the most popular in Canada, which indicates approval by the consumers of methods that have been followed by this company.

The report of the Commission recognized that "loss leaders" which is one of the greatest dangers seen as the result of the enactment of the proposed legislation tend to monopoly, but there is nothing in the report to indicate what the other ways referred to are of correcting the "loss leaders" evil.

That the methods of doing business followed by this Company meets with general approval of the retailer is demonstrated by the fact that no less than 688 of them throughout Canada have signed the following letter viz:

November 6, 1951

Hon. S. Garson, K.C., M.P.,
Minister of Justice,
Ottawa.

The undersigned, all being independent retail merchants, selling clothing manufactured by The Great Western Garment Company Limited of Edmonton for the working man and carrying on business at the addresses indicated opposite our signatures, hereby make the following

representations with regard to the proposed legislation leading to the elimination or discontinuance of the practice of the fixing of resale prices by the manufacturer, commonly known as Resale Price Maintenance.

1. Resale Price Maintenance under the plan of The Great Western Garment Company Limited protects the working man. It gives him a top quality product at minimum cost. In name merchandise such as this, the working man is assured of getting what he pays for. Under this plan, and for this company's blue denim bib-overalls, we as retailers receive 21.4 cents of the sales dollar, which is the lowest profit on which we can exist, and is much lower than the profit on articles where the manufacturer does not fix the price.

2. Resale Price Maintenance by individual manufacturers who have the welfare of the consumer in mind stops the "loss leader" practice, with which we cannot compete with this small markup. "Loss Leaders" tend to destroy the brand and the consumer thereby loses his standard of comparative values.

3. The retail merchant has a place in the Canadian economy. Our business is based on personal initiative and personal contact with the consumer and it is important in the interest of the public that our services should be maintained on a fair and reasonable basis.

The foregoing is respectfully submitted.

THE GREAT WESTERN GARMENT COMPANY LIMITED

C. D. JACOX
President.

APPENDIX C

Mr. Chairman, Members of the House Committee on
Resale Price Maintenance.

I am presenting this brief on behalf of the Retail Merchants' Association of Saskatchewan which association wishes to oppose the proposed government legislation to outlaw resale price maintenance. A great deal has been said to becloud the issues, which we believe should be clearly defined. Firstly whether the legislation is actually anti-inflationery, as has been given as the government reason for its proposal and secondly whether the conclusions that the MacQuarrie Commission has presented in their interim report on resale price maintenance are actually sound and valid in their application to the proposed legislation. We should like to emphasize that the MacQuarrie Commission was a commission to study present legislation on combines and to make recommendations in order to make our Combines Investigation Act a more effective instrument for the encouraging and safeguarding of our free economy. It was not and never has been a commission to study causes of or to make recommendations for the remedy of inflation. We point this out in order to demonstrate that the MacQuarrie Commission did not recommend the outlawing of resale price maintenance in order to contain inflation or in order to produce anti-inflationary legislation, which points to a grave inconsistency in the reasons which the government has advanced as the purposes of this legislation.

The Speech from the Throne made references that this was the only anti-inflationary legislation which the government was proposing. It would automatically follow that the government considers resale price maintenance inflationary. But again I should like to emphasize that conclusions should

not be drawn from findings of the MacQuarrie Commission to substantiate this reasoning because the MacQuarrie Commission was not investigating inflation. Indeed resale price maintenance has not been established as inflationary and it would tax the ingenuity of those most opposed to the practice to establish in any way that it has been inflationary. The fact is, gentlemen, that products sold under price maintenance have risen less in price than those products which have not been traded under the practice of resale price maintenance, and of course, by comparison they have risen much less than the cost of living index. The committee would be wise to verify this information as they see fit.

I am quoting now from *Hansard,* Tuesday, October 9, 1951, dealing with the Speech from the Throne. The Prime Minister stated "The concern of our people over the rising cost of living resulting from international and domestic inflationary pressures is fully shared by the Government. Every measure will be taken which my Ministers believe will be effective in counteracting inflation without impairing of free institutions.

"The anti-inflationary measures already enforced have checked the upper trend of prices of goods in services affected by their operation.

"The government has received an interim report from the committee studying the Combines legislation recommending that such suppliers of goods should be prohibited from requiring or inducing distributors to re-sell such goods at fixed or minimum resale prices. You will be asked to consider legislation arising out of the committee's interim report".

On Monday, October 15, and I am quoting from *Hansard,* the Prime Minister stated, referring to resale price maintenance, "It is certainly a problem which is being considered by those who are really concerned with such measures as can be effective in curbing the high prices consumers have to pay for the goods they require."

On page 41 of this issue of *Hansard,* I quote the Prime Minister: "As regards immediate additional measures to curb inflation, while others may develop, the only one which we are prepared to submit at this time is the one that will arise out of this report of the combines committee with respect to retail prices. I do not think it is going to have a very substantial effect on the index of the cost of living". Page 42, referring to the methods of distribution, the Prime Minister stated "they are costly today".

Gentlemen, I submit that if they were not costly there would be something wrong. Expansion to service to consumers is costly, building is costly, rents are costly, labour is costly, manufacturing is costly, and the taxpayers will inform you that government is costly. Surely you do not expect cheap distribution of retail products.

These quotations, gentlemen, which you can read for yourselves, should clearly establish that in the government mind the purpose of this legislation is to curb inflation. We submit that if it cannot be established, that resale price maintenance has been inflationary, then the government's very reason for the legislation is not logical.

The Prime Minister has made a statement, as quoted, to the effect that he did not believe there would be much change in price level as a result of legislation and the brief of the Canadian Congress of Labour has also pointed out that they think the effect on the price levels of retail products by the legislation would be very slight indeed. If the government does not believe that the outlawing of this practice would be anti-inflationary, then it is difficult to see how the proposed legislation can be termed anti-inflationary. We hope that this Committee will see fit to have prepared an index of resale price maintained products. It will be found that it has not risen as much as the index of the cost of living or of non price maintained products. We

also hope this committee will verify our contention of the startling fact that the mark-ups allowed by manufacturers to retailers under resale price maintenance are lower than the mark-ups allowed by the government during the wartime, which was an emergency period, and at which time the government controlled the economy of Canada by means of the Wartime Prices and Trade Board. It is difficult to see how anyone could infer that retailers' mark-ups are too high when they are not as high as those allowed by the government during an emergency period.

Now Gentlemen, the chairman has stated that this committee is not concerned with mark-ups but rather as to whether the consumer might not purchase the product cheaper. We would be very foolish to try to demonstrate that certain products, likely Nationally advertised brands, might not sell at a reduced price level; your knowledge of the loss leader type of competition should clearly establish depending upon the competitive situation in any particular area some products will be cheaper to the consumer.

I should like to quote to you from the report of the Royal Commission on price spreads of 1949. This report was presented by the chairman, Mr. C. A. Curtis, on March 8th, 1949. In the section on the Examination of Mark-ups the report stated and I quote, "Behind all this, the crux of the matter is how much the profits of the distributive trade did or could effect prices. The fact of the matter is that the cost of the merchandise and the operating expenses of the merchant make up the big proportion of the price in the majority of cases, and that if all profits were eliminated the saving in price to the consumer would be slight." Referring to resale price maintenance this commission reported that they had not found the practice to be "a major factor in the recent rises in price".

We submit, gentlemen, that if the findings of the Royal Commission on prices were valid then resale price maintenance has not been, as the government inferred in the House, inflationary.

This being the case, and if the committee is prepared to recognize the business principle that it is not feasible to sell anything unprofitably, it is a simple matter to recognize that the cumulative profit on the many items offered for sale must remain the same if the business is to remain profitable. This applies to large and small retailers alike.

We must not confuse the largeness of a retailer and his willingness to cut prices with a vital desire to serve the public interest. On the contrary, the firm that can establish through advertised price cuts, a public confidence in the general price level of that business, then it places that retailer in a very favoured position to make up his lost margin on private brands where values cannot be compared and where the maximum price maintenance to be written into the legislation has no meaning.

I would suggest that the proposed legislation will allow the long buried phrase "Caveat emptor"—"Let the buyer beware"—to once again plague the consumer.

It can not be categorically stated that a restrictive business practice conflicts with our conception, legal and moral, of business combines. For example, the manufacturer who sells his own merchandise at retail or who appoints exclusive distributors, sets up a restrictive business practice to restrict competition on his product, but a practice which is not recognized as monopolistic. We will not attempt to weaken our reason by trying to convince this committee that resale price maintenance is not a restrictive practice but it does not follow that it is monopolistic; rather it is for the protection of manufacturers, wholesalers and retailers and the consumer at large against practices which are monopolistic in tendency and which are unfair price competition not in the

interest of the Canadian economy. These practices which price maintenance prevents were the very subject of the Stevens Report by the Royal Commission on price spread in 1934, set up by the same government in which were demonstrated to be against the public interest. I am referring to such practices as the use of loss leaders which is a financial instrument and which cannot be justified by reason of operating efficiency. It is a practice designed to attract business from competitors but in fact the only competitors whose businesses are placed in jeopardy are those who cannot afford to sell at an uneconomic price which is not profitable, simply because they have not the financial resources to weather such a storm. Such legislation might have the effect of actually legislating many small merchants out of business. Those opposed to this legislation have maintained that price maintenance places an umbrella over inefficient operators at the expense of the consumer. This is simply not so; if it were, then it would follow that the so called economic efficient retailing giants should be showing returns on their investment out of line with other businesses and industries.

It is a fact that many large volume units require larger margins than the efficient small ones. Your immediate reaction will likely be to query why the small man would be hurt. The answer is simply this, that large units with large volumes acquired by means of tremendous financial investments, either in single stores or in multiple outlets, have a buying power which can induce the manufacturer to enter into deals to preserve the mark-up of these retailers; this, small retailers, efficient though they be, cannot do. In point of fact I expect that most retailers will survive because there is a tremendous investment involved which they will attempt to protect at all costs. But it will be done at the expense of good working conditions and will force either lower wages or unemployment for countless number of employees who must not exceed the hours of work as prescribed by our governments. And gentlemen, legislation which adversely affects the working conditions of this segment of labour should be carefully considered. The fact that this labour has remained unorganized should not affect its position.

It has been contended this legislation would have the effect of making the big man bigger and the small smaller, and we intend to establish in the minds of the committee why this is likely to be the case. Referring directly to the Commission's interim report, there were apparently some notable exceptions to the general support of price maintenance offered by manufacturers, wholesalers and retailers' Association. It is very significant that the very large retailers are now opposing and I think it would indicate that they expect to operate more advantageously as a result of the proposed legislation.

We intend to introduce a discussion on the consistency of the reason of those groups opposed to resale price maintenance as compared with legislation and practices which affect them.

Although we agree in principle, and recommend to your consideration the reasoning supporting price maintenance as summarized in the interim report and by prior briefs, we do not intend to take up this committee's time with a review of these presentations. As small retailers, however, we challenge the statement that department stores operate on lower unit costs; it is precisely this type of thinking which we are trying to combat. I think the committee would find that department stores actually require and get a larger margin to cover their operations. It is our contention that in a period of prolonged price cutting they maintain a margin of profit because of their financial power coupled with their volume, and not through superior efficiency of operation. This we consider to be unfair competition. The practice of presenting loss leaders is not one which can be supported by reason of sound economic or

profitable practice, but it is rather one which is introduced by retailers who can afford the luxury to attract trade from less fortunate and less financially strong competitors. The only merchants who can afford to sell merchandise unprofitably are those who are financially very powerful. If it can not be established that retail mark-ups are excessively profitable then it follows that reductions in these mark-ups are not sound business economics. We have stated that large retailers use the device of loss leaders to attract their competitor's trade. But gentlemen, trade which they really want to attract is that which can be induced to buy his other profitable products. The reason that retailers fear this practice is that a large retailer can toy with the price structure of a small percentage of his volume in one department only. But this may represent the total business of his competitor. This particularly applies to a small merchant, for example a clothier or appliance dealer, who has acquired a large volume. The retailer with unlimited financial resources would be very tempted to use his resources rather than his merchandise efficiency which has proven ineffective, to temporarily price a successful competitor out of the market. It is a difficult choice for the independent; to lower his prices and operate unprofitably, which cannot last long for him, or to see his trade stolen by financial rather than merchandising capacity. Either way, his business future is not bright.

By the time prices have readjusted to a profitable level, as they must eventually do, the damage is done. The consumer no longer benefits by lower prices, but how does Mr. Independent lure back his trade? The results on employment and wages are obvious, but the benefits to the consumer do not compensate the public interest.

Almost without exception National Brands are used as loss leaders. The reason is obvious; the public is familiar with these values. If the large retailer had the public interest at heart he would apply the reduced profit margin to his whole line of merchandise, but no, he is most anxious not to do this!

Where there is no protection for the small independent you will find a great reluctance for new private enterprises to invest at the retail level. The risks attendant on retailing are enough without throwing oneself on the mercy of large operators. The fact that the practice is not in effect has no bearing. He cannot afford to risk building a profitable business if this device can even be held over him as a possibility, for his investment can disappear overnight even though his operations be more efficient.

The only expansion in the retail field will revert to those who are large enough to deter any such practice. For confirmation of this I refer to the retail grocery trade which generally speaking has little or no resale price maintenance. Certainly the big have become bigger and we can all readily see that it is the only segment of our retail continuity where the operators who earned only an existence, as all businesses did during the depression days, have not improved their position, even with the great business prosperity that we have experienced. Many are as efficient as the large competitors but they are literally prevented from acquiring a volume by the financial giants and the capital required to compete, simply cannot be acquired.

The observations on vertical integration in the interim report are worthy of note. The fact that price maintenance might encourage retailers to establish manufacturing of their own private brands is hardly an argument against price maintenance. Why should this be considered a bad thing? It is very notable, however, that margins of profit on private brands are almost without exception much higher than on price maintained products. It is always a nationally advertised brand that is cut since the cutting of private brands will not damage a weaker competitor's position, but rather will simply reduce the private brand

retailer's profit margin. This is the case even though producers of nationally advertised brands will often supply a similar or near enough identical product under a private brand label for a retailer to price as he wishes. Price cutting to a lower level is singularly unattractive to such retailers under these circumstances. It is inconsistent to object to price maintenance on the grounds of vertical integration. The objections to price maintenance on the grounds that it favors vertical integrations are simply not valid objections because such investment by retailers to establish private brands is a legitimate field of investment to which nobody should take exception. It is certainly not objected to by retail opposition as unfair, as it is a natural expansion by large retailers who have profit in mind. Let me throw this challenge at large retailers who would let the public believe that lower prices are in sight—if they can economically reduce prices and justify loss leaders as a sound and economic business practice, then let them reduce the price level of their private brand merchandise. Such price cutting does not directly interfere with the policies of competitors and does not unfairly force them to reduce prices to an unprofitable level. You well know that here is one saving that a consumer will never see.

One member of this Committee asked for support of the fact that private brands generally cost the consumer more in profit than nationally advertised brands. It is not hard to imagine why such private brands gain the favour of so called mass buyers. They then control a line on which there is no competition, which is the obvious place to average out profit margins.

We have prepared such a schedule which demonstrates our point. The following list shows the increased margin in well known private brands over price maintained National Brands expressed as a percentage of increase:

	Per Cent
Men's Overcoats	2·7
Children's Overalls	11·5
Children's Suits	4·7
Ladies' Hosiery	7·0
Woollen Blankets	7·2
Men's Shirts	10·4
Men's Sport Shirts	4·4
Men's Socks	8·4
5 Tube Radio	14·7
Mattress	3·0

We can supply many more such figures but we would prefer this committee to institute its own investigaion, which would insure you of the validity of such figures.

We would like to devote a few moments to what we believe are inconsistencies in the legislative policy of the present House.

If the government really believes in free price competition, may we make a few suggestions as to how the retail price levels can be reduced. These suggestions, of course, give no more consideration to the chaotic conditions which they might create in certain segments of our economy than the proposed legislation gives to this problem in the retail industry.

We frequently feel chagrined in Western Canada when we consider the price of automobiles, refrigerators, stoves and a variety of like necessities which largely come from central Canada, in comparison with the price to the South across the International border. Is it not true that the government creates a higher minimum price than would otherwise be possible under free competition by means of tariff barriers? The theory underlying such actions of course is to protect the Canadian industry, labour and capital against

competition which cannot be met. It is certainly true that we could reduce the cost of living by abolishing such actions. The members of this committee might possibly consider this action too drastic. If so, can you satisfy yourselves that your policy is consistent as it applies to our whole economy, including retailing, since the practice of protecting local industries certainly maintains a higher resale price.

It is in the national interest that Canadian business be profitable. I need not elaborate here. However, to be in the public interest it must be competitive so as not to be profitable at the expense of the consumer. Hence our Combines Legislation. But further, it must be allowed to operate within a free Canadian economy, and it is not in the public interest always to permit competition which is not within the capacity of Canadian business, no matter how efficient, to meet; hence our tariff legislation and the government concept of fair market price to prohibit dumping. We believe it follows that small businesses should be profitable only if they are efficient, to be in the public interest, but also that it is not within the public interest to open the way to unfair competition which is simply not within their capacity to meet.

On Friday, November 23, there occurred in this Committee what the *Star-Phoenix* termed a surprise development, which was that Eaton's had classified themselves as opposed to price maintenance, and were not in accordance with the brief being presented by the Canadian Retail Federation.

Surprise? To whom?

(1) Not to the Saskatchewan Retail Merchants who have been maintaining that this legislation supports the giant retailers.

(2) Surely not to the *Star-Phoenix* whom we have repeatedly informed that this development could be expected.

(3) Perhaps to those who do not clearly understand the issues involved.

(4) Certainly not to the government who should have had reason to believe this would happen, based on information garnered for them by a Royal Commission which I will mention later.

(5) I sincerely trust that the surprise is not the reaction of yourself, Mr. Chairman, or of your Committee.

I have with me a very important document with which we hope this committee is familiar. It is the report of the Royal Commission on Price Spreads dated, and signed by Mr. W. W. Kennedy as chairman, on April 9, 1935, commonly known as the Stevens Report.

It should enlighten the members as to the probable reason for the stand which Eaton's has taken. I might say that we are happy that Eaton's has taken this stand because it brings into the open, and removes from the field of conjecture, many of the points which we are attempting to make.

The Stevens Report discusses the position of the "Mass Buyers" who by definition were few in number at that time, and by far the largest of which was Eaton's. Chapter 7, dealing with distribution in Section 6, beginning on Page 220, discusses the causes and effects of mass buying and specifically qualifies Eaton's in this category. It recognizes the tremendous power which they wield and clearly establishes that a social problem was created which was in the public interest to investigate.

I would really like to read this section and others to you, so important do we consider them, but I shall leave it for your personal perusal.

The report concludes in this section that it is almost impossible to prove such charges as are levied, but that the motive and opportunity for malpractice were clearly there.

The Brief stated that the defences offered for mass buying as defined were not convincing, to use their words.

In the same Chapter 7, under the heading "Competitive Prices in the Retail Trade", the practices which we fear the most are discussed. They are recognized and stated in this commission's report as practices against which the independent has not the capacity to compete, and also they are condemned, yes condemned, as unfair and not in the public interest. On Page 28 of the same subsection, dealing with loss leaders, the following quotations demonstrate the seriousness with which that Commission viewed the situation:—"One of the most common practices of modern merchandising is the use of leaders or loss leaders. These terms have, as yet, received no exact definition, but are understood broadly to mean merchandise featured or sold at prices easily distinguished as being less than customary prices. Such price reductions are made for the purpose of attracting customers and promoting sales, not so much of the featured articles as of other articles on which a higher profit is secured. While the term "loss leaders" may have had its inception in the use of articles which were actually sold below cost, the natural loss is seldom now-a-days experienced on most leaders. The general practice is to reduce materially the customary margin on goods used as loss leaders. For a leader to be effective it must have a wide appeal and be sufficiently standardized to permit comparison of the cut price with that already charged. Goods in common use, such as sugar and butter, meet these requirements but trademarked or branded articles may be equally effective as leaders".

Later on it states "The competitors of the store using the loss leaders are, however, the persons chiefly affected. That the deliberate use of cut prices to draw patronage away from competitors is an unfair trade practice, is quite clear. Such reductions are not prompted by any desire to serve the public by giving lower prices. One purpose is to attract customers to whom the store hopes to sell goods that are not loss leaders, at substantial profits. Another purpose is to create the illusion of lower prices on all articles. That this end is not always attained does not in any way lessen the unfairness of good practice".

"It may be argued that competitors can adopt the same tactics. Large organizations including chains and department stores do so compete. But independent retailers, unless they associate together, can not pursue the same tactics for several good reasons. The volume of trade in the average independent store is not sufficient to permit the advertising of specials. On many articles the chain stores, through purchasing in large quantities, with special discounts added to regular quantity discounts, and bonuses from the manufacturer in the form of advertising allowances, have a much wider spread than the independent store. Thus, when the chain sells below its usual mark-up, it's selling price is often below the cost price of the independent. If the latter intended to meet such prices, he would be selling his goods at an actual loss", and on the same page—"We condemn the practice of loss leaders as unfair, promoting wasteful competition and seriously affecting the income of certain classes of primary producers, but in seeking a solution for the problem through legislation remedies, we are confronted with certain difficulties".

There follows, gentlemen, a discussion of the difficulties of such legislation which it is concluded are almost insurmountable. The commission concludes this chapter on distribution and I quote—"We believe that the abuses of large scale distribution can be prevented without interfering with its legitimate developments. At the same time we feel that this development is not legitimate if it is made possible only by unfair competitive advantages at the expense of the smaller and less favoured distributors. We are not condemning mass merchandising as such".

Nor is our Retain Association condemning mass merchandising as such. We have long maintained that we can compete with mass merchandisers if they will refrain or preferably if they are prevented from instituting unfair practices which are not within our capacity to meet. We submit, gentlemen, that resale price maintenance has had the effect of restraining mass buyers from such unfair practices and which has done so, as we have attempted to demonstrate, at no cost to the public, as confirmed by the Royal Commission on Prices of 1949. And we further submit that if resale price maintenance is declared illegal, that there can be no effective legislation, confirmed by the Stevens Report, to curb these vicious unfair practices so clearly demonstrated and recognized by this commission. We think it would be of interest to this committee to discover whether the Hon. Mr. Lester B. Pearson and the Hon. James L. Ilsley, both of whom have served as Cabinet Ministers in the present government; and both of whom were members of the Royal Commission on Price Spreads, would now testify that the conclusions which they arrived at through a study of the history of many, many years of business, were onlv valid for a temporary period, or whether they consider these conclusions to remain valid.

Let us consider for a few moments the position of the C.A.C., that great body which does so much good work for the protection of the Consumers who compose its membership. The Consumers (God Bless them!)

Consumer wives of farmers who trade under a form of price maintenance;
Consumer wives of labourers who earn under maintained wages;
Consumer wives of industrialists whose prices are maintained high by tariff legislation, gold subsidies and the like;
Consumer wives of newspaper enterprises who maintain a rigid resale price structure for their advertisers.

We have a particularly warm spot in our hearts for these consumers and spenders, but you will, I'm sure, understand when we depart from the time worn adage that the customer is always right. They seem to be convinced that prices will be lower; we are attempting to establish that the consumer will foot the bill for prices which will average out at an unchanged level to the advantage of financially strong retailers.

In the *Star-Phoenix* of November 14th, 1951, the Canadian Association of Consumers was reported to consider the practice of resale price maintenance economically unsound and also a factor in the high cost of living. I presume, gentlemen, they are anxious that such competition as they would hope to engender will produce prices which are not the same for different retailers, and yet there was a great to-do about soap prices being temporarily less expensive in another City than they were in Saskatoon, as reported on November 13th in the *Star-Phoenix*. The soap products referred to, gentlemen, of course did not bear resale price maintenance. Has the Canadian Association of Consumers then adopted the view that they do not want one product to sell in all locations at the same price as it does under resale price maintenance but that, but on the other hand what they really want is for one product to sell in all locations at the same price? It is very difficult to reconcile this kind of logic.

Our conclusions, gentlemen, are as follows:

(1) That since the government has clearly designated that the purpose of this legislation is to check inflation and since we do not believe that this committee can establish that resale price maintenance is or ever has been inflationary, we submit that the very reasons for the government introducing such legislation are not valid. The Royal Commission on prices, 1949, established

that the elimination of profits entirely would represent only a slight saving to the consumer, and also that the practice of resale price maintenance has not been a major factor in the recent rises in prices.

(2) We submit that efficient small independent retailers can compete with large retailers and mass buyers, in the public interest, if practices which have clearly been established as against the public interest are prevented. We again refer you here to the exhaustive study of the Stevens Report to substantiate our conclusion. Much information from practices and results in the United States has been introduced to this Committee and at this point I should like to quote a statement of the late Mr. Justice Louis Brandeis of the United States Supreme Court, who was one of the most vigorous enemies of trusts and monopolies. He said "Americans should be under no illusion as to the value or effect of price cutting. It has been the most potent weapon of monopoly; a means of killing the small rival to which the great trusts have resorted most frequently. It is so simple, so effective. Far-seeing organized capital secured by this means the co-operation of the short sighted unorganized consumer to his own undoing. Thoughtless or weak, he yields to the temptation of trifling immediate gain, and, selling his birthright for a mess of pottage, becomes himself an instrument of monopolies."

The practice of loss leaders is one of the most feared by independent retailers, but the Stevens Report discusses many other practices equally bad and which we believe this committee should seriously consider.

(3) We believe that it is inconsistent to discuss free price competition only at the retail level, but rather such discussion and consideration of government measures should include consideration of such restrictive practices as tariffs which in effect create higher prices to the immediate detriment of the consumer; government subsidies for a range of productive enterprises which create higher prices; government policy of farm price support; government price on minimum maintained prices for labour through enabling legislation and countless numbers of other restrictive business practices which the government actually encourages and condones and which it does not include as monopolistic restrictive business practices. We retailers are not criticising; we simply ask the same consideration as is given other segments of our economy insofar as the definition of monopolistic practices is concerned.

(4) We submit that the divergency of opinion between large and small retailers does not weaken, but rather strengthens the validity of the arguments of small retailers that this legislation will work to the advantage of financially strong retail businesses.

(5) We submit that it is very significant that mark-ups on resale price maintained products are not as high as those allowed by the government through the Wartime Prices and Trade Board during an emergency period when our economy was controlled.

(6) We submit that it is within the means of this committee to ascertain that products bearing resale price maintenance have not risen in price as much as either the cost of living index or products not traded under resale price maintenance and

(7) We wish to go on record as supporting in principle the briefs offered here by manufacturers and wholesalers although for the purposes of attempted brevity we have not discussed the situation as it affects them and the economy at large.

This report we respectfully submit in behalf of the Retail Merchants' Association of Saskatchewan.

APPENDIX D

RE PRICE MAINTENANCE AGREEMENT

Brief of Bulova Watch Company Limited in support of the practice of requiring price maintenance agreements from distributors of their products.

Bulova Watch Company Limited respectfully submits for the consideration of the Minister of Justice of Canada and his colleagues the following considerations with respect to the proposed legislation to prohibit Price Maintenance Agreements.

1. The combination of two or more producers of the same or similar articles to maintain prices has for very many years been considered to be restrictive of competition and not in the public interest.
2. On the other hand, the right of the individual producer or importer of a commodity to prescribe the conditions upon which he individually will sell that particular commodity, has always been considered an inalienable right of those engaged in trade.
3. In the year 1928, an application to restrain a retailer who had entered into a price maintenance agreement from selling at prices prohibited therein, was considered by the Court of Appeal in England. Lord Hanworth, Master of the Rolls, delivering the majority judgment of the Court of Appeal, referred to a number of cases in which such agreements had been upheld, and at page 271 he says:

   > So far as the public is concerned, after the passages I have quoted, slight evidence—if any—is needed to justify an agreement for the maintenance of prices; and the Court regards the parties as the best judge of what is reasonable between themselves . . . If the defendant determines to sell . . . preparations, why should not the terms as to price, payment and the like, be matters to be decided between the parties.

3 (*a*). The Supreme Court of the United States has also dealt with this subject. The Press have indicated that the decision of the United States Supreme Court declared the illegality of price maintenance agreements between one producer and his customers. On the contrary, the decision of the United States Supreme Court merely states that no retailer is bound to maintain the retail price set by the individual manufacturer unless he has agreed to do so. The Miller-Tydings Act expressly legalizes retail price maintenance agreement between an individual producer and retailers.

4. The Speech from the Throne earlier refers to the right of free and uninterrupted trading. It seems contradictory, and indeed dictatorial, to say to an individual that he cannot himself impose the terms upon which he individually is prepared to sell his own product.
5. No merchant is required to purchase and carry in stock the product of Bulova Watch Company Limited; nor is any member of the public under any compulsion to buy such products. There are a great number of other articles of like merchandise which the public is at liberty to buy if it does not like the price at which Bulova products are offered to the public.
6. The primary object in requiring price maintenance is not to enable the producer or distributor to obtain an excessive profit. If the producer or distributor prices his goods off the market, he simply does not sell his product, and ultimately must go into bankruptcy.

7. The primary object of price maintenance agreements—it may not be the sole object—is to protect two things:
   (*a*) the prestige of the article in public esteem; and
   (*b*) to protect the small merchant.

8. Producers who have devoted the greatest consideration and have developed the greatest skills possible in the production of their commodity have a pride in maintaining the prestige of that commodity in the estimation of the public. Nothing can militate so seriously against such prestige as to have these commodities subject to bargain and slaughter and fire sales, "loss-leader" advertising, or other sensational methods of offering merchandise at temporarily reduced prices.

9. The type of sales just referred to means that the small merchant who is carrying in stock a certain quantity of high class merchandise, suddenly finds the value of his inventory and the ability to dispose of the same at a profit, undermined by vicious practices, sometimes by people who are only temporarily in his community. His confidence in his inventory position—and indeed his ability to sell his inventory, is taken away by slaughter prices.

10. It is impossible that sales of the kind described can continue for more than a very short time, because the margin of profit is not sufficient to enable a continuous operation of the kind mentioned *in any one community*. The slaughter salesman must move about from community to community, thus there is no permanent or continuous advantage to the purchasing public of any one community.
    Rather, the whole conditions of the trade have been upset and local merchants everywhere find the value of their inventory is lessened and their ability to conduct a steady business on a reasonable basis is greatly impaired. It cannot be to the public advantage to have the merchants' livelihood taken away from them; and particularly is this true in regard to those whose inventory is of entirely high-priced goods.
    The majority of retail vendors of watches give to the customers a one-year guarantee; and during that one year obligate themselves to service the watch, making any adjustments or repairs rendered necessary in ordinary use. If by reason of practices referred to in this paragraph, the retail merchant is driven out of business or is unable to continue stocking high-class watches, the customer will be deprived of the service which was otherwise open to him.

10 (*a*). After the first flurry of excitement, the cutting of prices and the consequent loss of prestige results in lesser sales by the retail merchant and consequent lesser purchases from the factory. The cost of movements, cases and accessories to the distributor is very materially affected by the quantities ordered at any one time. The lessening of demand will increase the price to the distributor and, accordingly, to the retailer and to the ultimate consumer.
    As an example, on the morning of October 17th one retailer, who last year purchased Bulova Watches to the extent of $80,000, called on us and stated that owing to the uncertainty of the conditions in the trade and due to the Government's announcement, he could not place any order at all at the present time. Many other customers have written in protesting against the discontinuance of the price maintenance arrangements.

11. As evidence of the fact that price maintenance agreements have not been used to unduly enhance the price of commodities to the public, Bulova Watch Company Limited point to the fact that, notwithstanding the very great increase in the cost of watch movements, watch cases, bracelets, etc. and increased transportation costs, they have continued to offer a high-class Bulova Watch to the public at the price of $29.75 including attachment.

Prior to the imposition of the 25 per cent Excise Tax and the increase of Sales Tax, this watch sold to the public at $24.75. Had the whole of the Excise Tax and of the 2 per cent increase in Sales Tax, namely 27 per cent been added to the price to the consumer, that price would have been $31.43. In addition, all costs have gone up very materially. Nevertheless, by giving large orders to the manufacturers, and by the distributor, the salesman and the retailer each taking a reduction in his profit or commission, the price has been held at $29.75. Thus Bulova Watch Company Limited has, at a sacrifice to all concerned, brought high class watches within the range of all customers. Without a price maintenance agreement many dealers will materially increase the price of this watch to the ultimate buyer.

11 (*a*). These submissions in favour of price maintenance agreements are not by any means exhaustive. We adopt the arguments in favour of these agreements which have been summarized in the Interim Report of the MacQuarrie Commission.

12. The conclusions of the MacQuarrie Commission adverse to the continued legality of price maintenance agreements is based on one fundamental error, namely, that they stifle competition. This could only be true if the commodity in question was produced by only one producer; but where there are numbers of producers and importers, it is almost foolish to suggest that there is any stifling of competition in one producer or importer saying that his particular commodity must be sold on his terms.

No one is compelled to buy a Bulova Watch; and the prospective buyer has literally scores of alternative makes from which he may buy. Every argument in the MacQuarrie Interim Report adverse to price maintenance is based on that fundamental misconception and loses its validity when it is realized that the purchaser has numberless alternatives before him.

13. The argument on page 17 of the Report, based on the suggested inequity of charging the same price for the same commodity whether sold in a store paying high rent or sold in a store paying low rent, has no validity. A high rent is paid because of the great volume of traffic in that neighborhood and the consequent very greatly increased prospect of many sales. A low rent is charged for exactly the contrary reason, that because of the lack of density of traffic there will be relatively few sales. The small merchant in the outlying area paying a small rent is himself much more insistent upon the price maintenance of nationally advertised goods than is the merchant in the centre.

14. The MacQuarrie Commission do not give sufficient weight to the fact that price maintenance agreements place a ceiling above as well as a floor below prices. In the illustration given of the $29.75 watch, there is no question but that for the price maintenance agreement many retailers would offer this watch at a very much higher price.

15. The suggestion also that prices are fixed by producers who do not know the details of the retailers' busines, is without any foundation. It is perhaps safe to say that very, very few retailers study the conditions affecting the sale and distribution of nationally advertised goods as minutely and efficiently as do the producers or distributors of such goods. Almost all such producers or distributors furnish many aids to publicity and sale to the retailers and constantly co-operating with the retailers to increase the efficiency of the means of distribtuion at the retail end.

16. It is equally unfounded to suggest that the producer or distributor has an interest in maintaining the retail price of his commodity at an artificially high level. The great secret of success in selling is to dispose of sufficient numbers at modest prices to distribute the inevitable overhead over as many units as possible.

    The cost to the producer and prices to the distributor are based upon mass production. Both are therefore very greatly interested in the widest possible demand for the commodity and, accordingly, very greatly interested in fixing the price, at the lowest point which will afford a reasonable profit to all those engaged in the sale and distribution of the commodity.

17. With respect, we suggest that the Commission's conclusions are based upon certain predilections rather than upon evidence submitted to the Commission; and those conclusions lose their validity when it is realized that they are based upon the conclusion that price maintenance agreements force the buyer to purchase at the maintained price; whereas the fact is, that the buyer in no case is compelled to purchase a price-maintained article, but is free to purchase a similar commodity from many other available sources.

    The many other available sources naturally afford the competition which keeps the maintained price down to a competitive level.

18. To make illegal price maintenance agreements between the individual producer and distributor and the retail merchant is simply to force the great volume of trade into the hands of the highly capitalized retailers, such as the great departmental or chain stores. In competition with the price-maintained commodity, these chain stores and departmental stores, in many instances, produce their own "named brand" commodity, the price of which they absolutely control.

    The real question before Parliament in dealing with the proposed legislation is whether they want to force great numbers of small retailers out of business, and aid in the flow of business to a limited number of departmental stores and chain stores. The latter result will do great harm to the commercial community; and, in our opinion, will produce no benefit to the consuming public.

19. In conclusion, it is submitted that price maintenance agreements between the individual producer or distributor and the retail merchant, steady the conditions in the trade, stabilize the solvency of the small retail merchant, prevent such small merchant being driven out of business by the departmental stores and chain stores, and enable the producer or distributor to maintain the standing and reputation of his commodity in the trade. The public, on the other hand, can buy any one of numbers of competitive articles; and if they do not want to purchase a premium product at the producer's price, they are not in any way hurt.

We submit that the conclusion of the English Court of Appeal should be adopted by yourself and the Government; and that the parties to commercial transactions should continue to be regarded as the best judges of what is reasonable between themselves.

APPENDIX E

CANADIAN ELECTRICAL MANUFACTURERS ASSOCIATION

126 DAVENPORT ROAD (AT BELMONT)

Toronto 5, Canada

November Thirtieth, 1951.

TO:
The Joint Committee, both Houses of Parliament
to consider the Interim Report of the MacQuarrie
Committee on Price Maintenance.

Reference: Submission of Price Information.

In acknowledgement of a letter received from Mr. A. L. Burgess, Clerk of the Committee, dated November 26th, we are submitting herewith information from certain companies showing the price information, which in our opinion would provide the Committee with sufficient data on which to base their judgment.

It was suggested at the hearings on Monday, November 26, covered by "Minutes of Proceedings and Evidence No. 6" that the Committee itself would formulate a list of questions to be answered. However, it was later determined by the Committee that the manner of presentation of this price information would be left to the manufacturers themselves, with the understanding that the Committee would confine its questioning to such representations as we would care to put forward.

To clarify the situation I might say that this letter was received at 11:00 p.m. on November 26, necessitating my return to Toronto on the 27 and therefore, my contacts with various member companies were subsequent to that date.

Since this is a national association with member companies spread out from British Columbia to Quebec, you will understand that the time factor did not permit submissions by all companies in the Appliance Industry. Even at the time of writing, therefore, some promised information was in transit in the mail, but was not received in time for submission to the Committee.

However, sufficient price information has been tabled, particularly in regard to what might be termed "major appliances", e.g., Refrigerators, Ranges and Washing Machines, to prove without doubt that the profit accruing to the manufacturers is entirely reasonable.

You will note that in many cases the manufacturers have shown their costs and profit margins both previous to the tax increases and subsequent thereto. Therefore, it will be noted that in several cases the result has been a loss to the manufacturer rather than a profit, since the excise tax was levied in April of this year.

COMPANY "A"

"Confirming our conversation re List Prices on Electrical Appliances.

The Distributor's profit on the Appliances which we manufacture is only 20% on the selling price, whereas the usual profit on non-electrical housewares is 25% on the selling price.

In view of the fact that the distribution of Appliances involves a certain amount of service, we feel that the present margin of profit is very low."

NOTE: *In the following tables an asterisk indicates loss.*

COMPANY "B"

APPLIANCE—RANGE

	Price Prior to Tax Increase	Price After Tax Increase
Suggested Consumer List Price	$349.00	$399.50
Dealer's Cost	230.00	264.00
Distributor's Cost	204.15	233.70
Manufacturer's Cost	185.64	276.78
Sales and Excise Taxes	16.27	44.75
Total	201.91	321.53
Percentage Markup		
Dealer to Consumer	51·7	51·3
Distributor to Dealer	12·7	12·9
Manufacturer to Distributor	1·0	27·3*

APPLIANCE—RANGE—APARTMENT SIZE

	Price Prior to Tax Increase	Price After Tax Increase
Suggested Consumer List Price	$239.75	$279.00
Dealer's Cost	163.00	184.00
Distributor's Cost	141.45	163.25
Manufacturer's Cost	144.32	215.16
Sales and Excise Taxes	11.04	31.25
Total	155.36	246.41
Percentage Markup		
Dealer to Consumer	47·1	51·6
Distributor to Dealer	15·2	12·7
Manufacturer to Distributor	9·0*	33·8*

APPLIANCE—TURNOVER TOASTER

	Price Prior to Tax Increase	Price After Tax Increase
Suggested Consumer List Price	$ 9.95	$ 10.95
Dealer's Cost	6.35	7.00
Distributor's Cost	5.27	5.80
Manufacturer's Cost	5.33	7.73
Sales and Excise Taxes	.98	1.50
Total	6.31	9.23
Percentage Markup		
Dealer to Consumer	56·7	56·4
Distributor to Dealer	20·0	20·0
Manufacturer to Distributor	16·5*	37·2*

NOTE: * Indicates *loss.*

COMPANY "B"—*Con.*

APPLIANCE—WASHER

	Price Prior to Tax Increase	Price After Tax Increase
Suggested Consumer List Price	$159.50	$184.50
Dealer's Cost	103.50	120.00
Distributor's Cost	89.75	103.75
Manufacturer's Cost	97.41	124.10
Sales and Excise Taxes	5.91	20.30
Total	103.32	144.40
Percentage Markup		
Dealer to Consumer	54·1	53·7
Distributor to Dealer	15·3	15·6
Manufacturer to Distributor	13·2*	28·1*

APPLIANCE—IRON

	Price Prior to Tax Increase	Price After Tax Increase
Suggested Consumer List Price	$ 13.95	$ 15.50
Dealer's Cost	8.95	9.95
Distributor's Cost	7.39	8.21
Manufacturer's Cost	6.98	10.11
Sales and Excise Taxes	1.38	2.13
Total	8.36	12.24
Percentage Markup		
Dealer to Consumer	55·8	55·8
Distributor to Dealer	21·1	21·2
Manufacturer to Distributor	11·6*	33·0*

APPLIANCE—REFRIGERATOR 7 CU. FT.

	Price Prior to Tax Increase	Price After Tax Increase
Suggested Consumer List Price	$375.00	$389.00
Dealer's Cost	255.00	265.00
Distributor's Cost	225.00	233.40
Manufacturer's Cost	192.86	275.02
Sales and Excise Tax	16.67	46.68
Total	209.53	321.70
Percentage Markup		
Dealer to Consumer	47·0	46·8
Distributor to Dealer	13·3	13·5
Manufacturer to Distributor	7·4	27·4*

NOTE: * Indicates *loss.*

COMPANY "B"—*Conc.*

APPLIANCE—REFRIGERATOR 9 CU. FT.

	Price Prior to Tax Increase	Price After Tax Increase
Suggested Consumer List Price	$399.00	$479.00
Dealer's Cost	270.00	325.00
Distributor's Cost	239.40	287.40
Manufacturer's Cost	222.72	317.60
Sales and Excise Taxes	17.74	57.48
Total	240.46	375.08
Percentage Markup		
Dealer to Consumer	47·8	47·3
Distributor to Dealer	12·8	13·1
Manufacturer to Distributor	·5*	23·4*

COMPANY "C"

PRODUCT PROFIT AND LOSS ANALYSIS

	Year 1950		Year 1951	
	Approx. 6 Cu. Ft. Cabinet	4 Burner Over-Oven Range	Approx. 6 cu. Ft. Cabinet	4 Burner Over-Oven Range
Retail Price	299.75	229.75	345.75	265.75
Less: 5 Year Protection Plan	5.00	—	5.00	—
Dealer Allowance	4.00	4.00	4.00	4.00
Factory List	290.75	225.75	336.75	261.75
Less: Average Discount	107.79	84.36	128.30	98.49
Gross Sale	182.96	141.39	208.45	163.26
Less: Sales Tax	11.97	9.81	14.98	11.80
Excise Tax	—	—	22.47	17.70
Freight Allowance	4.00	4.00	4.00	4.00
Co-Operative Advertising	4.36	3.39	5.05	3.93
Material Warranty	1.88	1.68	2.49	2.39
Factory Revenue	160.75	122.51	159.46	123.44
Cost of Sales	114.17	107.63	133.58	124.54
Gross Profit	46.58	14.88	25.88	1.10*
Gross Profit %	28.98	12.15	16.23	.89*
Selling Expenses	8.50	6.48	16.27	12.60*
Operating Profit	38.08	8.40	9.61	13.70*
Operating Profit %	23.69	6.86	6.03	11.10*
Income Tax	17.71	3.91	7.87	11.22*
Net Profit	20.37	4.49	1.74	2.48*
Net Profit %	12.67	3.67	1.09	2.01*

NOTE: * Indicates *loss.*

COMPANY "C"

PRICE STRUCTURE

	Year 1950		Year 1951	
	Approx. 6 Cu. Ft. Cabinet	4 Burner Over-Oven Range	Approx. 6 cu. Ft. Cabinet	4 Burner Over-Oven Range
Retail Price	299.75	229.75	345.75	265.75
Dealer Cost	198.93	150.58	229.61	174.59
Dealer Profit	100.82	79.17	116.14	91.16
Dealer Profit %	33.63	34.46	33.59	34.30
Distributor Cost	166.66	125.52	192.23	145.53
Distributor Profit	32.27	25.06	37.38	29.06
Distributor Profit %	16.22	16.64	16.28	16.64

COMPANY "D"

COMPARISON OF PRICES, COSTS, AND MARKUP RATES ON ELECTRIC REFRIGERATORS BEFORE AND AFTER TAX INCREASES

	Prior to Tax Increase		After Tax Increase	
	7½ cu. ft.	8½ cu. ft.	7½ cu. ft.	8½ cu. ft.
(A) Prices				
Suggested consumers price	$344.50	$374.50	$397.50	$432.50
Dealer's cost	232.35	248.90	268.15	287.50
Distributor's cost	192.25	205.50	221.80	237.30
Manufacturer's cost delivered	159.05	166.67	187.43	195.92
Sales and excise tax	13.97	14.95	43.61	46.72
Total cost delivered	$173.02	$181.62	$231.04	$242.64
(B) Percentage Markup				
	Per cent	Per cent	Per cent	Per cent
Dealer to consumer	48·27	50·46	48·24	50·43
Distributor to dealer	20·86	21·12	20·90	21·15
Manufacturer to distributor	11·11	13·15	4·00*	2·20*

NOTES: (1) Manufacturer's cost does not include expenditures of a capital nature, interest, or income taxes;

(2) Manufacturer's costs after tax increase do not reflect the current situation caused by progressive decline in volume and increases in costs of labour and material.

E. & O.E.
November 29, 1951.

NOTE: * Indicates *loss.*

COMPANY "E"

January-June 30, 1950

List (including 8 per cent sales tax)			$86.50
Distributors' 40 per cent and 10 per cent equal	$39.79	Balance	46.71
Freight allowance equals	.96	"	45.75
Sales tax 8/108 equals	3.39	"	42.36†
Manufacturer's cost for period			34.75
Manufacturer's profit			$ 7.61

May-October, 1951

Suggested list of (includes 10 per cent sales and 15 per cent excise)			$100.00
Distributors' 40 per cent and 10 per cent equal	$46.00	Balance	54.00
Freight allowance equals	1.08	"	52.92
Sales tax 10/125 equals	4.23	"	48.69
Excise tax 15/115 equals	6.35	"	42.34†
Manufacturer's cost for period			42.17

Manufacturer's profit 17 cents (or) ·17 per cent.

May-October, 1951

Suggested list price (10 per cent sales and 25 per cent excise)			$107.85
Distributors'—40 per cent and 10 per cent equal	$49.61	Balance	58.24
Freight allowance equals	1.08	"	57.16
Sales tax 10/135 equals	4.23	"	52.93
Excise tax 25/125 equals	10.59	"	42.34†
Manufacturer's cost for period			42.17

Manufacturer's profit 17 cents.

This company reports a third quarter loss in 1951	$9,896.66
This company reports Oct. 1951 loss	3,298.88
Loss July-October inclusive	$13,195.54

†Manufacturer's net income.

COMPANY "F"

Average net profit for 1950—8·7 per cent on sales.
(Range on various appliances from 6·5 per cent loss *to* 14·2 per cent profit.)
After tax increase—Spring 1951—average loss 7·7 per cent on sales.

Electrical Appliance

(Suggested list)	Dealer receives from customer	$13.95
	Distributor receives from dealer	9.30
	Manufacturer receives from distributor	7.53
	Less tax and transportation	.87
	Manufacturer's net f.o.b.	6.66

1950 cost $6.03—net profit per unit 63 cents.
At present time cost in own warehouse $7.17—loss per unit 51 cents.

NOTE: * Indicates *loss.*

COMPANY "G"

Discounts to Retail Dealers from Manufacturer's Suggested Retail Prices

	Minimum Discount	Maximum Discount
	per cent	per cent
Refrigerators	27	36
Ranges	25	35
Washing machines	30	38
Small appliances	25	40

This manufacturer sells his large appliances direct to dealers, and not through distributors. He gives distributors a discount of 46 per cent on small appliances.

His variation in dealing discounts between minimum and maximum are based on the following factors:

1. A lesser discount on low-priced utility models.
2. The volume of the dealer's purchases.
3. The efficiency of the dealer in sales promotion, sales training, store location, and in recognition of expenses incurred therein.

November 29/51

Profits earned during the years 1949 and 1950 and 10 months of 1951 on Appliances

Expressed in per cent of Manufacturer's Selling Price

Federal plus provincial income tax on corporation taxable income was 40 per cent in 1949, 41·6 per cent in 1950, and is 52·6 per cent in 1951.

	Net profit before income tax expressed in per cent of sales			Net profit after income tax expressed in per cent of sales		
	1949	1950	1951 (10 mos.)	1949	1950	1951 (10 mos.)
Refrigerators	0·7	5·1	1·0	0·42	3·0	0·5
Ranges	10·1	13·1	6·9	6·1	7·7	3·3
Washing machines	14·3 (loss)	5·5	5·4	(loss)	3·2	2·6
Other appliances.	11·5	11·2	10·6	6·9	6·5	5·0
Total all appliances	4·5	7·4	4·1	2·7	4·3	1·9

November 29/51

COMPANY "K"

This Company does not sell through Distributors.

Ranges

	Cost	Average Selling Price	Consumer List
Jan. 1/51	162.52	183.58	274.00
Nov. 30/51	216.21	213.73	319.00

Refrigerators

	Cost	Average Selling Price	Consumer List
Jan. 1/51	192.85	233.83	349.00
Nov. 30/51	244.40	247.23	369.00

NOTE: * Indicates *loss.*

COMPANY "L"

Electric Kettles

	Cost	Selling Price	Jobber's Price	Consumer List
Jan. 1/51	10.14	8.27	10.33	15.50
Dec. 1/51	11.86	8.80	11.00	16.50

COMPANY "M"

Amount Retained By Manufacturer From Each Dollar Sale To Distributor By Product

Product	Year Net before Income Taxes	Deduct Income Taxes	1950 Net Retained	Year Net before Income Taxes	1951 to date Deduct Income Taxes	Net Retained
A	·228	·095	·133	·230	·115	·115
B	·235	·098	·137	·223	·112	·111
C	·120	·050	·070	·130	·065	·065
D	·084	·035	·049	·076	·038	·038
E	·003	·001	·002	·082*	....	·082*
F	·217	·091	·126	·213	·107	·106
G	·243	·101	·142	·182	·091	·091
H	·207	·086	·121	·176	·088	·088
I	·035	·015	·020	·391*	....	·391*

Amount Retained By Manufacturer From Each Dollar Sale to Consumer By Product

Product	Year Net before Income Taxes	Deduct Income Taxes	1950 Net Retained	Year Net before Income Taxes	Deduct Income Taxes	Net Retained
A	·118	·049	·069	·123	·062	·061
B	·121	·050	·071	·117	·059	·058
C	·061	·025	·036	·070	·035	·035
D	·044	·019	·025	·040	·020	·020
E	·001	·0005	·0005	·041*	....	·041*
F	·115	·048	·067	·116	·058	·058
G	·135	·056	·079	·099	·050	·049
H	·144	·060	·084	·099	·050	·049
I	·019	·008	·011	·136*	....	·136*

It is felt that within the short time given, sufficient factual information is submitted herewith to prove, as stated to the Joint Committee, that profits in the Appliance Industry to put it mildly, have not been unreasonable. It is hoped that the presentation of these figures will assist the Committee in its recommendation on "Resale Price Maintenance."

Yours very truly,

B. NAPIER SIMPSON,
General Manager.

NOTE: * Indicates *loss.*