

## REGULATORY AND POLICY DEVELOPMENTS

### **MOTOR VEHICLE TRANSPORT ACT: COMMITTEE REPORT**

By: John Blakney  
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The Report of House Standing Committee on Transport on C-19, the government's legislation liberalizing extra-provincial trucking regulation, was tabled in the House on April 27, 1987.

The Committee's amendments to the implementation and licensing criteria provisions of the legislation will slow the pace of trucking deregulation by lengthening the transition period from three to five years.

Specifically, the Standing Committee changed the repeal date of the transitional licensing provisions. These provisions establish a "reverse-onus" test under which existing licensees who oppose a licence application must prove that economic harm would result if the application were granted. The Minister of Transport will be required to conduct a review of the effect of the transitional rules after three years' experience (to be completed prior to the fourth year). Most importantly, at the end of the fifth year, the Governor in Council will be able to extend the transitional rules and defer full economic deregulation for a further period. It appears that entry controls could be maintained indefinitely if the Minister of Transport so recommends after consulting with provincial Transport Ministers.

The Standing Committee has also significantly modified the transitional reverse-onus entry test. In its original version the Bill would have required that opponents to an extra-

provincial licence application establish that the licence would, having regard to certain economic factors set out in the legislation, likely be detrimental to the interests of users of transportation services, the economic or social development of Canada or inter-provincial or international trade or commerce. The relevant economic factors cited in the Bill included a negative impact on industry stability, price and service options, an undue lessening of competition, increased market concentration, price or service discrimination, consumer detriment, negative impact on employment, and adverse impact on an interested person (ie. opponent to the application).

The Committee's amendments retain the concept of reverse-onus but, in place of these specific and arguably tough criteria for an opponent to establish, would require opponents to adduce evidence that the licence sought "would be likely detrimental to the public interest".

This broader test would allow established truckers greater scope for raising objections and would permit provincial regulators to more readily import social or equity considerations into their licensing decisions. In fact, it might be argued that provincial regulators should go beyond narrower economic tests if Parliament rejects them by adopting the public interest test proposed by the Committee.

Other amendments worth noting include:

1. Authority to prohibit or restrict foreign trucking operations where a foreign government has engaged in unfair, discriminatory or restrictive prices against Canadian carriers, and prior consultations to eliminate their practices have failed.

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2. Authority to the federal Governor in Council to establish safety regulations for extra-provincial trucking, after consultation with affected provinces.
3. Mandatory safety and insurance requirements for licensees once full entry deregulation is in place.

### NATIONAL TRANSPORTATION ACT: COMMITTEE REPORT

Bill C-18, the government's transport regulatory reform legislation was reported out by the House Transport Committee on May 5, 1987, with minor changes.

Of greatest significance are the following amendments:

#### Declaration of National Transportation Policy

- The declaration of National Transportation Policy now states that the national transportation system should meet "the highest practicable safety standards" and that "commercial viability of transportation links is (to be) balanced with regional economic development objectives in order that the potential economic strengths of each region may be realized".

#### National Transportation Agency

- At least one representative from each region of Canada (Pacific, Prairie, Ontario, Québec, Atlantic) is now required for the National Transportation Agency.
- The Agency is now authorized to hear complaints on obstacles to mobility to the disabled.

#### Shipper/Carrier Mediation and Arbitration

- Specific economic factors such as cost changes, efficiencies, relative profitability of carrying particular goods, shipping practices and market conditions are no longer listed as relevant considerations in arbitrations.
- Carriers are now required to adopt the arbitrator's ruling.

#### NTA Rate Investigations

- Specific economic factors (same list as formerly under mediation/arbitration process) have been removed from the list of relevant factors to be considered by the National Transportation Agency.

#### Air Transport

- Scheduled service licences in Southern Canada and international licences may now include restrictions on the size and type of aircraft to be used.
- Specific economic factors (same list as formerly under mediation/arbitration process) have been removed from the list of relevant factors to be considered by the National Transportation Agency.
- The lead-time for notices of discontinuance or reduction of service has been increased from 60 to 120 days.
- New authority is granted to make regulations governing international air charter licensing and conditions of service and charges for the transportation of disabled persons.

#### Railways

- Broader authority is granted to establish competitive line rates to assist captive shippers.
- The Governor in Council has been given authority to suspend level of service regulations if they negatively affect railway viability.

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- Terminal Running Rights, which would have permitted a railway to run over the tracks of another railway in order to pick up or deliver goods, have been eliminated.
- The Governor in Council now has power to take action against restrictive practices of foreign railways.
- Railways cannot abandon more than 4% of their aggregate trackage during the first five years after the *Act* comes into force.

### Mergers and Acquisitions

- The Governor in Council has been given power to exempt persons or acquisitions from the merger/acquisition provisions.

At the time of writing both C-18 and C-19 had received Third Reading in the House without altering the Standing Committees' amendments and also First Reading in the Senate. There were indications, however, that the Senate planned to conduct extensive hearings on the legislation which would delay its final approval until the Fall Session of Parliament.

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## THE SPECIALTY CHANNELS HEARING: HOW MUCH COMPETITION CAN THE BROADCASTING SYSTEM ACCOMMODATE?

By: Andrée Wylie, Smith, Lyons, Torrance, Stevenson & Mayer, Ottawa

Beginning July 20, 1987, the Canadian Radio-television and Telecommunications Commission will finally hear over twenty applications for network licences to offer Canadian specialty programming services for distribution by cable television systems. Such applications were first called for by the Commission in August, 1986. The deadline for filing was extended twice. The first extension

was granted so that applicants could amend their proposals following the federal government's announced changes in the funding criteria of Telefilm Canada's Broadcast Program Development Fund. The second extension was at the request of the Parliamentary Standing Committee on Communications and Culture which was preparing to report to Parliament following a review of the Report of the Task Force on Broadcasting Policy (the Caplan-Sauvageau Report) and wanted its views known before the Commission proceeded to hear specialty applications.

### Background

Specialty services consist of narrowcast or theme-specific programming designed to meet the particular viewing needs of identifiable groups, be it on the basis of interest, age, language or culture, or to offer what is often referred to as "vertical", rather than general interest, television programming. These services are satellite-to-cable services, packaged by a network operator and uplinked to a Canadian satellite and then downlinked to the receiving antennas of Canadian cable operators. From that point they are distributed to Canadian homes through the coaxial cable system already delivering a number of programming services, including conventional television signals reviewed over-the-air at the cable system's headend.

Applications have been filed for licences to provide, on a commercial basis, family and youth, sports, ethnic, news, home shopping, health, music, religious, native Canadian, public affairs and weather programming services. An application has also been filed for two national, non-profit public networks, one in English and one in French, to distribute to all cable subscribers a variety of Canadian programming, including drama, children's programs, regional productions, documentaries and performing arts presentations. This concept, dubbed TV Canada, was suggested by the Caplan-Sauvageau Task Force and endorsed by the Minister of Communications. It would be supported by a levy of one dollar monthly on all cable subscribers in Canada.

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It should be noted that a few specialty networks have already been licensed by the Commission to provide sports, music, health and life style, and ethnic programming.

The original intent of the Commission in calling for further specialty services applications was to respond to the increasingly competitive nature of the programming environment brought about by the expansion of delivery technologies such as videocassette recorders and homeowners' parabolic antennas capable of receiving a number of satellite services. By encouraging the development of new Canadian programming services, the Commission planned to ensure that a greater range of Canadian offerings would be available to Canadian cable operators for distribution. It is currently Commission policy to authorize the distribution by cable of non-Canadian specialty services which do not compete directly with licensed Canadian specialty services and to prohibit the cable distribution of those who do. For example, the Nashville Network is eligible for distribution by Canadian cable systems since the Commission has not yet licensed a Canadian country music channel.

The applications filed are based on a variety of revenue generation proposals ranging from a mandatory levy on all cable subscribers in Canada or all subscribers in a particular cable franchise to subscription or advertising revenues or a combination of subscriber and advertising revenues.

### **Distribution Arrangements**

The applications filed also propose a variety of frameworks for cable distribution which the Commission has described generically as "mandatory", "optional" and "discretionary".

Although there are variations on these basic distribution arrangements, distribution on a mandatory basis involves the required carriage of a specialty network service by all Canadian cable licensees as part of the basic service, that is, as part of the package of services that a subscriber receives for the basic monthly fee paid for access

to cable delivery. Distribution on an optional basis involves the carriage of a network service, at the option of each cable licensee, as part of the basic service. In other words, if a cable licensee opts to distribute a network service, every subscriber of that cable licensee receives it.

In both these distribution arrangements, a certain charge attributable to the service will generally be passed through to the subscriber by the cable operator and integrated into the basic monthly access fee. Such suggested monthly charges range in the applications from as little as five cents wholesale to one dollar retail per subscriber, depending on such factors as whether cost will be recouped from all or some of the cable subscribers in Canada, how many cable operators are likely to agree to distribute an optional service, and whether and, if so, to what extent, a network licensee will also rely on advertising revenues to operate the service.

Distribution on a discretionary basis involves the carriage of a network service at the option of each cable licensee and reception of the service at the option of each cable subscriber for a monthly fee in excess of the basic access fee.

To date, specialty network licences have been granted on the basis of discretionary distribution only. It is to be noted that three of the applications were filed by existing specialty network licensees who wish to change their method of distribution from discretionary to optional or mandatory. The advantage to be gained in terms of broader market coverage and increased revenues is obvious. On the other hand the Commission has indicated that it expects such services to comply with the level of Canadian content required of conventional television broadcasters if they gain mandatory distribution.

### **Cable Company Ownership**

In its original call for applications, the Commission stated that it was not disposed to change its previous requirement that ownership involvement in specialty networks by cable licensees be limited to a minority shareholder

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position. However, the Commission declared itself prepared to consider proposals based on the integration of the distribution and exhibition functions, that is, applications where the network licensee would include cable ownership participation. There are in fact five such applications filed, some involving a controlling interest by cable companies. Three others involve already licensed general interest pay television licensees and three at least involve the ownership participation of conventional broadcasters.

Interestingly, the Standing Committee expressed concern in its report to Parliament with respect to the potential for unjust discrimination if the owners of cable systems are also allowed to own specialty programming services since such ownership gives them the opportunity, at their sole discretion, to make decisions regarding the selection for carriage or retail pricing between various optional services. The potential for the extension of preferential treatment to cable-related specialty undertakings is obvious since cable operators operate in Canada on the basis of territorial monopolies. As such, they are in control of the delivery system for satellite-delivered television programming in a given area and will remain the "gatekeepers" for access to viewers by network licensees until individual ownership of satellite receiving antennas is a more widespread, cost-effective method of reception. The Committee recommended that, unless the Commission can satisfy the concerns of existing and potential pay and specialty licensees for fair and equitable treatment, it should not permit cable ownership of general interest pay or specialty services.

### Issues to be decided

It is readily apparent that a number of important policy issues will be raised by the specialty hearing which is expected to last three weeks and to generate submissions from a number of interested parties, including cable licensees, conventional television licensees, and the production industry:

- How much competition for viewer attention, often referred to by participants in the broadcasting industry as fragmentation of the audience, can the Canadian system withstand? In other words, how many services should be licensed?
- How much competition for advertising revenues generated by the electronic media can the system accommodate without impairing the conventional broadcasters' capacity to discharge their responsibility to provide broadcast rather than narrow cast services, including local program production?
- Is there a real demand for additional specialty services and, if so, for which services? Should the Commission license a number of services on the basis of a "willing and able" test and let market forces take their toll as they did in the case of general interest pay television networks, or should the regulator estimate the market capacity conservatively and strictly control entry on that basis?
- To what extent should the Commission leave it to cable operators to limit access to their delivery system based on their own perception of demand once a service has been licensed? Are measures necessary to ensure equitable access to cable distribution systems with regard both to retail price and packaging or positioning with other services for marketing purposes? Some satellite services have attributed their failure in the past to a lack of cooperation from cable licensees in their marketing efforts.
- The cable industry historically has been hardware-driven and, some will argue, not very innovative, aggressive or skillful in marketing services. Should the regulator be involved in devising mechanisms aimed at ensuring that a volume and diversity of newly-licensed specialty services are brought to the cable subscriber on reasonable terms?
- If the Commission allows the cable industry to participate in the ownership of specialty networks, what safeguards, if any, should be

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put in place to prevent discrimination by cable systems in their dealings with specialty licensees?

- In cable franchises where channel availability is limited due to the technical capacity of the system or the number of signals and services competing for a position on the dial, should an order of priority be established by the regulator for specialty channels and, if so, on what basis?
- Should the Commission license narrowcast services for mandatory cable distribution? If so, which ones? On what basis should a regulatory agency decide that every Canadian cable subscriber must support a religious channel, an ethnic channel, or a children's channel, or be denied access to cable services altogether? Cable television may be closer to a basic amenity than to a luxury in areas which are comparatively underserved over-the-air or where the interference and congestion experienced in highly urbanized areas impair the adequate over-the-air reception of basic television signals.
- How much can be added to basic cable access fees for unrequested narrowcast services before cable operators face widespread disconnection?
- Where distribution of a specialty service is mandatory, should the fees for it be regulated?
- Would mandatory distribution of some specialty services on the basic service of some cable systems provide unfair competition for those specialty services marketed on a discretionary basis?

The cable industry in Canada has been given a pivotal role in ensuring that conventional broadcasting signals, both Canadian and American, as well as specialized and satellite-delivered programming services reach as many Canadian homes as possible. Could this role be altered by making faulty assumptions on the elasticity of demand for cable? The Commission will no doubt hear the Canadian Cable Television

Association submit in July that acceding to specialty applicants' demands for mandatory carriage and an increase in the basic cable access fee for all or some Canadian subscribers to support the service will lead to a serious level of disconnection. The exclusive distributor of programming services is likely to argue for the free play of market forces where the carriage of specialty services is concerned, in other words, for a liberal number of specialty services providing increased choice, with distribution arrangements governed solely by the laws of supply and demand as the cable industry perceives them.

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## SATELLITE COMMUNICATIONS ENTRY LIBERALIZED

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A CRTC decision in late 1986 has clarified the Commission's position with respect to the revised Telesat/Telecom Canada system interconnection agreement, and has provided customer owned earth station access to interconnected satellite-based private line telecommunication services in Bell Canada and BC Telephone territory.

The result is to establish similar opportunities for the competitive provision of satellite earth station equipment as have existed for some time for private branch exchanges and to provide telecommunication service users greater freedom in determining how those services are structured.

On June 10, 1986, SED Systems Inc. of Saskatoon applied to the CRTC for an order:

- (a) directing Telesat to file tariffs for the provision of interconnected private line services with the federally-regulated telephone companies (Bell Canada, BC Tel, NorthwesTel, Terra Nova Tel);
- (b) fixing compensation to be paid by Telesat to these telephone companies for the

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interconnection of Telesat's facilities for the purpose of providing interconnected private line services; and

- (c) directing the respondents to permit the attachment of customer provided earth station equipment to their facilities where such equipment is used in the provision of interconnected private line services.

A private line service is a direct, unswitched, call path between two fixed points, in this case, a satellite earth station and the transmitter or recipient of a message using Telesat's space segment services.

SED, since its incorporation in 1972, has been involved in the manufacturing and marketing of satellite television receivers, microwave components and agricultural monitors. It produces the Skyswitch Satellite Communications system used in private communication networks.

SED's application noted that the July 1985 amendments to the Telesat/Telecom Canada Connecting Agreement permitted Telesat to provide satellite-based interconnected private line services directly to the public. SED claimed that, for this to become a reality, Telesat must first file the necessary tariffs. SED also noted that the CRTC must determine the compensation to be paid by Telesat for such interconnection. Finally, SED submitted that business users must be permitted to attach customer-provided equipment, such as the SED Skyswitch, to Telesat's facilities.

The application was vigorously opposed by the respondents. Telesat argued that the application should be characterized as a system interconnection application and that SED had not made out the *prima facie* case required in such matters. Telesat also argued that the CRTC lacked jurisdiction to order a company to provide a particular service and that the question of Telesat/telephone company compensation could arise only when the service requiring compensation is offered by the carrier.

Telesat took the position that SED had the right to attach its earth station facilities directly to Telesat's facilities if they comply with Department of Communications technical standards, but that only Telesat could offer interconnected private line services, ie. SED cannot obtain through Telesat the right to provide interconnected private line services.

In reply, SED noted that the CRTC's decision approving the revised Connecting Agreement (Telecom Decision CRTC 86-9) stated that:

- (1) the amended agreement would allow all users of satellite services to deal directly with Telesat, an arrangement the Commission has long supported, and
- (2) the amended agreement will allow Telesat to offer interconnected private line services with compensation for interconnection to be similar to that required to be paid by CNCP Telecommunications to Bell Canada.

In Telecom Decision CRTC 86-21 (26 November 1986), the CRTC largely granted the relief sought by SED.

The Commission rejected the characterization of the SED application as an application for systems interconnection. It concluded:

In the Commission's view, the arrangement sought by SED with respect to the use of customer-provided earth stations is properly viewed as being in the nature of attachment of customer-provided terminal equipment rather than systems interconnection. In this context, SED is seeking from the Commission an order allowing users to attach customer-provided earth stations to Telesat's space segment facilities in order to derive interconnected satellite-based private line services.

The Commission noted that its decision approving the revised Connecting Agreement referred to "the need to establish, and the agreement by Telesat to pay, contribution charges similar to those which CNCP is required to pay" to obtain direct customer access via private lines leased from Bell, but that the Commission had elected to address these implementation details

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outside the connecting agreement proceeding. The CRTC went on to conclude that Telesat's right to offer space segment services directly to end users and to have these services interconnected to the public switched telephone network should not be used "to preclude the type of arrangement sought by SED".

Accepting Telesat's position, the CRTC reasoned, would grant Telesat a preference against suppliers who wish to provide users with earth stations for the purpose of accessing space segment services via interconnected private line services, and would be contrary to the public interest and would constitute a breach of the *Railway Act* subsection 321(2) prohibition against undue preferences being granted by CRTC-regulated telecommunication carriers.

Accordingly, the Commission granted the relief sought by SED against those respondents which are Telecom Canada members (Bell and BC Tel) but not against NorthwesTel and Terra Nova Tel.

The CRTC also went on to indicate that changes in Telesat's partial channel tariff would be needed to facilitate the derivation of interconnected satellite based private line services using customer-provided earth stations and directed Telesat to file tariff revisions providing that a customer may obtain and pay for increments smaller than increments of 1% of a full period RF channel service (at that time the smallest increment offered by Telesat) "so that a customer may obtain and pay for units of capacity closer to actual customer requirements".

None of the parties have appealed the SED Decision to the courts or, to date, have sought CRTC or Cabinet review of the Decision.

In rejecting Telesat's submission that the Commission could only change the terms of carrier-initiated services and not compel a carrier to provide a new service, the Commission has continued in its liberal and creative interpretation of its remedial powers under subsection 321(2) of the *Railway Act* first expressed in *Challenge Communication Ltd. v. Bell Canada* (Telecom Decision CRTC 77-16, 3 C.R.T. 489, 23

December 1977) and affirmed on appeal by the Federal Court of Appeal [1979] 1 F.C. 857, 86 D.L.R. (3d) 351.

In *Challenge Communications* the Commission interpreted subsection 321(2) of the *Railway Act* as authorizing the CRTC to require a carrier to offer a new service to overcome a situation in which it has granted an undue preference to itself over its competitors. In that case, the Commission ordered the respondent, Bell Canada, to file a substitute tariff to overcome the tariff successfully attacked by Challenge Communications on the ground that Bell had precluded Challenge's customers from connecting their equipment (mobile telephones with an automatic dialing capability) to Bell's network. Bell's tariff had the effect of limiting access to the new automatic dialing mobile phone technology to customers of Bell equipment.

The SED decision arguably extends the Commission's remedial powers under subsection 321(2) of the *Railway Act* to include an order to add another service element (in this case interconnected private line service) to the service purchased by customers wishing to attach their own equipment to the network in order to overcome an undue preference. It is also worth noting this service element (unlike the automatic dialing capability in the *Challenge* case) is not under the complete control of Telesat, the party which created the prohibited preference, but must be obtained by Telesat through negotiation with Telecom Canada members, and that the CRTC effectively specified the terms under which this new element should be provided to Telesat by the terrestrial carrier respondents, Bell and BC Tel.

Of equal significance is the Commission's characterization of a carrier-supplied private line component as integral to realizing SED's customer equipment attachment rights.

The SED Decision recognizes the reality that an effective earth station liberalization policy requires an ability on the part of private earth station owners to obtain territorial private line services as part of the transmission service provided by Telesat, the satellite carrier.

## REGULATION OF FINANCIAL INSTITUTIONS: THE LEGISLATIVE PROCESS BEGINS

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### Introduction

In the last issue of the *Canadian Competition Policy Record*, the federal policy paper on regulation of federal financial institutions was reviewed. This paper, entitled *New Directions for the Financial Sector*, was Tabled by the Minister of State (Finance) on December 18, 1986. Since its release, there has been extensive consultation with the industry and with the provincial governments.

The legislative process associated with the policy proposals has now begun, albeit somewhat later than was expected, and with a devious twist. So far, two bills have been introduced. At the time of this writing, both had received Second Reading in the House and had been referred to the Standing Committee on Finance and Economic Affairs.

### Bill C-42

Bill C-42 was introduced into the House on March 3, 1987. It represents the first phase of the federal financial services reform effort. The Bill includes provisions to establish the Office of the Superintendent of Financial Institutions, changes to the *Canada Deposit Insurance Act*, and changes to the supervisory procedures found in the acts governing federal financial institutions.

There are few surprises in this Bill in light of the discussion which took place subsequent to the Estey Report. However, one matter that should be of concern is the extent to which powers formerly held by the Minister are turned over to the Superintendent of Financial Institutions. This may improve the administration of the *Act*, and increase the speed with which action may be taken by removing the direct involvement of the Minister. However, it

also gives the Superintendent substantial powers to intervene on his own initiative into the operations of federal financial institutions. This shift of decision making authority from the Minister to a bureaucrat reduces direct political accountability for the regulatory system.

This issue also arises in respect of those sections of the Bill which grant powers to the Superintendent to seize control of financial institutions. Speedy action is certainly required at times to avoid losses to depositors and creditors, and, ultimately, to the Canada Deposit Insurance Corporation. However, the new powers being given to the Superintendent are virtually absolute and would be exercised by an official, not by the Minister.

According to the officials at the Department of Finance, the philosophy behind the changes is that the Minister will retain full authority over all "life and death decisions" affecting financial institutions. All other decisions involving supervisory matters are being delegated to the Superintendent. This may provide for administrative convenience, but it stretches the concept of accountability.

Bill C-42 also removes the authority to issue letters patent for the incorporation of financial institutions from the Minister of Consumer and Corporate Affairs and gives this authority to the Minister of Finance. In other areas, it transfers certain authority; e.g., the setting of fees, from the Governor in Council to the Minister of Finance. In other words, the Minister may now take certain actions which previously required Cabinet approval.

Overall, this Bill introduces a significant reduction in direct political accountability. Officials in the Department of Finance consider this shift necessary to ensure security for depositors and creditors of financial institutions. However, there is little evidence to support the need for such sweeping powers in the hands of bureaucrats. These are steps which should be taken only after careful thought as to the possible consequences. So far the deliberations in the Parliamentary Committees does not indicate that such careful consideration is being granted.

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**Bill C-56**

The second bill in the duo, Bill C-56, has been described as a slightly revised combination of former Bills C-8 (which dealt with insurance companies) and C-9 (which dealt with trust and loan companies). These two earlier Bills would have given the Minister of Finance the power to:

1. review and approve all transfers of 10% or more of the shares of any federal financial institution, or any transfer which increases an existing holding to 10% or more of the outstanding shares,
2. issue cease and desist orders to the management of federal financial institutions engaging in activities of questionable business prudence,
3. prescribe values for real estate held by federally regulated financial institutions where solvency and liquidity tests indicate that assets may not be appropriately valued, and
4. strengthen certain prudential and solvency standards for insurance companies.

In addition to these provisions, Bill C-56 includes:

5. a provision that mutual life insurance companies will be deemed to be Canadian, even if a majority of their policyholders (owners) are non-residents, so long as the head office of the mutual is located in Canada and at least 75% of the directors are Canadian citizens normally resident in Canada, and
6. provisions relating to the ownership of securities dealers by federal financial institutions in line with the recent agreement between the Ontario and federal governments.

A recent Federal - Ontario agreement cleared the way for domestic federal financial institutions to purchase or own 100% of an Ontario securities dealer effective July 1, 1987, and foreign

financial institutions to purchase 50% of a securities dealer effective July 1, 1987, and purchase 100% effective July 1, 1988.

British Columbia also passed legislation to allow foreign institutions to own 100% of a B.C. securities dealer effective July 1, 1987, one year earlier than provided for by the Ontario changes. However, C-56 would prevent this from happening before July 1, 1988.

With regard to the establishment of new securities operations by existing non-resident owned federally regulated financial institutions (e.g., Schedule B banks), the ownership limit of 50% until July 1, 1988, does not apply. However, until July 1, 1988, such operations would be restricted to the activities which are now permitted to be done in-house by the parent. In other words, a newly established securities operation of a Schedule B bank would not be allowed to engage in any activities that are not allowed to the Schedule B bank itself.

Further, non-resident owned institutions which have a Schedule B bank subsidiary in Canada would be required to establish a securities operation through their Schedule B bank subsidiary.

Thus, Schedule B banks will have two options. They can purchase 50% of an existing securities dealer on July 1, 1987, and thereafter engage in the full line of securities operations through this dealer, or they can establish a new securities dealer on July 1, 1987 and be restricted to only those operations allowed to be done in-house by the parent bank until July 1, 1988. The clear purpose of these provisions is to give domestic financial institutions a one year head start on the foreign competition.

There are no changes of substance between Bills C-8 and C-9 and Bill C-56 with regard to the provisions relating to the cease and desist or real estate valuation powers. Neither are there any substantive changes to the provisions relating to the prudential and solvency standards for insurance companies. However, there are significant changes to the powers granted to the Minister to review and approve share transfers.

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These changes have been made to reflect the ownership proposals found in the "Blue Paper" of December 18, 1986. The effect of the changes is to substantially increase the scope of the share transfer review powers, and to effectively implement the policy which arrests further commercial - financial links. It was thought that the commercial link policy would be brought in as part of the yet to be released Phase 3 of the regulatory proposals. However, this policy is now being included as part of the share transfer approval process in Bill C-56. The press release issued by the Finance Department upon tabling of Bill C-56 indicated that:

most of the measures contained in the Bill were previously introduced in the House on two previous occasions in essentially the same form as they now appear in Bill C-56. (Only a few technical revisions have been made.)

In fact, Bill C-56 has amended the provisions governing ministerial review of changes of ownership in a way that signals a fundamental change in government policy from Bills C-8 and C-9 and their predecessors.

In previous bills, the Minister was required to approve any transfer of shares which resulted in any person or group of associated persons acquiring more than 10% of any series of any class of shares of a federal financial institution. In addition, the Minister was required to approve the transfer of shares in any other corporation where such a transfer would result in a person or group of associated persons controlling this other corporation, if this other corporation itself owned more than 10% of the shares of a federal financial institution.

In this latter situation under the new provisions, it is no longer necessary for control to exist. Rather, the Minister will be required to review any transfer of shares of any corporation, where such a transfer would result in any person or group of associated persons **owning more than 10% of the shares of this other corporation**, where this corporation itself owns more than 10% of the shares of a federal financial institution.

This is a dramatic extension of the share transfer review powers of the Minister. Coupled with the broad definition of "associated persons", this power would involve the Minister in a vast number of share transfer situations, and could cause substantial confusion and uncertainty in the securities transfer process.

A related provision would allow the Superintendent to require a company to obtain information from any shareholder relating to his or her shareholdings. This provision was found in earlier bills. With the noted extension of the Ministerial powers, this provision would allow the Superintendent to inquire into share ownership far beyond what was provided for in earlier legislation.

It is understood that the Department of Finance is concerned with the mounting opposition to the proposed ownership and commercial link policies which were to have been introduced in Phase 3 of the legislative program. Apparently the government is attempting to bypass this debate and grant the Minister effective control over these situations through a disguised change to the provisions in Bills C-8 and C-9, now found in Bill C-56.

The Minister has indicated that he expects both Bills C-56 and C-42 to be passed into law before the House rises at the end of June. Indications from the two opposition parties are that they will not put any barriers in the way of either bill. At the time of this writing, the bills were being jointly considered by the House Committee on Finance and Economic Affairs. Bill C-42 has been pre-studied and reported by the Senate Banking, Trade and Commerce Committee, and Bill C-56 is going through this process. Thus, within a matter of a week or so both bills will have cleared the only opportunity for public input.

The changes in Bill C-56 essentially take the pressure off of the Department of Finance to proceed quickly with Phase 3 of the legislative program. The Minister and/or the Superintendent will have been granted all the required powers to exercise virtual absolute control over the financial sector. Thus, Phase 3 could be delayed until fall.

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Editor's note: *Dr. Evans' commentary on Bill C-56 was written prior to an agreement being reached on June 24, 1987, between the Minister of State (Finance) and the House Finance Committee. The Minister agreed to withdraw the controversial share transfer controls from C-56 and the Committee agreed to report out the Bill in time for Third Reading prior to the House rising for its summer recess. The Minister has indicated that he plans to re-introduce the share transfer controls in a separate Bill this fall, possibly as part of the Phase 3 legislation as was originally announced.*

## PETROLEUM PRODUCTS PRICING IN NOVA SCOTIA

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By notice dated January 9, 1987, the Nova Scotia Board of Commissioners of Public Utilities ordered that a public hearing be held in respect of gasoline and fuel oil prices in the province. The Board is empowered to hold such a hearing under the provisions of the *Nova Scotia Gasoline and Fuel Oil Licensing Act* which also authorizes the Board to determine the maximum price, or any changes in the price, of gasoline and fuel oil in the province. The Board's mandate under the *Act* is to ensure that such prices or changes in prices are "just and reasonable". The Board also licences gasoline and fuel oil wholesale facilities and retail outlets. Through the licensing power, the Board has regulated the types of gasoline retail outlets which may be operated in Nova Scotia.

The Board invited all persons interested in participating in the hearing to make a formal intervention and, alternatively, offered persons the opportunity to submit their views to the Board in writing. The petroleum companies which intervened at the hearing were Imperial Oil, Texaco Canada, Petro-Canada and Ultramar Canada. As well, the province of Nova Scotia made a formal intervention. The only brief submitted by a non-intervener was presented on behalf of the Retail Gasoline Dealers Association of Nova Scotia.

In advance of the hearing, the Board ordered that all petroleum companies carrying on business in the province provide certain information with respect to crude oil acquisition costs, inventory time lags, the tax components of prices, and refining and marketing gross margins. Initially, Imperial Oil, Shell, Irving and Texaco, and later Petro-Canada, raised the issue of confidentiality of the information provided. They argued that much of it was commercially sensitive and that public disclosure of such information would be injurious to competition and to the business of the companies involved. Petro-Canada also suggested that the disclosure of the information might lead to a contravention of the conspiracy provisions of the *Competition Act*. The Board decided that only crude oil costs for the most recent six month period would be treated as confidential. Petro-Canada then brought a motion before the Supreme Court of Nova Scotia challenging the Board's decision on the issue of confidentiality. The Court declined to interfere with the Board's decision and, accordingly, all of the information requested by the Board, with the exception of the most recent six months of crude oil acquisition costs, was filed publicly.

The hearing took place in Halifax on March 2, 3, 5 and 6, 1987, with final oral argument before the Board on March 13. During the course of the hearing, consultants were called as witnesses on behalf of the Board and the province of Nova Scotia, senior officials appeared on behalf of Imperial Oil and Petro-Canada and the Executive Director of the Retail Gasoline Dealers Association of Nova Scotia presented the Association's brief.

On April 8, the Board ordered all posted wholesale prices of gasoline, diesel fuel and fuel oil to be reduced by 2.5 cents per litre effective April 10. The Board acknowledged that, in most instances, prices set in a truly competitive market can be presumed to be fair and reasonable. In its decision, the Board stated that the small retail/residential market in Nova Scotia is not truly competitive. Although the Board recognized the dangers of regional price comparisons at a particular point in time, it found that, following the decline in world crude oil

prices, product prices in Nova Scotia were no longer comparable with unregulated prices in other jurisdictions. The Board concluded that a reduction of 2.5 cents per litre would result in prices which are "just and reasonable".

The Board acknowledged the submissions by the petroleum companies that consumers are better served by a free market which encourages competition, efficiency and innovation, and that regulation has restricted the choice of options in the marketplace, such as gasbars and self-service outlets, which can lead to lower prices.

The Board reviewed certain regulatory changes which it had previously introduced in an effort to create a more competitive environment, such as expanding hours of operation at certain locations, reducing "wholesaler" licensing requirements and permitting price changes, both downward and upward, without approval below the maximum price determined by the Board. The Board concluded that further changes should be considered to create a new competitive market leading to lower gasoline prices in the province. Accordingly, the Board undertook to:

- prepare a recommendation for consideration by the Government to permit the introduction of self-service gasoline stations on a limited basis. The number of stations would be

eliminated and would be subject to review by the Board, and a further recommendation to the Government, before additional licences will be granted; and

- consider the licensing of a number of outlets without the traditional two or more service bay areas attached. The specific requirements will be developed in consultation with industry and may vary by specific locations.

The Board recognized that the petroleum companies were anxious to cooperate with the Board in fulfilling its functions under the *Act*, and, accordingly, stated its intention to develop a consultative process with the industry to improve communication and to assist the Board in its functions.

Following the Board's decision, Texaco Canada, and subsequently Ultramar, Irving, Imperial Oil and Shell, filed applications for an increase in the posted prices of gasoline, diesel fuel and fuel oil citing increases in the cost of crude oil following the Board's determination of "just and reasonable" prices as the basis for the proposed increase. The Board held individual hearings in respect of the five applications, with the province of Nova Scotia intervening. The Board's decision on these applications is expected shortly.

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