crime justice and society

volume 3 tome II

crime in québec

the peaks
of québec criminality

commission of enquiry into the administration
of justice on criminal and penal matters in québec

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COMMISSION OF ENQUIRY INTO THE ADMINISTRATION OF JUSTICE ON CRIMINAL AND PENAL MATTERS IN QUEBEC

THE COMMISSION

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Social Welfare Court
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* The Honorable Mr Justice Guy Merrill DESAULNIERS

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* His Honor Judge Jacques CODERRE

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* resigned following appointment as judge during the enquiry.

GOVERNMENT OF QUEBEC

COMMISSION OF ENQUIRY INTO THE ADMINISTRATION OF JUSTICE ON CRIMINAL AND PENAL MATTERS IN QUEBEC

To his Excellency

THE LIEUTENANT-GOVERNOR IN COUNCIL

WE, THE COMMISSIONERS,
FORMED INTO A COMMISSION OF ENQUIRY
INTO THE ADMINISTRATION OF JUSTICE
ON CRIMINAL AND PENAL MATTERS
HAVE THE HONOUR
TO PRESENT TO YOUR EXCELLENCY
THE THIRD PART OF OUR REPORT
DEALING WITH
CRIME IN QUEBEC

CRIME, JUSTICE AND SOCIETY

CRIME IN QUEBEC

THE PEAKS OF QUEBEC CRIMINALITY

Following the rapid survey of crime in Quebec, we will now deal with specific areas of criminality which are of particular concern to the Province of Quebec.

Part one : FRAUDULENT BANKRUPTCY

Part two : ARMED ROBBERY

Part three : AUTOMOBILE THEFT

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PART ONE

FRAUDULENT BANKRUPTCY (1-168)

INTRODUCTION

a) THE MANDATE: FRAUDULENT BANKRUPTCIES (1-3)

1. The mandate of the Commission calls for a study of "the present problems concerning the administration of justice". Amongst these problems must be included fraudulent bankruptcies.

There are many reasons for this. First, Quebec has for some time had the reputation of being the national champion in the realm of bankruptcies. Second, even before the Commission started its work, fraudulent bankruptcies had become a subject of many public discussions. Finally, Quebec and Ottawa considered this problem sufficiently serious to require negotiations resulting in joint action.

Public attention was drawn to this problem following several spectacular disclosures and numerous arrests, all directly or indirectly related to the question of fraudulent bankruptcies. Today almost four years after the celebrated "Darabaner" affair, public opinion is inclined to believe that the police forces of Quebec and of Canada have not yet fully uncovered the ramifications of this ring. Judging by the testimony given before this Commission, the investigators who had been working on the unravelling of this affair are not themselves certain that the condemnation of Moise Darabaner can be considered as being the last word on the case. According to them, there are still in the background, more important aspects and even more guilty persons. Even if there is some justification for this opinion of the specialists, there is no doubt that quite a number of myths exist in the minds of the public concerning fraudulent bankruptcies. There is the belief, for example, that the typical bankruptcy in Quebec is planned, carried out and exploited by distant and all-powerful racketeers. It is our opinion that "ordinary local talent" has played a much more important role in bankruptcies and even in fraudulent bankruptcies than one might believe at first glance.

In other words, *organized crime,* does not appear to us to be too much involved with fraudulent bankruptcies in the Province of Quebec, while gambling on the contrary shows signs of cells tied in with international gangsters. However, the problem is not a minor one and it does call for a serious examination.

2. In this report it is our intention to deal only with one category of bankruptcy - those cases which have in them in varying degrees, elements of fraud. It is not our intention to have the reader lose sight of the fact that fortunately, most of the bankruptcies are honest, and in no way cast discredit on the bankrupt himself, or on his creditors.

The normal bankruptcy procedure, as stated by Mr. W. J. McQuillan, prominent Montreal solicitor, is :

> "... the expeditious realizing of debtor's assets and the distribution of the proceeds among the creditors entitled to them in law — the punishment of the dishonest debtor — and the ultimate discharge of the debtor from bankruptcy and his integration into society once again freed from a crushing burden of debt [1]."

3. In itself bankruptcy is not part of the mandate devolving on this Commission. In fact :

— it is actually the responsibility of the Federal government by the reason of constitutional disposition ;

— it remains in our opinion principally a civil problem with which the Commission does not have to concern itself directly.

Frankly, on the question of normal bankruptcy we have neither criticism to put forward, nor an opinion to express. However, it is important for us to define clearly normal bankruptcy and fraudulent bankruptcy, so as to separate as carefully as possible, the civil domain and the criminal domain. This will also allow the Commission to evaluate the purely civil aspects if they appear to make the work of defrauders particularly easy [2].

b) RECOURSE TO SPECIALISTS (4-6)

4. To become well informed of the situation, the Commission has heard at various stages of its work, a number of qualified witnesses involved closely in the study of bankruptcy. In Appendix 1 will be found a resumé of the evidence so presented.

1 Quotation extracted from a brief presented by the Canadian Institute of Chartered Accountants to the Federal Minister of Justice, October 1963, p. 1.

2 The modern bankruptcy law is one of the great humane accomplishments of the twentieth century, relieving mankind of what had been since antiquity a great source of involuntary servitude. It is important to keep this accomplishment in mind, even while noting that the little rings of bankruptcy lawyers who cluster around some of the federal courts may be the most rapacious community in the legal profession in America. They are also the most protected. MARTIN MAYER, *The Lawyers*, New York, Dell Publishing Co., Inc., 1967, p. 387.

Names	Dates of testimonies	Pages of the stenographic notes
Yvon Desloges, Registrar	12-4-67 19-7-67 25-7-67	1084-1158 3292-3423 3615-3737
Lieutenant Léo Talbot of the Social Security Squad of the Montreal Municipal Police (accompanied by Director Jean-Paul Gilbert)	5-4-67 6-4-67 12-4-67	693-703 704-739 1000-1069 1074-1083
Paul Devos, Official Receiver	27-6-67 13-7-67	2446-2608 3131-3238
Raymond Leblanc, President of the Lumberman Association	28-6-67	2610-2748
Mr. Jay Rumanek, Montreal Crown Prosecutor	29-6-67 16-8-67	2749-2814 4139-4166
Mr. Jean-Paul Bergeron, c.r.	5-7-67	2816-2930
Captain Germain Courchesne of the Provincial Police	18-7-67	3240-3266
Mr. Jean Bruneau, former Chief Crown Prosecutor	16-8-67	4167-4180
Mr. Rhéal Brunet, Assistant Chief Crown Prosecutor in Montreal	16-8-67	4181-4196

5. Upon completion of these special hearings, the Commission came to the conclusion that it was necessary to proceed to a detailed examination of hundreds of files on bankruptcy so as to :

1 — ascertain the names and activities of the responsible principals ; and above all

2 — to evaluate the defence precautions available to the police forces and the Minister of Justice.

This meant that we had to contemplate the examination, probably fruitless but necessary, of hundreds of files which without a most careful examination could only be classed as being of a civil nature.

Under the direction of the eminently competent, Mr. Jean Paul Bergeron, Queen's Counsel, a team immediately went to work on these files. The report which we are today presenting on fraudulent bankruptcies in Quebec includes the substance of the remarks which have been sent

to us by Mr. Jean Paul Bergeron, and is inspired to a great extent by his recommendations and suggestions (Appendix 2).

We take advantage of this occasion to express our most sincere thanks to Mr. Bergeron for the willingness with which he made his experience and ability available to us during long months.

6. At our request, Mr. Bergeron undertook a heavy task which gave a very clear picture of the difficulties which must be overcome daily by the Crown prosecutors. The correspondence of Mr. Bergeron (Appendix 3), is presented here not to draw attention to the work done by this outstanding Quebec specialist in the domain of bankruptcy, but because it gives us some useful guidelines when the time comes to assess the measures called for to prevent frauds and to carry on an effective fight against defrauders.

The needs are tremendous when so much competent work is required to establish an inventory.

c) IN "CAMERA" SESSIONS (7-11)

7. Certain omissions should be explained here. The Commission decided to hold "in camera" sessions to hear certain witnesses. It would have been ridiculous not to have listened to them, but it would be dishonest and dangerous to mention their names.

The decision to hold certain sessions "in camera" was easily justified :

1 — The Commission was gathering at this moment, more than legal proof. Police and informers were asked by the Commission to give the names of individuals suspected, but against whom the legal proof of conspiracy or fraud had not yet been made before the courts.

2 — In some instances there were suspicions about individuals mentioned by our informers, but a more thorough examination showed that only appearances were against them, and that the suspicions were unfounded.

In both cases the Commission believes that it would be premature or dangerous to act without caution. It would be extremely unfair to make public all that we heard during these "exploratory meetings". Moreover, the full implications of what we were told are not yet known.

8. There was no intention on our part to carry on our public enquiry "in camera", nor did we intend to refuse to make known all the elements of the situation, as we saw them. We simply believe that for various reasons, certain information should not be disseminated.

In the course of its work on fraudulent bankruptcies, the Commission received, as we have said, considerable information of a confidential nature. This was to be expected. This information was either given because it was understood that "in camera" meant full protection, or because the revelations were contained in documents which were made available to us only on the guarantee of strictest secrecy. In both cases the dissemination would be equivalent to a betrayal of what was, or what has become the equivalent to, a promise.

Obviously we limited the sessions in camera to the strictest minimum. In some cases the Commission has, immediately after such a session, made a resumé for the journalists of the elements of interest to the public (stenographic notes Volume 9). On other occasions the Commission has definitely refused to hear "in camera" the evidence regarding general accusations which have been made publicly (Volume 34 August 16, 1967).

9. During its work the Commission justified its decision to hold sessions "in camera" in the following manner.

DECISION RELATIVE TO HEARINGS "IN CAMERA".

Motives

WHEREAS the status of a Royal Commission of enquiry is very different from the status of a court ;

WHEREAS the mandate confided to this Commission of enquiry dealt principally with the present problems relative to the administration of justice in criminal and penal matters, and of the efficiency of this administration ;

WHEREAS in matters of criminal law and in matters of administrative law, that is to say in matters of public law, it is necessary to apply the principles of English law even in Quebec (Langelier V. Giroux 52, B.R., 113) ;

WHEREAS for the purposes of the enquiry and more precisely for the establishment of the oral and documentary proof, this Commission should consequently follow the principles of common law ;

WHEREAS in virtue of the common law before the courts and before analogous organisms, publicity is the rule and "in camera" the exception ;

WHEREAS the exception of "in camera" is determined by the criteria established by jurisprudence (R.V. Josephson, 1949, 1 W.W.R. 93, 7 C.R. 273, 93 C.C.C. 136, Cour d'appel, Man. ; Rideout v. Rideout, 1950 96 C.C.C. 293) ;

WHEREAS the reasons for excluding the public from the court room are :

1. — the interest of public morals ;
2. — the maintaining of order ;
3. — the good administration of justice (Lagarde, *Droit pénal canadien*, 1962, p. 631) ;

WHEREAS it is necessary to distinguish between direct evidence and hearsay evidence ;

Decision

THE COMMISSION after having studied rules 1 and 2 of the regulations governing practice and procedure which it adopted April 5, 1967, after having examined the doctrine and the jurisprudence on the matter and having deliberated on all this, arrives at the following decision :
Whenever it will be required for a good administration of justice and prudence, the Commission will hear witnesses "in camera" and in certain cases it may even decide to exclude journalists.

Comments

It is understood that merely the request of a witness to be heard "in camera" is not sufficient reason to justify the Commission to decide to do so.
The Commission in addition to being guided in its decision by the rules of common law, recalls that an analogous policy has been adopted by other commissions, such as :

a) The Taschereau-Kellock Report on the Gouzenko affair (1946, pp. 703-704) ;
b) The Spence Report on the Munsinger affair (1966, pp. 87-88) ;
c) The Wells Report on the Spencer affair (1966, pp. 4-5) ;
d) The Roach Report (1961, pp. 211-217).

In Appendix 4 will be found the rules of practice referred to in the decision of the Commission.

10. With regard to written reports we must also adopt a special procedure.

— We sometimes take into consideration evidence without fully identifying authors.
— We omit certain accusations when we have been unable to substantiate them.

Our desire is to protect serious witnesses who might be threatened, but we also wish to protect respectable citizens against the attacks of those who are well-intentioned but poorly informed.

We know that all procedures of this kind require delicate handling, and we are limiting this "unsatisfactory evidence" to such instances in which any other recourse is impossible.

11. After mature reflection the Commission has therefore decided not to use in its public report all the information received in the course of its work on fraudulent bankruptcies.

In our opinion, jurisprudence indicates clearly that different commissions of enquiry in the past have been obliged to restrict the desseminat-ion of certain information [1].

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1 Hearsay and secondary evidence, not founded on first-hand knowledge, is not rigidly refused (by Royal Commissions). The Balfour Committee remarked that many chairmen seem to hold the view that it would not be wise to restrict the evidence before Royal Commission in accordance with the practice in Courts of Law. It accordingly recommended that :

> At any meeting for hearing oral evidence the chairman, as presiding officer, should have power to rule out any question when put which he considers inadmissible as being irrelevant or unnecessary. Any objection to the Chairman's ruling should be considered forthwith (the room being cleared during the discussion) and the decision of the majority of the Commission must prevail, subject to an appeal by the minority on any matter of principle (but not on mere personal questions) to the originating department, who should not only be empowered, but required, to give a definite decision on the matter so submitted.

Oral evidence is to the general practice, but there is no prohibition against consideration being given to submissions in writing. In England evidence is printed and sold, but in Canada it is an exception when it is printed. A Commission of inquiry may take evidence in confidence, *in which event it is not published.* An example is offered by the Pulpwood Commission. It arranged with the Government of Quebec that an officer of the Province would give evidence which would be treated as confidential. Prior to the tabling of the Commission's report, a member of the House of Commons moved for the production of this particular evidence. The Minister of Trade and Commerce objected to the adoption of the motion until the Province gave its consent. The mover did not press his motion further. At Westminster more recently, a member inquired as to the publishing of confidential evidence received by the Royal Commission of Palestine, also whether it would be made available to the Mandate Commission. The answer of the Secretary of the Colonies was :

> His Majesty's Government have not, and will not see, the confidential evidence which was given solely to the Royal Commission in confidence, and which is always kept under seal. It will not be given to me and it cannot be given to the Permanent Mandates Commission.

The Ontario Court of Appeal noted in Re Imperial Tobacco Co. v. McGregor that the Commissioner had not made available to the companies certain evidence taken in the inquiry prior to notice of charges against them being given the companies. The Court regarded this as a matter within the Commissioner's discretion. WATSON SELLAR, *A Century of Commissions of inquiry*, in *The Canadian Bar Review*, XXV, January 1947, pp. 17-18.

I — GUIDELINES FOR THE COMMISSION

I — GUIDELINES FOR THE COMMISSION (12-33)

a) LACK OF INTEREST SHOWN BY BRIEFS (12)

12. At the time we began our work, the problem of fraudulent bankruptcies was still one of great public interest.

In fact, fraudulent bankruptcies in Quebec had for quite some time, received so much publicity, that it would have been normal to expect a large number of the briefs submitted to the Commission to deal with this problem. However, only the Fédération des Travailleurs du Québec considered it necessary to draw our attention to this matter [1]. Moreover, the F. T. Q., itself limited its comments to the risks facing workers and consumers. Consequently, notwithstanding the emotions aroused by the number of accusations and condemnations, fraudulent bankruptcy remained for the majority of Quebec citizens, too technical a problem to spend much time on it. The comments of the F. T. Q. are worthy of mention :

> The practice of bankruptcies in the business world was for a long time excused as being the unfortunate result of the uncontrollable mechanism of a free economy, and under this heading it had to be considered as one of the risks of the game ; in business the belief is that it is normal for the strong to win. But the public has finally realized that the practice of bankruptcies was in itself a worthwhile business, and quite recently attention has been drawn to this kind of organized crime which is planned in a shameful manner. The victims of this kind of crookedness are not, it should be understood, the proprietors, but rather the workers who lose their employ and often a part of their earnings and marginal benefits and, similarly, the consumers who have no recourse available to them. Energetic measures must be taken to rid our economic system of this "shameful vice" by seeing to it that the Secretary of the Province exercises stricter control of the applications for incorporation, and by punishing severely those who indulge in this practice. The Secretary of the Province has incorporated companies whose proprietors have already been found guilty of four or five failures. The Secretary of the Province

1 An important detail should be mentioned here. The *Canadian Lumbermen's Association,* through its spokesman, Mr. J.R. Leblanc, conveyed its commentaries as well as substantial information, to the Commission. We believe that Mr. Leblanc, because of his relentless work on bankruptcies, earned the title of expert. This explains his being omitted from the list of authors of the brief.

should undertake intensive enquiries into the solvability and the antecedents of the applicants for incorporation, before opening the doors of the business world to them. When certain owners are obliged to declare a bankruptcy, they should not for a definite period of time, be permitted to obtain a new incorporation [1].

And the Fédération des Travailleurs du Québec concludes this exposé by specifically recommending recourse to drastic measures :

> Strong measures must be taken to eliminate the practice of fraudulent bankruptcy : exercising a strict control of the applications for incorporation, severe sentences for the guilty, and a temporary withdrawal of the right to obtain a new incorporation by those who have already had a bankruptcy [2].

The mass media has dealt with this problem extensively, (Appendix 5) even though we note, there too, a gradual loss of interest.

b) NUMBER AND VOLUME OF BANKRUPTCIES (13-20)

13. Before plunging directly into the domain of bankruptcy, we should mention that it is extremely difficult to compare the situations in different countries.

With regard to the spectacular escapes which took place in Quebec in April and May 1968, we have already indicated that the situation in other countries (England and the Scandinavian countries) was certainly more alarming than in ours. In the matter of bankruptcy we would like to stress that the opportunities offered by the law to an insolvent citizen or corporation, have without doubt, a direct impact on the number and volume of failures. Thus the Quebec law known under the title of the Lacombe Law has undoubtedly, an influence similar to that of some of the American laws.

> In Oregon, which leads the nation with more than 200 bankruptcies a year for every 100,000 of the population, a creditor could before 1965 attach *all* a debtor's wages, and can now take half; in New York, where only 10 percent can be attached, there are only 31 bankruptcies per 100,000 ; and in Florida, North Carolina, Pennsylvania and Texas where wages cannot be garnished the figure is ten or lower [3].

This throws some light on the situation, but it does not do away with the Quebec problem. The annual losses due to American bankruptcies have been valued at $2 billion [4]. Quebec, with a proportionately smaller

1 Brief of the Fédération des Travailleurs du Québec, pp. 39-40.
2 *Ibidem*, p. 48.
3 MARTIN MAYER, *The Lawyers*, New York, Dell Publishing Co., Inc., 1967, p. 284.
4 *Ibidem*, p. 386.

business volume and with a population 40 times smaller, loses annually approximately $100,000,000 : with hardly 2.5 percent of the American population, our losses are easily equivalent to 5 percent of the American bankruptcies.

14. Our mandate does not require us to make a study of all the mechanisms of bankruptcy. Bankruptcy in itself is principally of a civil nature, while as already pointed out, our mandate only calls on us to investigate criminal and penal matters. We should however study :

a) *the legislative texts* if they appear to make fraud too easy ;
b) *normal bankruptcies* if they can furnish information regarding the nature or volume of frauds.

Let us enlarge on this point. The figures concerning Quebec and Canadian bankruptcies should not be interpreted as showing financial losses resulting from criminal acts. However, the losses resulting from bankruptcies in Quebec and Canada are so great that even a small percentage of fraudulent bankruptcies represent an appreciable amount.

On the other hand, the losses attributable to bankruptcies increase much more rapidly than the gross revenue, and it is necessary to determine if this is caused by criminal activities. For example, from 1946 to 1965 the gross revenue of Canada grew from $11 to $52 billion. During the same period the losses attributable to bankruptcies went from $6 million to $392 million. In 1965 only, the losses attributed to Quebec bankruptcies were $77,191,000. A quick estimate allows us to conclude that the Federal government thus lost approximately $26.5 million dollars while the Quebec government also lost in income taxes, approximately $9.2 million (Appendix 6).

15. It should be repeated that these figures deal with bankruptcy and not specifically with fraudulent bankruptcy. However, the police forces specializing in a study of fraudulent bankruptcies estimate that the bankruptcies in which the available assets represent les than one half of the liabilities, which is true of a good half of the bankruptcies, warrant serious investigation. In our opinion such statements lead to the belief from the very start, that there is intensive criminal activity in the area of Quebec bankruptcy. The results of the investigations which we have undertaken enable us to elaborate on this opinion.

In practice the percentage of fraudulent bankruptcies increases when the number of bankruptcies increase. The work of investigation of course, is much greater and much slower with a thousand cases than with one hundred . . . and the defrauders know this. In other words, frauds com-

mitted when there are a limited number of bankruptcies are more likely to be quickly discovered and discouraged; while in all probability, if a fraud is likely to go unnoticed, the defrauders set to work in earnest!

16. In a general manner, the statistics show that Quebec is suffering from more than its share of losses in the matter of bankruptcies. However, if this trend is constant, the volume of the losses seems to be strangely uncertain.

According to whether the figures of the Dominion Bureau of Statistics are used, or those of the Dun & Bradstreet Co., information varies considerably. In addition, the specialists in bankruptcy, and we are thinking here of the Registrar or of the Official Receiver, frequently use a third set of figures. This appears to us to be abnormal and disturbing. In an area as important as this, and faced with annual losses which are calculated in the millions of dollars, it is in the public interest to reconcile the different statistics, or, at least, to give a clear indication of their meaning.

Let us agree that it is quite possible for the different compilations to be based on different steps in bankruptcies; the one could be dealing in a single year with all the petitions for bankruptcy, even if quite a number of them were only cleared up in the following year; the other might consider the bankruptcy as being terminated only after the distribution of dividends amongst the creditors . . .

It can be understood that different methods of compilation lead to different results. On the other hand it is difficult to understand why the various compilers of statistics give so little information and seem to accept all too readily the differences which arise [1].

17. These differences are so great that it is difficult to even grasp the trends.

Thus, much has been said about Quebec holding the championship title in the domain of bankruptcies and fraudulent bankruptcies. Yet, the figures supplied by Dun & Bradstreet for the year 1965, indicate as we have seen, Quebec losses of $77 million. The same sources fixes at $78.5 million the Ontario losses for the same year. The Dominion Bureau of Statistics quotes, for the same Provinces, and for the same year, figures of $107 million (Quebec) and $259 million (Ontario). The analyst is lost.

Undoubtedly such differences can only be explained if the various services publish periodical statistics each adopting a different basis or period. Unfortunately the result is that the figures of Dun & Bradstreet do not agree with those published by the Dominion Bureau of Statistics, even though Dun & Bradstreet (in English) and the Canadian Credit Men's Association (in French) themselves quote the statistics of the Dominion Bureau of Statistics.

For obvious reasons we consider it prudent to base our statements on the government statistics. All other sources appear to be unsuited for a full compilation.

18. At the local level the representatives of the government sometimes arrived at personal conclusions which should be examined with a great deal of care.

At the time he gave his evidence before the Commission, Mr. Paul Devos, the Official Receiver of the First Division of Bankruptcy, accepted (in writing) this third division:

> Before going into the detail of these procedures, possibly the Commission should be made aware of what happens in the Province of Quebec:
>
> In 1965, not to go back too far, there were 1,225 non-summary cases of commercial bankruptcies against 501 cases in the Province of Ontario, and a total of 1,912 cases for all of Canada. From the point of view of "dollars", for 1965 the liabilities in the Province of Quebec were established at $92,156,000.
>
> From the point of view of "summary administration", still in 1965, there were, in the Province of Quebec, 1,292 cases of failures against 1,529 for the Province of Ontario, out of a total for all Canada of 3,111 cases of summary administration. From the point of view of amounts, the total liabilities for the Province of Quebec was calculated at $13,257,000, and at $26,205,000 for Ontario, out of an overall total for Canada of $43,617,000.

In the face of these different versions which still paint a rather dark picture for Quebec, the least that could be hoped for would be a standardization of the definitions and uniformity in the figures used by the businessmen and by government.

19. Such differences are not only disturbing to the mind, they are also a handicap to the legislator.

As we have just seen, in the matter of summary administration, the Ontario losses in 1965 were double the Quebec losses. There could be a temptation to utilize the figures for 1965 to show that Quebec is on

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1 Stenographic notes, volume 6, April 5, 1967, pp. 644-645.

Commissioner Gould:

How do you explain the difference between these two figures?

Mr. Jean-Paul Gilbert:

I have tried but I am unable to explain the difference in the number of failures shown in these tw tables. The only information that I can give is that the report of the Dominion Bureau of Statistics is more complete. I do not know whether in the first table which is that of a private organization, only the failures which took place amongst those associated with it, are given.

the road to losing its championship title in bankruptcies to Ontario. Actually whether we choose one or the other compilation, the year 1965 places Ontario in a much worse situation than Quebec.

In face of these two series of facts, the Quebec government might even doubt the gravity or the permanence of the problem.

However, it should be recalled that the year 1965 was an abnormal year. In that year Ontario suffered from the failure of the Atlantic Acceptance Corporation which in itself, resulted in losses of more than $100 million. Since 1966 Quebec has regained *first place* in most of the compilations [1]. The sources for this information will be found in Appendix 7.

In 1966 Quebec suffered $112 million of losses against $108 millions for our neighbouring province. In 1967, Quebec consolidated her hold on the first place for both the number of failures and the overall losses. In that year, Quebec had 1,065 failures for an overall liability of $110 million, while Ontario had 667 failures resulting in losses of $73 million.

And still according to the same source, Quebec already had in the two quarters of 1968, 450 failures and losses of approximately $33 million, while Ontario declared 348 failures and losses of $26 million. The only element from which some satisfaction may be derived from the partial figures of 1968 is that we have made some progress : on the same date for the preceding year, Quebec had already 570 failures and losses of approximately $36 million.

20. It should be pointed out that a failure generally costs less in Quebec than in the other Canadian provinces. In 1966 for example, the average failure involved

— in Quebec, losses of $66,300 ;
— in the Maritime Provinces, losses of $131,100 ;
— in Ontario, losses of $106,300 ;
— in the Prairie Provinces, losses of $67,400 ;
— in British Columbia, losses of $120,300.

These figures call for careful analysis. Certain sectors, such as that of retail sales, are particularly affected in Quebec. In 1965 for example, Ontario lost more than Quebec by failures, in all sectors except in that of retail sales.

Taking everything into consideration certain trends seem to confirm that :

1 The report of the Superintendent of Bankruptcies gives various figures. We are referring to the liabilities of commercial failures. Otherwise, the total would have been :

	Assets	Liabilities	Deficit
Quebec	$99,550,000	154,589,000	$ 55,039,000
Ontario	91,080,000	270,470,000	179,390,000

1 — The number of failures are lower while the average cost of a failure is increasing. For Canada as a whole, the number of failures proportional to the number of commercial and industrial enterprises, is at its lowest level since 1960.

2 — On the other hand, the overall losses continue to grow : $175 million in 1965 against $215 million in 1967.

c) ESTIMATE OF FRAUDS (21-24)

21. The statistics confirm the impression that Quebec is suffering more than its share of losses in the area of failures. On the other hand, neither the briefs nor the statistics make it possible to determine exactly the magnitude of fraudulent bankruptcies.

At the request of the Commission, expert witnesses endeavoured to compensate for the lack of information in the briefs. The police force of Montreal, for example, was particularly explicit in describing the problem of fraudulent bankruptcies and the difficulties faced in the fight against defrauders who have chosen this field of action.

Mr. Jean Paul Gilbert, the Director of the Montreal police force, declared during the evidence he gave before the Commission in April 1967, that half of the Quebec failures (approximately 600) took place in the Montreal region, and that after a quick survey, 300 of them warrented police enquiry.

In this domain we suffer more from the slowness in the judicial apparatus than from the ineffectiveness of the police forces. While the figure quoted by Director Gilbert has not yet been corroborated, it is known that the police forces have rarely been able to bring all the contentious files before the courts. One should therefore not blame the police (particularly those of Montreal) for the slowness in the examination of the file of fraudulent bankruptcies and for the uncertainties in evaluating the problem.

Mr. LUCIEN THINEL — Now, when a case is ready, coming from your service, is the report sent to a provincial judicial organism ? Or what is the organism which is aware of the existence of the eighteen cases ready ?

J.-P. GILBERT — They are the lawyers of the Minister of Justice of Quebec ; our police are in constant touch with these prosecutors who prepare the cases with our police ; and if I mention this in my evidence, it is to underline that, with regard to all concerned, that is all the individuals in the administration of justice beginning with the policeman, the police forces, going on to the courts, and then to the prisons, and then to parole

— in all these areas there is a serious lack of personnel, whether it be a lack of qualified personnel or whether it be because personnel cannot be engaged on account of insufficient budgets [1].

22. In the course of giving his evidence before the Commission, Director Gilbert of the Montreal Police force made a most severe criticism of the Quebec situation with regard to bankruptcies. He was basing his statements both on the experience of the police of Montreal and on the conclusions of the Commission enquiring into bankruptcies, liquidations, legal settlements and assignments of goods (1965) presided over by Mr. Lucien Mercier, Chartered Accountant :

> The enquiry showed that dishonesty and fraud have crept very deeply in one year or another into a large percentage of the bankruptcies and liquidations, and that racketeers have even made a most lucrative business out of this to the detriment of honest creditors...
> From the facts established in this enquiry, the Commission retained the upsetting impression that the administration of law with regard to bankruptcies as it actually exists in the district of Montreal, is more or less similar to a gigantic enterprise where there is no internal control and as a result the officers or employees at various levels become suspect...
> The enquiry has shown more particularly the existence of "rings" of fraudulent bankruptcies, that is to say, the direct or indirect link of many persons or companies whose sole purpose is to appropriate for themselves funds, merchandise or other advantages, and to have recourse to the Bankruptcy Act to liquidate such a business...
> Witnesses, one of whom was a member of the Bar, have stated that it is current practice for some trustees to demand and receive bribes from lawyers representing the interest of guaranteed creditors or tentative buyers, promising in turn not to oppose the procedures taken by them...
> If, as a general rule, the Commission was far from being satisfied with the manner in which some trustees and inspectors were administering bankruptcies and liquidations, it was surprised, on the other hand, to find in what disorder the files were kept in the bankruptcy court of the district of Montreal.
> By reason of the complexity of the problems with regard to bankruptcies and the multiplicity of facts brought to its attention, the Commission realized that this exposé was very definitely incomplete, requiring observations to be restricted to those of a general nature and to recommendations which seemed to the Commission to be the most opportune [2].

23. A police officer specializing in this field, Lieutenant Leo Talbot, also of the Montreal police force, was of the opinion that there was a very close

1 Stenographic Notes, volume 6, April 5, 1967, pp. 648-649. Exhibit 1 (in camera) gives the list of the 18 files which the Montreal police force considered at the time to be ready for court action.

2 This report is found in Appendix 8.

tie between criminal incendiarism and fraudulent bankruptcy [1]. It was his opinion moreover, that a large number of the frauds could be avoided by applying the provisions of the Act more rigorously.

> I have noticed quite frequently that when there is a failure, there is also criminal arson ; and most of the time a simulated robbery.
> I consider through my personal experience in the domain of bankruptcy, that approximately half of the bankruptcies in Montreal could be avoided, if an enquiry in depth were carried on in each of these failures, and if the Bankruptcy Act was applied as it should be. What I mean by that is, that those who go into bankruptcy should be questioned and their replies verified. That is not what happens at the moment. The bankrupt person can reply whatever he pleases whenever he is called upon to present himself for questioning. I am told that at the office of the Clerk of Bankruptcy at the present time, they have a long list of bankrupts who have not presented themselves. Up to now nobody has followed through on this ; they have received a notice from the court to be present, they do not present themselves, and there is no warrant issued. The individuals disappear and nobody does anything about it.
> Everything that has to do with fraud by virtue of the Criminal Code usually happens before the person goes into bankruptcy, such as : the disappearance of the assets, or false accounting records, or purchases in large quantities under false names ; all the methods used by the defrauder in bankruptcy are infractions which are committed before he becomes bankrupt.
> The yardsticks on which I endeavour to establish whether there is a fraud is when the assets are less than 50 percent of the liabilities. At that point quite often, one finds that there has been fraud.
> When the balance sheet is submitted by an accountant and there is a note to the effect that the physical inventory has not been taken by him personally, I immediately have suspicions. In checking I learn by questioning the employees that the inventory has been padded, sometimes to twice its real value ; this is done to establish credit preceding the failure.
> When it is possible to find the bankrupt, an effort is made to question him in the bankruptcy court, before the Registrar, under oath. This involves some difficulties at that point : when there are no assets in the failure, who is going to pay for the stenographic notes [2] ?

Lieutenant Talbot confirmed the impressions of Director Gilbert : a good half of the Montreal failures warrant serious examination.

24. These figures and evidence of specialists are sufficient to justify a provincial enquiry Commission looking into the matter of fraudulent bankruptcies :

1 It is not the intention of the Commission to undertake here an investigation into criminal arson itself. Undoubtedly we readily agree, with facts to support it, that there is frequently a very close association between fraudulent bankruptcy and criminal arson. However, we believe that criminal arson is related more naturally to loan sharking than to fraudulent bankruptcy.

2 Stenographic notes, Volume No. 6, April 5, 1967, pp. 694 to 698.

1. There is a presumption of fraud, according to the police in a large number of cases.
2. Even the volume of failures in Quebec makes fraud easier and less discernible.
3. Specialists have actually uncovered a large number of frauds without always being able to bring them before the courts.
4. If the frauds are so numerous, the law itself warrants a serious examination so as to determine whether it has too many loopholes, and whether it is difficult to apply.

It is important, however, to have a better understanding of the intention and origin of the actual legislation and to ascertain the limits and the extent of a provincial mandate.

d) ACTUAL LEGISLATION (25-33)

1 — Origin (25)

25. It is astonishing that bankruptcies which are much more a part of the civil domain than of the criminal, devolve on the Federal government. It is worthwhile ascertaining the motives which influenced the writing of the present Bankruptcy Act, and the establishment of competencies.

In this connection it is interesting to note that notwithstanding the close ties between bankruptcy and the civil domain, the intent of our legislation and the administrative controls which are related to them are definitely of Anglo-Saxon inspiration. Quebec has retained a French civil sector, but bankruptcy, although related to the civil, is today a British concept.

> Bankruptcy law, which begins with a statute of 1542 and has remained a creature of statute, originally treated bankruptcy as virtually a crime. Bankruptcy was principally associated with the Chancery Court, yet somewhat oddly under the Judicature Acts it was assigned to the Queen's Bench Division and then transferred in 1921 to the Chancery Division. Some bankruptcy jurisdiction was given to County Courts. The law of bankruptcy has long ceased to be akin to criminal law, although there are many criminal offences particularly connected with bankrupts. The conception is that bankruptcy serves the two purposes of securing an equitable distribution of the assets amongst the creditors and of enabling the bankrupt to get quit of the burden of debt. A petition may be filed by a creditor or by the debtor himself. If an "act of bankruptcy" is proved, a receiving order is made. The investigation is peculiar in that bankruptcy is partly judicial. The official receivers are officials of the Board of Trade and also officers of the court. In due course the bankrupt's property will be distributed and he will receive his discharge, the date of the latter depending upon the circumstances. Revenue cases used to go to the King's Bench Division (as the heir of the old Exchequer Court) but tax law is nowadays associated with companies, partnership, settlements and so forth, and the Revenue List is taken by a Chancery judge [1].

2 — Evolution (26-28)

26. We should look more closely at the Quebec and Canadian history on bankruptcy matters. One finds very quickly the definite problems which arose during the years preceding the Act of 1867 as well as the pressures which were brought into play to remedy them. The decision taken in 1867 then becomes clear.

> Confident in the possibilities of the Canadian market, the London and American merchants had shipped large quantities of products of all kinds. They had done this even more freely as the crisis did not affect only Canada, but also Europe and the United States. That is why the Quebec market, where the prices were good, seemed to them unexpected manna from heaven. Unfortunately the shipments of merchandise had been too great for the ability of the country to absorb them. Also they were obliged to liquidate their stock at low prices and often at a loss. Add to this the unhappy consequences of the Pontiac War on the fur trade, and it is easy to understand the wave of commercial failures of the years 1764-66. The Quebec Gazette noted the numerous bankruptcies which affected, together or separately, Canadians and Britons. The vigilance of the military commanders had freed the colony from inflation and monopolies, for which they received the appreciation of the French Canadian population, and the enmity of speculators: but they were unable to bring production back to its full strength [2].

The historian, Fernand Ouellet described the economic difficulties which justified at that time, a change in the legislature. Most of the commercial failures of the years 1764 to 1771 were explained by the sad experience with paper money. When the regime changed, the bills of exchange were still in circulation, but the King continued to pay them, upon their maturity, only up to the autumn of 1759.

> In 1763, Murray claimed that the total amount of paper money remaining in the colony amounted to 42 million. This seemed somewhat exaggerated. By reducing this amount to 30 or 33 million a figure is arrived at which is much closer to reality. As only about £15,200,000 remained in the colony one year later, it could be assumed that the negotiators, in the normal course of business, and the speculators, secured this paper money for an amount of between £15 and 18 million. Murray relates that a London merchant had sent £15,000 sterling for the purchase of paper money. It can easily be assumed that with this

1 R.M. JACKSON, *The Machinery of Justice in England*, Fifth Edition, Cambridge, University Press, 1967, p. 50.

2 FERNAND OUELLET, *Histoire économique et sociale du Québec, 1760-1850*, Éditions Fides, Ottawa, 1966, p. 55.

money in hand he could secure almost £2 million of paper money. Mutiplying this example by ten indicates the importance of speculation. Taking into consideration the compensation clauses accepted by France, it could be estimated finally that the effective losses of Canadians was a little more than £300,000 sterling, and that of the British merchants and speculators, about £110,000 sterling. It can be readily believed that these losses played a role in the commercial failures of the years 1764 to 1771. Keeping in mind the actual demography, the losses of the British were much greater then those of Canadians [1].

27. It can be understood in this perspective that the British minority in Quebec rebelled very quickly against the survival of French institutions and customs in matters of commerce. In the course of the years 1820, this British minority in Quebec made strong and significant representations to the Parliament in London :

> The legislature of this Province has for a long time been so agitated by dissensions, and its deliberations have increased to such an extent, that it has neglected trade, agriculture, education and other matters of general interest. No law exists for the registration of goods and hypothecs so necessary to the safety of commercial enterprises ; there is no act regarding insolvent debtors and your petitioners have waited in vain for a law giving representation to the townships, a fertile and important part of this Province, established by those of British origin ; the petitioners have little hope of resolving these legislative matters, and many others so necessary to activate the initiative of industry and enterprise in a commercial country, until a reunion of the two provinces would weaken the influence which up to the present time has prevented them from being introduced into our statutes [2].

Following this the Anglo-Saxon element of Quebec continued its pressure along the same lines. The journals of the Legislative Assembly of Lower Canada include different examples of this, including this intervention of M. W. Patton in 1831 which, taken in its context, has a particular pointedness :

> I attribute *the facility with which fraudulent debtors deceive their creditors* in this country, and that quite openly, to the French law of hypothecs, which is a general one, and to the establishment of dowries in the marriage contracts ; and I fear that it would be extremely difficult to pass a law with regard to bankruptcies of which there is a pressing need, until that law is changed. Every merchant in this city can offer numerous examples of debtors who have property and who defy their creditors [3].

On January 22, 1843, it is a French Canadian, M. Emery Papineau, who once again, emphasized in his correspondence, the enormous margin which

1 Ibidem, p. 67.
2 Document relating to the constitutional history of Canada (1819-1828), quoted by FERNAND OUELLET, *op. cit.*, p. 309.
3 Ibidem, p. 356.

separated the French legislation from the Anglo-Saxon customs in business matters regarding solvency and bankruptcy :

> But the sacrifices made by the merchants here have had as a consequence, that they are unable to meet their engagements having done too much to meet their first or earliest obligations : into this state of affairs have come the financial measures of Sir Robert Peel, which undoubtedly caused considerable losses to merchants engaged in the business of exportation but which would not, I think, have affected the entire fortunes of the merchants of this country, if their proprietors had not already had a great deal of trouble on their hands, caused by their imprudence and their lack of foresight. The bankrupts, and I am expressing myself poorly, here the word represents the state which in French you call failure and not what you mean by the word bankrupt : the bankruptcies followed in quick succession to the point that in less than three months, several individuals assured me that they have made the calculation, which I believe to be below reality, if there is a difference, that the amount of these failures had reached £750,000 sterling, and since then others have taken place ; thus for the City of Montreal alone, it could be estimated that these failures had risen to £800,000 sterling. And this commercial collapse has not yet ended ", come the spring consignments when quite a number of the merchants will be obliged to meet their commitments, and still another amount will be added to the two others. Because of these bankruptcies, all business finds itself paralyzed and this commercial stagnation has an even more pernicious and fatal effect on the agricultural classes, so that everyone is crying " Oh misery, these are hard times ! " [1].

28. This short historical exposé explains at least in part, why the Fathers of Confederation, in 1867, believed it necessary, while leaving the administration of the criminal code to the provincial jurisdiction, to give the federal authority the responsibility for failures. It is nevertheless true that :

1. the two authorities have often shown themselves incapable of coordinating their efforts ;

2. doubtful practices have developed without the legislation and the administrative control intervening in time.

In a sector as sensitive as that of commercial administration and of bankruptcy, clarification of the provisions of the British North America Act of 1867 is a matter of definite urgency ; because one ends up, as a result of duplication and overlapping, with losses running into millions of dollars.

1 Quoted by FERNAND OUELLET, *op. cit.*, p. 493.

3 — Division of responsibilities (29-33)

29. The field of bankruptcy is another one of the grey zones left to us by the Constitution of 1867. The law on bankruptcy is definitely and specifically under Federal jurisdiction which should put an end to all the controversies, if it were not for the fact that the Criminal Code had not itself foreseen various offences which could take place when there was a bankruptcy.

Here we are thinking particularly of fraud. From the moment that a fraud in a matter of bankruptcy becomes a question of provincial jurisdiction, our mandate calls for us to make suggestions and recommendations oriented towards more conscious prevention, and a more efficient fight in this domain.

Consequently, only *fraudulent* bankruptcy at the present time falls into the area of provincial jurisdiction. We do not believe this to be a normal or logical situation. As it is not our function to reform either the law or the Constitution, we must be content, in accordance with our mandate, to make recommendations within the Quebec purview. We will only touch on the Constitutional problem in a purely pragmatic perspective. However, we believe it to be quite in order to show that the jurisdictional conflict increases the opportunity for fraud and permits the defrauders to go unpunished.

i — DANGER OF OVERLAPPING (30-32)

30. To realize the overlapping of the federal and provincial jurisdictions it only requires a glance at the list of Acts which have a direct effect on the problem of bankruptcy.

Most of the analysts, including the Commissioner Mercier, in his report of July 1965 recognize the importance of the Companies Act of Quebec. Closely related to this is another legislative text: The Companies Information Act (Chapter 281, R.S.Q., 1964). The Minister of Revenue Act (Chap. 66, R.S.Q. 1964) is also related, so that the enquiry conducted by Commissioner Mercier resulted from a request expressed by Mr. Eric Kierans, Minister of Revenue at the time. Also to be taken into consideration is the Securities Act (Chapter 233 R.S.Q., 1964). However, the key role is of the Federal authority. It is the Bankruptcy Act and the Regulations thereto. (R.S.C., 1952, Chapter 14).

This Act emanating from the Canadian Parliament under the terms of the Confederation Act of 1867, includes 172 Articles, (if one removes therefrom the Chapter on the Methodical Payment of Debts, the application of which is left to the discretion of the provinces).

31. In the context already described, it can be seen that the competence and jurisdiction in legislative matters dealing with bankruptcy and insolvency, were granted to the Canadian Parliament by the British North America Act.

Additional research made for the purpose of determining the origin of this granting of jurisdiction to the Canadian Parliament, has indicated parallel motives: thus it was considered that carrying out this jurisdiction on a national plan would favour better commercial trade. In fact, it was stated that the system was more uniform and more coherent if the matters connected with bankruptcy and insolvency were dealt with on a national plan similar to that of the Bills of Exchange Act. This was given as the official motive; the private and behind-the-scene pressures already referred to, should not be forgotten.

Before Confederation there were already in existence different laws dealing with both bankruptcy and insolvency, going as far back as 1791. These statutes had their origin in English law. Up to 1839, the French law governed failures in Lower Canada. In 1839 the Statute II Victoria, Chapter 26, became effective in bankruptcy matters. Carried forward under the union, it remained until 1867, after having been amended under the title of the Insolvent Act of 1864. By this Statute, bankruptcy applied to everyone in Upper Canada, but only to commercial matters in Lower Canada.

It is not surprising that by 1867 the concept of bankruptcy inspired by the English law had already become part of the customs of the majority, and that the French customs were placed in a subordinate position. As a logical consequence, the legislation on bankruptcy and insolvency became, in 1867, exclusively a part of the competence and jurisdiction of the Canadian Parliament.

Apart from the tangible advantages, this brought about trouble in two areas:

1. The civil domain did not belong entirely to the provinces;
2. The surveillance of bankruptcies came under both the federal and provincial jurisdiction.

32. Actually our Criminal Code assumes interest in the bankrupt the moment there is an indication of specific fraud: failure to keep books (345), destruction or falsification of books (340), defrauding creditors (335, 340, 343, 345) ... The fact that the Criminal Code specifies in this manner certain aspects of fraudulent bankruptcy is sufficient to give the provinces a responsibility in this matter. The administration of the Criminal Code is actually under provincial jursdiction.

As such, bankruptcy continues, however, by reason of the 1867 Constitution to be the responsibility of the Federal government. A lack of

coordination has existed from the very beginning and the ambiguities have increased. For example, the duties of the Receiver continue to be separated into judicial functions and administrative functions. In effect, bankruptcy is :

— a zone falling into both the federal and provincial jurisdictions,
— principally a civil sector, and secondarily criminal,
— a domain entrusted to the authority of men who are in some cases both judges and administrators.

These overlappings explain to a great extent why the surveillance has not always been adequate.

ii — SCOPE OF A PROVINCIAL MANDATE (33)

33. In the face of such dangers of conflict, the meaning of the mandate given by Quebec to an enquiry commission, should be examined. Fortunately, here again it is possible to indicate the line of demarcation between the provincial responsibilities and the federal jurisdiction by looking at the jurisprudence.

> I do not understand the principle established by that case to be one of absolutely rigid and unyielding character. For instance, a commission to inquire into the working and efficiency of the grand jury system, might, I think, be validly issued by the provincial government even though it was called on to examine some aspects of the system which... are under Dominion control. But where... as here... the commission is directed to inquire into matters that are exclusively under the control of the Dominion Parliament, I think the principle applies with the result that the commission is void, so far as concerns the mandate to inquire into violations of Dominion prohibitions relating to intoxicating liquor [1].

The flexibility of this text would be enough to justify our enquiry into an area of bankruptcy which, while it is controlled by the federal jurisdiction, has also by reason of the Criminal Code, provincial implications. As we have indicated, frauds in matters of bankruptcy are to a great extent envisaged by the Criminal Code, the application of which is under provincial authority.

The jurisprudence goes even further :

> A provincial detective force might, I think, be organized under provincial laws for the very purpose for which the commissioner was appointed. Now,

[1] In re Gartshore, (1919) 1 W.W.R. 372, p. 376. A trenchant criticism by W. Jethro Brown of the *Colonial Sugar* case is to be found in the *Law Quarterly Review* (1914), vol. 30, commencing at p. 301. The same decision was distinguished by the Manitoba Court of Appeal in the Kelly case — it being founded on certain provisions of the constitution of Australia which are not comparable to the provisions of the B.N.A. Act, WATSON SELLAR, *A Century of Commissions of Inquiry, in The Canadian Bar Review*, XXV, January 1947, p. 13.

> if I am right in thinking that investigations, extra-judicially, into the commission of crime for the purpose of discovering if and by whom committed are within the subject matters assigned to the Province under the words "administration of justice", is there anything to prevent the Province from making the investigation effective by imposing on individuals an obligation to give evidence under penalty for refusal ? I think not. Such a power is not *inconsistent*, but consistent with the jurisdiction of the Province to legislate concerning property and civil rights.
>
> No doubt, to concede the power to the Province to make investigations into *breaches* of Dominion laws would appear at first blush to be an anomaly, and it might be argued that the power conferred upon the Province in respect to the administration of justice ought to be interpreted as conferring merely the duty or obligation to put the machinery of the Courts in motion, and to take the requisite steps to prosecute persons accused of crime. That narrow construction would, I think, preclude what has been generally recognized as one of the functions of government in the administration of justice, namely, the ferreting out of crime and identification of criminals. There is nothing novel in compelling a witness to give evidence which may tend to incriminate him. That is done in the civil Courts and is the practice in one of the oldest criminal Courts of the Realm, the Coroner's inquest. With the justice or expediency of inquiries into crime by an extra-judicial provincial commission I have not to concern myself. The power to appoint such rests somewhere. It is either with the Dominion or the Province, or with both, and hence it is idle to urge as a reason against the validity of the order-in-council that it is inimical to the rights of the subject [1].

[1] Re *Public Inquiries Act* (1919), 48 D.L.R. 237, at pp. 239-240, SELLAR, *loco cit.*, pp. 14-15.

II — CHARACTERISTICS OF FRAUDULENT BANKRUPTCIES IN QUEBEC

II — CHARACTERISTICS OF FRAUDULENT BANKRUPTCIES IN QUEBEC (34-47)

34. To have a better understanding of the weaknesses of the actual system, it is useful to take a look at the exploits of certain of the defrauders.

For evident reasons we will limit ourselves here to failures in the field of corporations. These are without doubt the most important bankruptcies and the ones which produce the most serious frauds.

It is not our intention to review all the frauds which have taken place in Quebec during recent years. A team as limited as ours, could not possibly think of undertaking so considerable a task. Furthermore, we do not believe that it is the responsibility of an enquiry commission to duplicate the work of the government services whose responsibility it is to control bankruptcies. We believe that our role should be limited to evaluating the effectiveness of the present controls.

a) CHARACTERISTICS PROCEDURES OF THE BECOTTE RING (35-39)

35. As our first example, we would like to describe here the activities of Armand Bécotte, the master-mind of a group which was in existence and functioned at least from 1948 to 1962. Our findings come specifically from a detailed examination of sixteen files, but substantially the same characteristics can be found in some 300 files seized during a Provincial Police raid at the home of Armand Bécotte.

Bécotte, a former teacher, a some time bookkeeper, had first of all followed a practical course on bankruptcy by working closely with many trustees of bankruptcy during a number of years. Bécotte, well fortified with the knowledge which he had acquired in the offices of the trustees, wished to put his experience to profit. We noticed a rather interesting point. The first impression resulting from the examination of the different files belonging to Bécotte, leads us to believe that this man was sincerely interested in helping the debtors who came to him for advice and assistance. In the first stages of a large number of cases we notice in Bécotte a strange

moral sense which permitted everything that could be done to help the debtors, and justified all his manipulations to trick the creditors.

36. It took many years before the creditors became aware of the activities of Armand Bécotte, notwithstanding the fact that the latter consistently adopted the same procedure and used an extremely limited number of figure heads. We consider it important to describe these procedures in detail by reason of the fact that this gang was able to function freely for some fifteen years. The sentences handed down to Bécotte never paralyzed the gang.

In most cases the procedure used by Bécotte was along the following lines :

1) Bécotte entered into contact with businessmen whose names appeared in the court journals, such as the *"Court House Daily Report"*. In most cases they referred to a businessman who had a personal or property action taken against him and who quite obviously was finding it difficult to keep his business alive.

2) Bécotte introduced himself as a business consultant and offered his services. If this offer was accepted, Armand Bécotte involved himself in the business.

3) Bécotte then made a full inventory of the assets and liabilities of the debtor. He had all the accounts receivable turned over to him as well as a list of accounts payable and the actions taken against the debtor. Through the medium of his own collection agency, Bécotte could then undertake to recover the accounts receivable. He then made use of his thorough knowledge of bankruptcy to bring into action all the delaying measures he could with regard to the actions taken against the debtor.

4) If the business in difficulty still had any real estate assets, Bécotte had them transferred to third persons over whom he had full control. There then began a period of manoeuvring : this was necessary so that the transfers could not be attacked and annulled at the moment of bankruptcy. Bécotte increased his evasive actions and useless exchanges of correspondence so that there would be no demand for bankruptcy made against the debtor before the expiration of the legal delays. In this way he avoided the presumptions of rights relating to the transfers which took place in the weeks or months immediately preceding the failure. Generally speaking, the debtor made no objection to transferring to Bécotte, or to one of his men, all of his property assets. This transfer was generally accompanied by a promise made to the debtor that all these assets would be returned to him when he would be released from bankruptcy. It would appear that

Bécotte did return the assets so transferred, to the owners of the bankrupt businesses, after having, of course, taken his fees for services rendered.

5) Bécotte then asked the debtor to make out a promissory note to him for an amount in excess of $1,000 (back-dated). This would serve, if it were needed, to register an application in bankruptcy against the debtor. In this fashion, having himself become a creditor, Bécotte could trigger off the bankruptcy in his own time and in the judicial district which best suited him. Moreover, it became possible for him, following the decision of the receiver, to suggest, in accordance with the law, the nomination of a particular trustee. Chosen by Bécotte the latter was not overly zealous in the detailed examination of the assets, nor was he too concerned with the selection of inspectors. . .

6) The note asked for by Bécotte was in his favour or in favour of a firm under his control (Montreal Collection Bureau). If the note was made out in favour of a third person, Bécotte immediately had him endorse it. The application for bankruptcy was, following this, written on a typewriter which was identified as belonging to Bécotte. The application generally had the name of Mr. Claude Picard as lawyer for the petitioner. In the majority of cases, the petitioner was Bécotte himself, or an individual associated with him : St. Martin, Roy, Painchaud (dead), Perrier, etc.

7) It can be seen in this context that the petition for bankruptcy was not in danger of a contestation. In the majority of cases the debtor himself went so far as to sign a consent to judgment.

8) In those cases where the files dealt with enterprises located too far for Mr. Picard himself to look after the procedures, the brother-in-law of Bécotte, Mr. Bertrand V. Tremblay, generally looked after the serving of the petition and the handling of the details in court. In addition he sometimes carried out all the arrangements agreed to with the debtor.

9) The petition in bankruptcy generally emanated from the district of Montreal, notwithstanding the fact that the debtor in most of the cases was domiciled elsewhere in the province. This had the immediate effect of depriving the majority of creditors of the possibility of attending the general meeting of the creditors. Moreover, this permitted Bécotte to name without any difficulty, thanks to the proxies which he had, the inspectors of the bankruptcy, that is to say those who would be called upon to decide on the disposition of the assets.

10) When the general meeting of the creditors was finally held, Bécotte was in full control of all that took place. His own personal claim or the proxies which he was able to secure, permitted him to exert sufficient pressure so that the inspectors were men of his own choice : most of the time they were

Rene Roy, Painchaud, Saint Martin, Mr. Claude Picard, or, Armand Bécotte himself.

11) In almost all the cases, the trustee did not personally take physical possession of the assets, as he depended entirely on Bécotte with regard to the accurateness of the inventory. It would appear that on many occasions it was Bécotte himself who decided, instead of the trustee, on the value that could be realized from the assets.

12) The disposal of the assets generally took place at a sale arranged by one or other of the agents of Bécotte, and in particular a certain Perrier. Most of the time this was done by mutual agreement and there were no requests for tenders for the sale of the assets.

13) Faithful to his promise, Bécotte finally arranged for the formation of a new company for the purpose of restoring to the debtor his principal assets. The minimum delays had barely expired when Bécotte made a request to the bankruptcy court for the discharge of the debtor. The report of the trustee indicated that the inspectors favoured the request for the discharge of the debtor and in the absence of any contestation, this was generally accorded in a very short period of time.

37. Various documents show the methods utilized by Armand Bécotte to introduce himself into companies in precarious financial situations.

The Appendix 9 is a summary of bankruptcy jurisprudence compiled by Armand Bécotte himself. This document indicates the knowledge which Bécotte had on matters of bankruptcy. Appendix 10 gives five examples of the type of correspondence which made it possible for Armand Bécotte to introduce himself to numerous businesses and in this way to participate in several hundred cases of bankruptcy.

The Appendix 11 shows that it was possible to make a petition so as to secure a judgment from the receiver in a legal district far removed from the place where the bankrupt had exercised his business.

Appendix 12 shows that Armand Bécotte registered the Montreal Collection Bureau in his name the same day that F. Armand Painchaud, another brother-in-law, registered with the Clerk of Titles a notice of dissolution of a company with the same name. This was the agency which Bécotte used in collecting the accounts receivable for those companies of which he took charge.

Appendix 13 is a document particularly incriminating for Armand Bécotte. This document shows that Bécotte specifically contravened the provisions of Article 82, paragraph 11 of the Bankruptcy Act :

> No inspector is, directly or indirectly, capable of purchasing or acquiring for himself or for another any of the property of the estate for which he is an inspector, except with the prior approval of the court.

The Appendix 13 shows in fact that :

1) Armand Bécotte was the inspector in the failure of Louis-Philippe Lebeau.

2) The assets of the bankruptcy were bought by Jules Comeau, one of Bécotte's straw-men, for the sum of $650, contrary to the provisions of the law.

3) Armand Bécotte himself cashed the cheque issued by the Imperial Oil Company to the order of Jules Comeau, which shows the direct contact between Bécotte and Jules Comeau.

4) Bécotte was so involved in the activities of Jules Comeau that he himself reimbursed the lawyer Gilles Godin, when the latter called upon Bécotte to do so in a letter of May 14th, 1963.

The Appendix 14 shows other elements. It is noted that Mr. Claude Picard, who appeared on many occasions as the lawyer for the petitioner, occasionally acted as an inspector of bankruptcies. The same appendix shows moreover, that the votes of the inspectors present were divided at the time of the meeting of inspectors held April 10, 1967 at St. Jerome, for the purpose of studying the report of the trustees regarding the release of the debtor, Henri-Paul Blanchette. When such a situation occurs, the law (Bankruptcy Act, Article 82, paragraph 7) states :

> In the event of an equal division of opinion at a meeting of inspectors, the opinion of any absent inspector shall be sought in order to resolve the difference, and in the case of a difference that cannot be so resolved it shall be resolved by the trustee, unless it concerns his personal conduct or interest in which case it shall be resolved by the creditors or the court.

The Appendix 14 shows that Mr. Claude Picard voted in favour of releasing the debtor while Mr. Robert Demontigny voted against the release of the debtor, which resulted in a tie vote.

The Minutes of this meeting, however, do not make mention of the fact that the opinion of the third inspector, Armand Bécotte himself, was requested before the verdict was rendered. However, the same Appendix 14 establishes that the trustees, in a report submitted to the court the same day, asked the court to refuse an order of absolute release. It is surprising, therefore, considering the objection of Mr. Robert Demontigny and the trustees Carriere and Dansereau, that Mr. Claude Picard should still insist on the discharge of the bankrupt.

The same Appendix 14 also furnishes proof that a bankruptcy can very easily involve different judicial districts. The bankrupt, Henri-Paul Blanchette, lives at 61 Vachon St., Cap de la Madeleine ; the meeting of the inspectors concerned with his bankruptcy took place in St. Jerome ; the report of the trustees by virtue of Articles 163 and 163A was addressed to the Superior Court of the District of Montreal.

The Appendix 15 shows that Mr. Bertrand V. Tremblay, brother-in-law of Armand Bécotte, was perfectly aware of the business affairs of the latter and even agreed to participate. There is ample reason for the Minister of Justice to enquire into the nature and extent of this participation.

38. Notwithstanding the refinement of the procedures utilized by the Bécotte ring, it is quite clear that this was a ring formed by several individuals on a purely local basis. At no point have we been able to see the slightest relationship between the gang formed by Armand Bécotte and organized crime.

Moreover, as we have already mentioned, Armand Bécotte respected a certain code of ethics. Other groups were not satisfied, as was Bécotte, to make good use of the assets of the threatened company. Other gangs, as we shall see, had recourse to all possible methods to first of all increase the assets by taking advantage of the credit of the business.

Apart from this difference, the methods used by the Bécotte gang, and those utilized by other gangs, are somewhat similar. They particularly resemble each other on this point: the assets of the company are dispersed before the failure takes place, and the creditors recover, at most, an infinitesimal percentage of the amounts owing to them.

For this reason it can be said that:

1) The Bécotte ring was a local enterprise and in some ways *"home grown"*;
2) Bécotte's actions were consistent with a certain code of ethics, strange as it might have been, and above all he showed an excessive *loyalty* to his clients.

39. Notwithstanding these observations, there is no doubt that the Bécotte ring was one of the biggest in Quebec. That he should have been able to carry on his activities for fifteen years without ever running into trouble with the police or the courts, gives us some idea of the refinements of his methods. Actually, the cases in which the Bécotte gang took part can be numbered in the hundreds, and yet the judicial cases are very few.

That a group of defrauders should have been able to remain in existence for so long a period and to have acted in such a systematic manner, undoubtedly shows a kind of genius. However, such a situation also shows the weaknesses of the legislative texts and of the ineffectiveness of the controls and the investigations. Fortunately, the amendments of July 15, 1966 have strengthened the controls.

Appendix 14 also gives rise to the belief that in certain areas, some members of the group were still active in 1967.

40. Other groups have been active in Quebec with much more cynicism than Armand Bécotte. Some of them have even had recourse to methods which, according to the Katzenbach Commission, are strangely reminiscent of those used by organized crime:

> Criminal groups also satisfy defaulted loans by taking over businesses, hiring professional arsonists to burn building and contents, and collecting on the fire insurance. Another tactic was illustrated in the recent bankruptcy of a meat-packing firm in which control was secured as payment for gambling debts. With the original owners remaining in nominal management positions, extensive product orders were placed through established lines of credit, and the goods were immediately sold at low prices before the suppliers were paid. The organized criminal group made a quick profit of three-quarters of a million dollars by pocketing the receipts from sale of the products ordered and placing the firm in bankruptcy without paying the suppliers [1].

41. Actually, fraudulent bankruptcies consistently show the same characteristics. The common objective is the dissipation of the assets of the company before the bankruptcy takes place. Even at the level of methods used, the variations are very few.

If one excludes the Bécotte ring, the Quebec gangs which we have studied have consistently endeavoured to deliberately and fraudulently inflate the assets of the companies marked for failure. In some cases, the gang would take over existing businesses which enjoyed an excellent reputation with their suppliers. It then became possible for the defrauders to suddenly increase the volume of orders without informing the suppliers of the change in management which had taken place in the company.

No sooner delivered, the merchandise thus obtained was disposed of very quickly and at ridiculously low prices. At the moment when the creditors endeavoured to secure payment of their merchandise, the group consumated the failure.

42. In other cases, the defrauders themselves incorporated new companies giving them names almost identical to those of known and solvent companies. In this way, suppliers were led astray, and it was possible to obtain large quantities of merchandise for which there was never any intention of paying. Then, the bankruptcy took place once again in time to avoid any payment for the merchandise.

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[1] Task Force Report: Organized Crime, p. 4.

Most of these gangs also arranged for their own information service which enabled them to give the suppliers a false image of the economic situation of the enterprise.

In the majority of these rings, the frauds perpetrated against the creditors did not involve very complicated methods. The orders were given to the suppliers by deliberately fooling them with regard to the identity of the enterprise itself, or by hiding the fact that there had been a change in administration. The credit references sometimes came from a bank where a fairly large sum of money had been deposited — on a temporary basis, of course. Most frequently, fictitious references were sufficient: the gang put the suppliers in contact with figure heads whose sole purpose was to see to it that the solvency of the company was guaranteed.

Apparently it was considered most important to have a rapid liquidation of the inventory. Old and new merchandise had to disappear quickly, even before the creditors had an opportunity to demand payment. In some cases the merchandise received, was sent to another company, tied in with the gang. The bills of sale were frequently fraudulent as to quantities, but correct with regard to the unit price. In some cases the merchandise simply disappeared. In the absence of any accounting records, it became impossible to find the merchandise. Some of them were not above "suffering" a fire sufficiently effective to burn all the accounting records...

When the creditors endeavoured to recover the amounts due them, a petition in bankruptcy was made by one of the accomplices against the debtor company, utilizing a cheque which had been returned because of insufficient funds, or a bill not paid.

EXAMPLE: THE FRAUDULENT BANKRUPTCY RING IN THE LUMBER INDUSTRY (43-46)

43. To illustrate these procedures, it would be useful to take a look at the activities of a gang which has systematically defrauded the Quebec lumber trade during recent years (Appendix 5).

The ring included only a small number of individuals, but they brought about losses to the lumber merchants easily running into millions of dollars.

The system used, consisted of forming, one after the other, several incorporated companies, registered under many trade names. Generally these newly formed businesses carried names strangely similar to those of well-known, successful companies. The system had as its purpose the deception of the creditors by leaving them under the impression that they were dealing with solvent companies. Even at the level of credit references the same confusion existed: the supplier refrained from securing further

information, because he believed that he knew the identity of the company he was dealing with; even the agency responsible for furnishing credit information confused the new company with old clients.

44. Once formed, these new companies sent out letters and circulars to the different suppliers outside of Quebec. These firms were asked to quote or tender, giving their price for shipping lumber to Montreal. These letters and circulars carried references dishonestly purporting to be bank references. In fact the telephone number mentioned to the suppliers led them directly to the office of these phantom companies where a special telephone line was used giving the impression that it was a branch bank.

Everything conspired to lead the suppliers into error. The result was that the deliveries were agreed to very quickly on the basis of non-existent credit references. The deliveries were made to one of the new companies in Montreal, or in the immediate surroundings. Once delivered, the lumber was immediately sent to companies specializing in the transformation of lumber in such a way as to efface any marks of identification. The suppliers who endeavoured, after the failure, to recover their merchandise, could never identify their shipments.

45. Here again, unfortunately, there does not seem to have been any quick counteraction on the part of the authorities. Consequently, it is very difficult at the present time to carry out successful criminal prosecution against all the individuals who were involved in this game of misrepresentation and fraud.

However, actions have been taken against Jean-Paul Denis who, it is presumed, was the key person and the master-mind directing the ring. The cases are pending, have been almost fully heard, but they still require continuing investigation.

One happy feature, which compensates to some extent for the administrative slowness: the principal charges made against the said Jean Paul Denis seem to have had a salutary effect, as this gang of racketeers has, according to all indications, been out of operation for almost two years.

The Appendix 16 gives many illustrations of the procedure used.

46. Undoubtedly the lumber business had suffered many other frauds. However, there does not appear to have been any concerted and systematic action on the part of other organized groups.

There are isolated cases, such as that of St. Onge at Beauharnois and Valleyfield, and also a number of cases in the field of construction material. We noticed the case of Mayfair Homes where the names of a number of known repeaters were found, such as, Ciarroni and a certain Groleau, now

in prison in the United States in connection with the Lucien Rivard affair, etc. Here again, the enquiries indicate that the gang appears to have ceased its activites.

In the construction material business, a certain Roger "Blanc" Marceau appears to be still active. This individual is at the moment being investigated in connection with Trifab and Edifab, Abode cases. This investigation of Marceau is being conducted by the Minister of Justice, by the Social Security Squad of Montreal, and by the Superintendent of Bankruptcies. He has already had several convictions for fraud, and these last adventures, at the time of Expo 67, resulted in losses to the creditors amounting to more than one half million dollars (cf. Appendix 2).

47. We could continue indefinitely this description of the bankruptcy frauds which have taken place in Quebec, but we believe that our mandate rather calls for us to make suggestions and recommendations which might prevent similar rings from being formed again and carrying on their illicit activities.

In Appendix 17 is a partial report from Mr. Jean Paul Bergeron on a number of bankruptcy cases. Here again it is not at all our intention to make public all the material accumulated by the Minister of Justice and the Clerk of Bankruptcy. We will merely describe the operation of different fraudulent systems and endeavour to suggest some remedies [1].

[1] The published report does not include this voluminous report which is of more interest to the Minister of Justice than the public. We have omitted this for reasons of economy rather than by concern for discretion.

III — VARIOUS FUNCTIONS RELATED TO BANKRUPTCY AND FRAUDULENT BANKRUPTCY

III — VARIOUS FUNCTIONS RELATED TO BANKRUPTCY AND FRAUDULENT BANKRUPTCY (48-67)

48. It is now time to take a close look at the traditional methods of contending with fraudulent bankruptcy rings, and the defrauders themselves. This analysis of the mechanisms now used should explain why certain Quebec gangs, and particularly that of Bécotte, have been able to act with impunity during many years, in hundreds of cases. It will be seen that many of the functions related to bankruptcy are completely ineffective in the prevention and detection of fraud.

a) THE CREDITORS (49)

49. A preliminary comment should be made. Regardless of the extent of the bankruptcies or the frauds, generally speaking, the creditors in Quebec are conspicuous by their absence. This is so general that it is almost astonishing to see an organization such as the Canadian Lumbermen's Association actively looking after its own interests.

In fact, unless there is police action or intervention by the government administration, the frauds go unnoticed. When the Canadian Lumbermen's Association became an exception to the rule, its quick action led to the breaking up of the ring which threatened it.

It will be noticed on examining the files of the gang formed by Armand Bécotte, that there were present at the meetings of the creditors, on most occasions, an extremely small number of those who were affected. The creditors were so few that it was relatively easy for the defrauders to name themselves as inspectors of the bankruptcy, or to have men of their own choice appointed to this position. As the inspectors of the bankruptcy have the responsibility of approving the choice of trustee and disposing of the assets of the company with him, it is not difficult to imagine what the inspectors can do when they are acting in the interest of the bankrupt, or of themselves, rather than that of the creditors. And so, quite frequently Bécotte and his men were appointed as inspectors of bankruptcy, which permitted them to value the assets at only a fraction of their real value.

Moreover, they could then dispose of the inventory for the benefit of one of their own, for a nominal sum. The assets remaining after the manipulations of the bankrupt himself would be further reduced after the bankruptcy, thanks to the connivance of the inspectors.

We intend returning to this aspect of the problem further on. For the moment it should be noted that amongst the effective methods of fighting fraud, the intervention of the creditors is the most important: it is an effective weapon but not used.

Let us not be too quick with our criticism. The chronic absenteeism of creditors is partially explained by certain weaknesses in the law itself. As we have seen in the files of the Bécotte affair, the bankrupt and his advisors take the necessary measures to see to it that the meeting of creditors takes place in a judicial district removed from the place of business of the majority of the real suppliers. In this way, the large majority of the creditors find it impossible to attend the meeting of creditors, and there is nothing to interfere with the activities of the inspectors chosen by the bankrupt himself, or by his advisors.

b) THE OFFICIAL RECEIVER (50-55)

50. In evaluating the effectiveness of the fight against fraudulent bankruptcy, the role filled by the Official Receiver up to the present, should be examined.

Even if the creditors are not interested in the meeting which concerns them, or are led to distinterest themselves by the actions of the bankrupt and his figure heads, the Official Receiver has the responsibility of the statutory examination of the bankrupt. This examination is intended to reveal the true circumstances of the failure and to give the administrative authority full knowledge of the circumstances leading to the failure.

51. In the past this examination has often been a simple matter of routine, even in the important division of Montreal. The Mercier Commission was inclined to believe that the situation was worse in Montreal than anywhere else. Since July 1968 the situation has improved considerably. As to the period prior to July 1, 1968, it should be divided into two parts: that preceding 1965, and that from 1965 to July 1, 1968.

52. Before the arrival of Mr. Paul Devos as Receiver in Montreal, the function of the Receiver was, for all practical purposes, of a purely statutory nature, and even academic. Authorized agreements and assignments were accepted without any real interrogation. No importance was attached

to the chairmanship of the general meeting of creditors. The statutory examination was not carried out in the presence of the Receiver, and it was made on a stereo-typed form.

Under this system which existed from time immemorial, it could be said at most, that the letter of the law was observed. Not too much time is required to ascertain what the practical results were from a system which was content to merely stamp documents.

53. With the appointment of Mr. Devos, the functions of the Official Receiver in Montreal began to have some real meaning. Particularly with regard to the examination of debtors, a clean-up campaign started which turned out to be most profitable. Frauds which would have been normally relegated to limbo, or which would not even have attracted any attention, were uncovered at the moment of the declaration of bankruptcy and even before that. The investigators were quickly made aware of these files and in important cases, even attended the examinations themselves.

Mr. Devos has been called upon for consultation by different Receivers in other districts, and without being able to state categorically that the improvement in the examination has resulted in a considerable reduction in the number of bankruptcies, there is no doubt that merely drawing the attention of the trustees, the members of the Bar and the general merchants to these inquiries, had a most salutary effect.

Since July 1, 1968, the office of the Superintendent of Bankruptcies has undergone important changes which concern the Official Receiver in more ways than one. It is our intention to evaluate these changes, but for the moment we are limiting ourselves to merely a review of events.

54. The extent of the work undertaken by the Receiver is underestimated because it is not fully realized that he frequently assumes some of the responsibilities of the Registrar. In a division such as that of Montreal, failures are counted in the hundreds, and this in turn affects the statutory examinations, the meetings of creditors...

> In 1966 there were 1,868 failures deposited in the Montreal Division, of which 250 Proposals were made by insolvent persons or corporations. The three Registrars rendered 4,342 judgments, and, as the Official Receiver also undertook the functions of Registrar with his colleagues, all these figures can be attributed to these three officers. They have presided over 2,009 meetings of creditors, and over 2,033 examinations of bankrupts. They have, moreover, during this year, presided over an undetermined number of examinations before the Registrar in virtue of Article 121 of the Bankruptcy Act. The number may be guessed at by realizing that it called for a total of one hundred volumes of depositions, with 200 pages in each. This estimate is quite obviously approximate, because many of the examinations, made in virtue of the Article 121 by the Crown prosecutors,

(the cost for the transcription being assumed by the Minister of Justice), have not been deposited in the record of the Superior Court, sitting in matters of bankruptcy, as is provided for in Article 121, paragraph 3, for reasons which I do not know.

In 1967, from January 1 to June 30, 655 bankruptcies were deposited in Division No. 1, of which 225 were individuals and 430 corporations, and we have presided over 772 meetings of creditors and 950 examinations, and we have rendered 1,841 judgments, and almost the same number of memoranda of costs of lawyers.

Moreover, I estimate that we have held at least 600 meetings of inspectors, in those cases where the Official Receiver acted as such, and proceeded to at least 30 investigations into these cases where we had reason to believe that an infraction of the law on bankruptcy or of other laws had been committed [1].

55. In this context, it is easy to understand that the possibilities of fraud are many, and that quite often months and years pass before they are uncovered :

> That which is done is done; frauds which have been committed and which are actually waiting to be heard before our courts, are one thing; those to come are another matter, and it is these last which disturb me the most.
> A sound principle understood and taught in all the armies of the world, calls for a strategy of never underestimating the enemy; but for many years, it has been common knowledge that we can do nothing, practically nothing, when in any one week we have more than one case of fraud. So our enemies, quite naturally, take chances; they register three or four, being certain in advance that we can only deal with one or at most two, and that they are home free for the others [2].

c) THE POLICE FORCES (56-57)

56. Particularly when the creditors are noticeable by their absence, the police are called upon to detect the frauds.

In undertaking an evaluation of the work carried out in this field by the different police forces in Quebec, special attention should be given to the work accomplished for many years by the Social Security Squad of the Montreal Police Force. This squad has today a special office in the northern sector of the city with a dozen special investigators working under the direction of Lieutenant Leo Talbot and his Chief Assistant, Const. Desrochers. The Squad has offices apart from that of the Montreal Police Force, but it works in close collaboration with the fraud unit of the City of Montreal.

The principal function of this department is to enquire into bankruptcies, and up to the present almost 300 files have been opened which are being examined by this Squad. Even if it is still not yet sufficiently staffed with specialists (lawyers, accountants, etc.) and even though its members

1 Report submitted to the Commission by Mr. Paul Devos (Appendix 18).
2 Appendix 18.

are still new in this field, it is a great and pleasant surprise to see how this group has grasped the economic aspects of the Bankruptcy Act, as well as the extent of their practical knowledge (cf. Appendix 2).

It is chiefly because of the activities of this squad that the principal frauds have been uncovered and serious convictions have been secured particularly in the case of the gang of Erbstein et al.

57. The provincial police also have a fraud unit which carries out similar work.

From the examination of all the files, it becomes apparent that the work of investigation, and the reports made following these investigations have been well done. The facts are related in an orderly manner and with a great deal of careful research to discover evidence of fraud. It is regrettable however, on reading these reports, to note that the investigation methods adopted do not fully respond to the needs. Notwithstanding the best of intentions and all the trouble which the investigators take to do their work well, it must be said that they lose precious time in checking minor details, as for example, the registration of the company name, the dates of incorporation of companies, etc.

It is evident that all the members of this squad do not have the accounting knowledge so essential in this kind of investigation, and that they do not benefit sufficiently from technical assistance needed even by investigators with considerable training.

Use does not appear to have been made of the most elementary methods of research. For example, they have neglected to check with the suppliers, the total amount of merchandise sold to a debtor in a particular period, and immediately preceding the failure. It therefore becomes exceedingly difficult, if not impossible, to reconcile the total purchases through the inventories of the debtor at the time of bankruptcy.

This is a serious weakness in a very sensitive area, because in the majority of fraudulent bankruptcies, the fraud takes place in two phases :

— a massive increase in purchases over a short period of time ;
— rapid liquidation of inventory before the failure.

And the benefit to the defrauders comes from the discrepancy between the volume of purchases, and the volume of the merchandise still available at the time of the failure.

d) THE CROWN PROSECUTORS (58-60)

58. An analysis of the police work shows that even in the opinion of the police themselves, there is almost a complete lack of specialists and above all of supporting personnel.

The police complain, as we have already seen, that their files when completed, remain dormant for months before the Crown prosecutor finds the necessary time to bring a case to the attention of the courts. On different occasions in the course of our work, we have noted that some police forces, particularly that of Montreal, wait for indefinite periods for the results of their investigations to be brought before the courts.

This leads to understandable dissatisfaction on the part of investigators ; a policeman who has completed an investigation in a conclusive manner, is not at all happy to see his file remain in the hands of the Crown prosecutor without any further action. Several months ago the Minister of Justice of Quebec, in an effort to resolve this problem, gave three permanent Crown prosecutors in Montreal the responsibility of working on bankruptcies only. This was a most important decision.

59. In actual practice, this measure has not produced the results expected, for the very good reason that each of the three prosecutors has been obliged on many occasions and sometimes for weeks on end, to look after cases completely foreign to bankruptcies. It is impossible to liquidate the backlog of cases and introduce satisfactory controls unless these three prosecutors devote their time *exclusively for a period of at least 2 years,* to the study of bankruptcy cases. A rapid survey of the police investigations which have been terminated, as well as a cursory analysis of the files which should be re-examined, bears this out.

In our opinion it is not enough merely to arrange for a rotation amongst the permanent Crown prosecutors, although this would at least result in three of them being constantly engaged with the bankruptcy cases. What is really needed is a continuity of effort, and a definite specialization on the part of the three prosecutors delegated to study these bankruptcy files. This continuity appears to be completely lacking at the present time. Not only are the three prosecutors distracted from the task allocated to them, but there aren't even three permanent prosecutors working in the field of bankruptcy.

60. This complete lack of continuity is explained in part by the need to look after immediate needs which arise daily. In addition, the Minister of Justice, obviously finds it difficult to always utilize the same men to deal with the bankruptcy files, for the reason that the lawyers themselves do not appear inclined to remain for any length of time as permanent Crown prosecutors. It is our opinion that the Crown suffers in this area as elsewhere, from the inadequacy of its salary scales : in view of this, it becomes impossible to recruit a sufficient number of Crown prosecutors and to retain them, regardless of how great the need may be. This results in the

overloading of each of the prosecutors, and a change in personnel which prevents both continuity and specialization.

e) THE TRUSTEE (61-63)

61. In the normal administration of a bankruptcy, the trustee fills a most important role. And an examination of the fraudulent bankruptcy files unquestionably involves some of the trustees.

Generally speaking, the files examined by the Commission, show no indication of fraud to the profit of the trustees themselves. But it is difficult to explain why the various trustees working on cases originating through Bécotte and his men, never became aware of the tactics utilized by the group. Bécotte and his gang were actually involved in hundreds of cases, all of which were examined by trustees without eliciting any reaction.

In our opinion, the trustees, who regularly accepted the Bécotte cases, have shown gross neglect and a blindness which to say the least, is astonishing. They have most definitely allowed this gang full control of the different phases of the administration of bankruptcies, to the extent of both taking the inventory and disposing of the assets.

There is nothing to indicate that the trustees have acted in collusion with Bécotte to share any profits, or to give assistance in return for remuneration, in dishonest transactions. They appear to be quite satisfied to merely receive their regular fees following a termination. They freely granted all the authorizations required without really making an effort to improve the assets for the benefit of the creditors.

62. These same trustees in most cases, have had their licenses cancelled by the Superintendent of Bankruptcies and we believe this to be a good decision, not so much by reason of any dishonest acts, but rather because they failed to carry out their responsibilities thoroughly and scrupulously, and consistently showed a lack of vigilance in protecting the interests of the creditors.

Trustees cannot plead ignorance when they are constantly faced with the same inspectors of bankruptcy, as was the case in the different gangs, and more particularly in that of Armand Bécotte. The latter, as we have seen, endeavoured to dissuade the creditors from taking any part in the surveillance and administration of the bankruptcy, so that he could name himself or his men as inspectors of the bankruptcy. He managed regularly to select a distant judicial district where he made his application for an Order from the Receiver. This enabled him to hold a meeting of the creditors in a locality not easily accessible to most of the interested parties. This obviously resulted in Bécotte and his men appearing regularly in the role of inspectors of the bankruptcy, and it seems almost impossible

that the trustees failed to notice this. But the trustees never complained to anyone about this anomaly which certainly casts doubts on the efficiency of their work.

63. From the three possible interpretations of their behaviour - connivance, incompetence, indifference — we would prefer to give them the benefit of the doubt, and to consider this group of trustees as insufficiently concerned with the interests of the creditors.

One thing is certain, the trustees involved in the administration of bankruptcy stemming from the work of Bécotte did not appear to have used all the means at their disposal to increase the share to which the suppliers were entitled. Faced with such behaviour and thinking along general lines, the question might well be asked whether the function of trustee should remain in the hands of private enterprise. When private enterprise shows in such a flagrant manner its willingness to pocket its particular benefits without giving the services which it has promised, possibly the State should be asked to superintend the liquidation of enterprises which have failed, so as not to permit one sector of private enterprise to benefit from the tribulations of creditors, also private enterprisers.

This severe criticism, warranted by a few, should not be considered as applying to all trustees, or even to an important proportion of this group.

f) THE LAWYER (64-65)

64. In matters of bankruptcy, the role of the members of the Bar up to the present, should certainly be examined. Unfortunately a study of the files shows that some lawyers have played, with full knowledge of the facts, a somewhat questionable role, to say the least, in certain bankruptcy cases. These cases are the exception, but when it is realized that a large percentage of the bankruptcy cases are concentrated in the hands of a small number of practitioners, these exceptions take on considerable importance.

We will limit ourselves here to those whose names recur regularly in certain categories of bankruptcy cases, and who are constantly at the side of individuals who have been found guilty of illegal manœuvres in bankruptcy matters. We make a clear distinction between the lawyers who conscientiously fulfill their professional duties on behalf of individuals more or less honest, and those few lawyers who are implicated in acts which, if not illegal are at least incompatible with professional ethics.

In a particular ring, Lawyer X (whose name the Commission has made known to the Minister of Justice) appeared in many court records as the

petitioner in bankruptcy, and always for the amount of the incorporation fees of the debtor company. These fees in most cases, amounted to between $300 and $400.

According to statements made by Barry Marks, whose evidence however, is considered to be suspect, Lawyer X received a weekly fee of between $150 to $200, in respect of meetings in which he was presumed to be disinterested, "for services rendered to the debtor company". These sums were paid to him when the receipts were divided amongst the interested parties.

Serious questions arise when a lawyer follows the practice of being both the company advisor and its petitioner in bankruptcy.

65. It is noted that Armand Bécotte, notwithstanding his thorough personal knowledge of the ramifications and procedures of bankruptcy, constantly used the services of lawyers. The correspondence seized during the raid on Bécotte showed that the lawyers of whom we are speaking here, knew all about Bécotte's intentions.

The specialist asked by the Commission to examine the files seized at Bécotte's place reported in the following manner :

> The Commission should examine very carefully the conduct of certain members of the Bar who have willingly taken part in the Bécotte complex of affairs.
>
> The correspondence exchanged between Bécotte and his brother-in-law, Mr. Bertrand V. Tremblay indicate to us that the latter was fully informed of Bécotte's intentions in certain bankruptcy cases.
>
> As to Mr. Claude Picard, he appeared as the lawyer for the petitioner in each of the applications for bankruptcy made at the instigation of Bécotte. In many cases he also appears as an Inspector. It is quite inconceivable that petitions in bankruptcy should be made under the signature of a lawyer, while the petition itself, is dictated and typed outside the office of this lawyer; that often the affidavit has not been received by the presumed Commissioner of Oaths; and that the notice of the proceedings in the majority of cases is arranged by Bécotte.
>
> If in certain isolated cases the negligence or indifference of a lawyer is a factor, this cannot be said when a countless number of these same petitions are presented to the courts by the same lawyer for the petitioner, Mr. Picard.
>
> At the request of the Hon. Mr. Justice Hannen of the Superior Court, the Bar has been made aware of an irregularity in an affidavit supporting a petition in bankruptcy presented by Bécotte, and in connection with which Mr. Picard acted as lawyer. However, the Bar does not appear to have carried its enquiries too far, nor has it up to the present taken any corrective measures in this matter [1].

[1] We reproduce here an extract from the evidence of Mr. Yvon Desloges, Registrar of the Bankruptcy for the Bankruptcy Division of Montreal, April 12, 1967, p. 1122 to 1128, dealing with the same problem.

THE PRESIDENT:

Q. — But trustees are not the only ones to be involved in the Court of Bankruptcies, there are also other persons?

R. — Now I am coming to this other category of persons: there was a rather unpleasant situation in the past; if it was a trustee who was discussing the matter with me, it appeared that the lawyers took all and left nothing for the trustee; and if it was a lawyer who was discussing a matter with me, the trustee took everything and left nothing for the lawyers.

So let us look at this; I would say that the trustees, are now, generally speaking, well-behaved.

As to the lawyers, some of whom behaved rather questionably in bankruptcies, let us say that they have now settled down realizing that their life is not as easy as it was in the past.

However, if possible, when the time comes to make recommendations to revise the Bar Act, I would like to see established clearly, the serious risk there is for a lawyer who acts on behalf of the debtor and also as lawyer for the trustee. This in the past has led to frequent abuse.

And if I may be permitted to suggest: that it be clearly established in the Bar Act that it is an offence for a lawyer who has acted for a debtor or for a company to then act for the trustee on the same matter. The temptation is too strong and it has often been established that the lawyer is the one who directs everything, who organizes the entire failure for his client, and he knows all the details, and he has succeeded in making it possible for his client to suffer a minimum of loss and to salvage the maximum from the failure.

That would definitely be an improvement.

MTRE. LUCIEN THINEL, Q.C.
for the Commission:

Q. — Would you apply the same principle - I am interrupting you - to the individual who would be the lawyer for a creditor and who might become the lawyer of the trustee? Would you see the same danger?

R. — I do not necessarily see the same danger, because if he represents an ordinary creditor, there would not seem to be great danger.

But if he represented a guaranteed creditor, for example, there I do not see him as a lawyer for the bankruptcy, nor as an inspector of the bankruptcy.

But I have a recent case where a lawyer was the president of the debtor company; he became an inspector of the bankruptcy; his legal office had made a request to the court to authorize the trustee to sell the assets of the bankruptcy to another company which had been formed at the time of the bankruptcy, and of which he was also president, the same lawyer.

Q. — And you find here a conflict?

R. — Yes. More, I have spoken there...

THE PRESIDENT:

Q. — Or a similar interest?

R. — Yes. I have already spoken about our personnel, I don't believe there is any need to repeat it.

From the point of view of cleaning up the practices of lawyers I believe I have already stressed the important point.

As to the trustees, we are in close collaboration with the Superintendent, and I believe I can say that in a general way, the trustees, have now become

our best allies specifically for uncovering fraud; and we place less faith in a trustee who has not brought frauds to our attention. And if we find too many of these frauds, we begin to have doubts regarding the quality of the trustee. But on the whole I can say that we are quite satisfied in Montreal.

Now may we enter into the field, if you wish...

Q. — Just a moment! Can you say as much for the lawyers? Have they become your best allies or amongst your best allies in preventing frauds in the field of bankruptcy?

R. — I cannot say as much. Some, yes. And it so happens that quite a number of lawyers are now coming to the bankruptcy court, lawyers who formerly abstained by reason of the bad reputation attached to all transactions in the field of bankruptcy.

So, yes, I can say that as a consequence there is a real improvement on the part of lawyers; except for those who in the past were not cooperative, and are no more so today.

Q. — And of those who have provoked or justified your hesitation before replying, approximately how many, are there in your opinion?

R. — Not more than a dozen.

Q. — That's already too many.

R. — That's without thinking too much about it.

Q. — You have the right to think.

R. — So let's say: not more than a dozen, without thinking too hard.

MTRE. LUCIEN THINEL, Q.C.
for the Commission:

Q. — You mean to say: amongst those who are non-cooperative?

R. — Who are non-cooperative.

Q. — Approximately twelve.

M. COMMISSIONER LAPLANTE:

Q. — Are the non-cooperatives the ones you see most often?

R. — .... Let us say that there are several of them with whom we feel very ill at ease; without necessarily knowing why.

In other words, these would be the cases where, following a preliminary investigation, the complaint would be sent back for lack of proof, but there would have been a preliminary investigation.

Q. — Would you say you have regulars?

R. — Yes, oh yes.

Q. — And amongst those regulars...

R. — Amongst our regulars...

Q. — Is it chiefly there that you find the ones whose collaboration leaves much to be desired?

R. — Ah, amongst our regulars, I would say, the collaboration of lawyers is in general quite good. Ah yes, quite good. But we have several of these, and they number ten or twelve, something like that, with whom we are very uncomfortable, and we must scrutinize every detail closely before granting a petition.

THE PRESIDENT:

Q. — Have you referred cases to the Bar of Montreal ?
R. — I have previously referred cases to the Bar of Montreal.

Q. — Many ?
R. — To date at least three.

Q. — Have there been any results following your reports ?
R. — ... With regard to a double complaint there was an investigation by the Bar which stopped there, without any formal complaint being made against the lawyer and obviously without any sanction. With regard to the two other complaints, they are at the moment under study.

g) THE COURTS (66-67)

66. Even if the different agents already mentioned collaborate closely to clean up the administration of bankruptcies, it is nevertheless true that the hearing of the bankruptcy cases before the courts creates a number of problems.

The examination of the files has shown for example, that the important cases of commercial bankruptcy make it necessary to subpoena a large number of witnesses, both for the preliminary enquiry and for the trial. Usually, the number is about 20 or 25, and in many cases it can reach 75.

As indicated by a specialist, this means that before placing a case on the roll, whether it be for enquiry or trial, the Crown prosecutors must be certain that a judge will be available. It would only be a matter of the judge having other cases on the roll for the same day, for these to take precedence over the bankruptcy files. An adjournment of the case because of inability to proceed is almost always disastrous to the interest of the Crown, because a number of the witnesses called the first time do not show up the second time, and even fewer the third.

67. Looking more closely at this problem of adjournments in fraudulent bankruptcy matters, one has the impression that the majority of judges simply do not want to involve themselves in these extremely complex cases.

Notwithstanding the disadvantages which result from an adjournment, it would appear that many judges agree to such delays in the hope of relieving themselves of a case which would call for concentrated effort over a prolonged period. It should be admitted, in fact, that the fraudulent bankruptcy case often results in extremely detailed research and accounting analyses, and an investigation of management for which not everyone has the desire or the competency.

Some, conscious of the specialization which would be called for, have even suggested the formation of a special court, analogous to the French *"tribunal de commerce"*. Within the framework of this chapter we merely indicate the problem.

IV — DIFFICULTIES IN THE ADMINISTRATION OF BANKRUPTCIES

IV — DIFFICULTIES IN THE ADMINISTRATION OF BANKRUPTCIES (68-87)

68. Up to the present we have localized the different agents whose actions must be coordinated to prevent fraud or fight it. It is necessary now, before even dealing with the legislative texts, to see up to what point the actual administration of bankruptcy coordinates the efforts of each, and how it deals with the functions having to do with the control and prevention of fraud.

a) LACK OF INFORMATION (69-75)

69. The different agents cannot carry on a coordinated work unless they are able to communicate with each other quickly and have the necessary information as to the work being carried on by their colleagues.

Unfortunately, at the present time, the administration of the Bankruptcy Act cannot be certain of having full knowledge of the facts. On the one hand, insufficient attention is paid in each particular case to listing the successive events. It is therefore possible to examine a file without realizing at any point from a study of the evidence, that actions have been taken. In the same way, a Crown prosecutor can take over the handling of a case without knowing to what point in the procedure the case has gone. This impression is corroborated by the statement of specialists, who, at the request of the Commission, have examined hundreds of files (Appendix 2).

On the other hand, nobody up to the present has endeavoured to establish a worthwhile index of bankruptcies and, more particularly, fraudulent bankruptcies.

Neither the office of the Crown prosecutor nor the Quebec Secretary nor the principal police forces of Montreal or the Province, have classified all the information they have on racketeers specializing in the field of bankruptcy.

70. It is therefore not always possible to find all the information concerning a case in one file. Moreover, the different individuals and the various

organisms which have worked in the preparation of a case do not communicate with each other sufficiently.

In this way, when there is an application for a new incorporation, or another police investigation, it is only thanks to the memory of the officials or the police that it may be possible to establish a relationship between a recent event and the past activities of a racketeer. And if memory fails, very little is found. The Commission was made aware of the example of an individual who, notwithstanding a long court record, had been able to obtain twenty-three different incorporations from the Quebec Secretary.

71. Even though we agree that information must circulate, we are still not certain of the nature of the relationship that must be established between the Quebec Secretary's office and the various law enforcement bodies. We would hope for improved communications between the two groups ; in practice, however, discretion must also be respected. In our opinion, it is not a matter of obliging the Quebec Secretary's office to forward to the different law enforcement bodies, copies of all the documents and information which have reached it. This would entail constant duplication and sometimes an infringement of the fundamental rights of the individual.

On the other hand, we can no longer allow the various control mechanisms to function entirely autonomously, incapable of forming a unified system. It is therefore reasonable to expect and even hope that :

1. The Quebec Secretary's office would organize its own specially appropriate index;
2. The Quebec Secretary's office would reach an agreement with the Department of Justice on the circumstances permitting the diffusion of information;
3. The Quebec Secretary's office would agree to anwser all legitimate, pertinent and specific questions addressed to it by the various law enforcement agencies.

In short, we must reach a point of equilibrium : there must be an end to the present laxity, at the same time avoiding excessive and arbitrary diffusion of information of a confidential nature. By leaving the bulk of the information in the hands of the Quebec Secretary, the improper and systematic communication of information of a strictly administrative nature is avoided. By permitting the law enforcement agencies to secure the information necessary to complete their criminal investigation, we would hope to make the prevention and detection of fraud more effective.

The existence of this central file in the office of the Secretary of Quebec should not prevent the different parties involved in the administration of the Bankruptcy Act from making their own compilation of the information available to them on bankruptcy matters. Our mandate requires us to limit our comments to information concerning fraudulent bankruptcies.

72. With the purpose of preventing and combatting fraud, this central index should contain certain specific information. An examination of fraudulent bankruptcy files shows that some gangs have been able to secure tremendous illegal benefits by taking over well established businesses without anybody being aware that there has been a change of proprietors. This is a flagrant example of the deficiencies resulting from a lack of information.

At the present time a business can very easily and quickly change proprietors and fall into the hands of a group known for its activities in fraudulent bankruptcies, without the police forces or even the Quebec Secretary being aware that the business is no longer under the same management. This technique is very much in use by defrauders.

Preceding paragraphs have spelt out this operation which consists of securing control of an existing business and immediately taking advantage of the reputation and credit of the business. Unless the Quebec Secretary becomes aware very quickly of the entrance into the picture of groups known to have been previously engaged in illegal activities, it is extremely difficult to prevent such frauds. Only *after* the bankruptcy is it realized that the original owners who established the reputation of the business have been replaced by a group of individuals who, in 90 days, have had the time to purchase the company, place orders in abnormal quantities, and terminate the activities of the company before the creditors and suppliers could collect what was owing to them.

73. This central index should contain not only the name of the company incorporated, but it should also give a list of the directors and officers of the incorporated company. Kept up to date, this index would be of invaluable help.

We would like to stress that we do not advocate that the Quebec Secretary's office undertake to automatically forward copies of all these files to the various law enforcement agencies. This would come too close to having a police state. In actual fact, it is only a very small percentage of businesses which fail, and an even smaller percentage which might be considered as fraudulent in one form or another. As a result, it would be useless and abusive to set up *police* files on all Quebec corporations under the pretext that some of them have fallen into the hands of professional defrauders.

In our opinion it would suffice for the Quebec Secretary to be well informed and to act on requests from police forces in Quebec and elsewhere, with prudence and a spirit of cooperation.

74. It should be realized that no matter what improvements are made by the Quebec Secretary, the Official Receiver should never be relieved of his own responsibilities. He will find it to his advantage to have an up-to-date index. In closer and more regular contact with the police forces, and endowed with considerable powers of investigation, he could and should organize a detailed compilation.

The Official Receiver of the First Division, Mr. Paul Devos, has already taken such initiatives, but because of a lack of personnel, he is unable to carry them out in a satisfactory maner.

> Referring to a central index and to what it should contain; it should be possible for us, every time that an individual or an enterprise transfers any part of its property (whether it be accounts receivable to a bank, or to another financial institution, or whether it be an assignment under Article 88 of the Bank Act), to prepare a card in the name of this individual or this corporation, so as to be able to follow the events which, in nine cases out of ten, seem to take place shortly afterwards. Once an individual or business is in bankruptcy, this index should show the value of the assets and liabilities, the names of the directors, administrators and principal shareholders of the corporation or the business in bankruptcy.
>
> In addition, this index should also show the percentage of the dividend which has been paid in each case. The individuals involved in the bankruptcies of corporations should each also have a personal card to show in how many corporations, bankruptcies or liquidations they have been involved. There should also be inscribed in this index a summary of the real causes of the failure [1].

75. Each of these indexes should have its own *"raison d'être"* for being in existence : the fact that the Receiver keeps one, does not render the index of the Secretariat useless as it will not serve the same purpose.

The different departments are involved in different situations. The Receivers remain *regional* administrators and they indicate the necessity of a central *provincial* information office. Little by little the Official Receivers would come to use the central index of the Secretariat of Quebec as a clearing house. In this way the Official Receiver could very easily inquire about the antecedents of any group that he suspects of fraud in other judicial districts.

1 See Appendix 18.

b) LACK OF QUALIFIED PERSONNEL (76-79)

76. The undue delays in the administration of bankruptcy and the detection of fraud is not solely due to the lack of information. Difficulties just about as serious result directly from the instability, and the lack of qualified personnel responsible for applying the legislative texts.

All the specialized police forces in this field are of the unanimous opinion that the number of Crown prosecutors made available to the investigators is still, notwithstanding improvements, dangerously inadequate. The correspondence which is reproduced in Appendix 19 gives a specific illustration of this problem.

In reality there has always been a shortage of Crown prosecutors, as the working conditions and the salaries offered by the government do not attract a sufficient number of candidates. In recent years, it was wisely decided to forego the formula of a part-time Crown prosecutor, but it is only recently that the Montreal office is at the full strength of 25 permanent lawyers as envisaged some time ago. Bankruptcy is an area where the public will approve of greater expenditure of funds by the government. One can predict that funds made available to improve the efficiency of prosecution would in a very short order result in increased revenue to the government. The government itself, not to speak of the suppliers, loses millions of dollars every year by reason of fraudulent bankruptcies ; losses which would in large part be eliminated with even the most reasonable additional expenditure.

77. The Minister of Justice of the Province of Quebec has done his best to remedy this situation as is illustrated in Appendix 19. On April 1, 1968, the Associate Deputy Minister of Justice, Mr. Denys Dionne wrote :

> The work of revision was undertaken during the last months of 1966 and the first months of 1967, through individuals and means previously made available to the Minister of Justice in the particularly difficult domain of fraud and conspiracy in commercial matters and in matters of bankruptcy.
> From the month of August 1967, it appeared evident to us that it was necessary to review numerous files going as far back as 1960 as follows : 1960 : 11 cases — 1961 : 10 cases — 1962 : 9 cases — 1963 : 14 cases — 1964 : 27 cases — 1965 : 134 cases — 1966 : 76 cases — all on account of an element of fraud, the proof of which had to be established in a definite and satisfactory manner, or where the completion of evidence called for a concentrated effort of analysis or investigation, concerning the commercial operations or bankruptcies which had caused harm to many people in the Province.
> It should be said that the Provincial Police in every case where a complaint was made, and where a request had been made to them, gave these matters their sustained attention, and succeeded in securing remarkable results.
> In 1967 the change-over in personnel in the section of the Ministry of Justice

dealing with crime resulted in a better coordination of efforts in maintaining sustained activity and a more effective communication between the Minister and the Provincial Police.

The integration into the criminal legal section already established in the Quebec Ministry, of activities and work of a juridical, technical or statistical nature, which were handled formerly in Montreal through a separate team, contributed to improve the situation.

The nomination of a Chief Crown Prosecutor on a permanent full-time basis, as well as the formation of a team of 25 lawyers, all permanent, for the district of Montreal only, are also worthwhile initiatives in that they have resulted in a definite improvement in the domains referred to in the present report. A new division of duties under the direction of the criminal legal section has had the same effect.

On September 1st, 1967, two separate teams, one consisting of three lawyers of the Crown in Montreal having full discretion under the authority of the Chief Prosecutor, to utilize the services of experts in various professions, the other in Quebec helped by a lawyer specializing in matters of bankruptcy, and of a chartered accountant who was also a licensed trustee, undertook to look after, in a regular and continuing manner, the revision, study and bringing up-to-date of both the old and new cases and, where necessary, to undertake the legal action called for on behalf of the Minister and in the name of the Attorney General. Their regular assignment to this particular domain created a most favourable climate between the officers of the Minister and the special officers of the Provincial Police, particularly because of the frequent meetings amongst these individuals [1].

78. Even more than the declaration of principle by the Minister, various documents allow us to :

1) determine the efforts of the Minister of Justice of Quebec concerning fraudulent bankruptcies, during recent years ;
2) measure, moreover, the extent of the work which remains to be done.

In Appendix 20 will be found the list of the members of the two teams formed in Montreal and in Quebec, at the request of the Minister of Justice, to tackle the problems caused by fraudulent bankruptcies.

Another document (Appendix 21) gives a list of the cases for the judicial district of Montreal, which the team of Crown prosecutors disposed of between September 1, 1967 and March 31, 1968. The first part of this list proves without any doubt, that the investigations undertaken by this group have resulted in many legal actions and convictions. On the other

1 However, the result of these reforms are still somewhat uncertain. In some cases they exist in theory. For example, as we have already said, the work of the Crown, particularly in Montreal, lacks continuity for the good reason that the three lawyers designated to deal exclusively with fraudulent bankruptcies have been given in the course of recent months, many other responsibilities which have prevented them for periods sometimes running into many consecutive weeks, to even touch the fraudulent bankruptcy files.

hand, as we go further into this document, it is realized that a large number of files are still under study although the suspected infraction goes back two, three or even four years. Even so, this document indicates the effectiveness and the extent of the work which can be accomplished by a permanent team of specialists.

79. Another document (Appendix 22) underlines the impossibility of a *team formed on a temporary basis or only acting on a part-time basis,* carrying on investigations right up to the trial, or to the conviction of the guilty persons. This last document gives a list of the cases for which the criminal legal section in Quebec was able to complete investigations between September 1, 1967 and March 31, 1968. A comparison of these two documents, shows in our opinion, the need to entrust the general surveillance of the fraudulent bankruptcy cases to a permanent and specialized team. Such organization of the work is even more evident as, according to another document (Appendix 23) the criminal legal section of the Minister of Justice believes that it is essential for it to again undertake the study of a large number of bankruptcy files dating from 1960 to 1967. These files which merit a renewed examination cover 281 cases. It is possible to have some idea of the amount of work which this will call for by looking at the amount of work which the two special teams were able to carry out during the period from September 1, 1967 to March 31, 1968 :

Files closed after study, revision and opinion :	15
Files under study or under investigation :	66
Files where complaints have been made and where procedures are being carried on :	39
Complaints deposited and abandoned :	none

c) DUALITY OF JURISDICTION (80-86)

80. For reasons already given, the surveillance of bankruptcy calls for, in addition to sustained provincial action, a constant collaboration between the Quebec government and the central authority.

Frauds in matters of bankruptcy can fall under the Bankruptcy Act, which is of federal jurisdiction, or under the Criminal Code, the application of which is within the provincal jurisdiction. It is extremely fortunate that the two governments have endeavoured to reach a definite agreement which is intended to enable each jurisdiction to better understand its role, and to exercise an efficient control in the domain for which it is responsible :

On November 1, 1967, following various exchanges of views, the Superintendent of Bankruptcy and the Minister of Justice of Quebec signed an agreement which in fact, was the first of its kind, and which assured an exchange of services and information, establishing in all these matters, the responsibilities and the costs of the federal and provincial authorities having regard to the respective jurisdiction of the two governments, the one for the application and respect of the Bankruptcy Act, the other for the Criminal Code. The experience of this new system has been fruitful and there is reason to believe that the actual situation is under better control, and that new cases are examined more rapidly and more thoroughly. The frequent communications between the two organisms have shown tangible results and it should be stressed that the system of control and investigation started in this way is also available to all police forces [1].

In Appendix 25 is reproduced the text of a memorandum which contains the terms agreed to during a bipartite meeting held in Montreal, October 26, 1967, *relative to the investigations and actions for infractions and criminal acts committed in the field of bankruptcy.*

81. The agreement reached between the Superintendent of Bankruptcies in Ottawa and the Minister of Justice of Quebec, will not realize its full potential unless each of the authorities involved in the agreement makes sufficient personnel available. Crown prosecutors alone, albeit permanent, stable and competent, have neither the time nor the training for the task ; the complexities of accounting procedures today requires constant recourse to specialists.

The ideal solution to this problem would be to start with one or two chartered accountants as part of the office of the Crown prosecutor, in the two principal judicial districts of Montreal and Quebec. For the other districts, it would be sufficient for the time being for them to have access to the services available in the central offices.

Such a regular service of analysis by accountants under the direction of the Crown prosecutors, could help the investigators of both the Quebec police force and the Social Security Squad of Montreal in the search for evidence.

82. The problem is that chartered accountants having the necessary experience are only rarely interested in becoming civil servants, chiefly by reason of the fact that the remuneration offered to them is not too attractive. As an alternative, a conclusive experiment has been made in Quebec and Montreal utilizing accountants on an hourly basis ; the results indicate that these are the lines along which to proceed, although in our opinion, work done on an hourly basis is not as fruitful as work done by a permanent employee.

[1] Report of Mr. Denys Dionne, Associate Deputy Minister of Justice of Quebec, dated April 1, 1968 (Appendix 24).

The services of these accountants would be used for investigating frauds and irregularities, and also in the immediate preparation for the hearing of cases.

83. Notwithstanding the agreement entered into between the Superintendent of Bankruptcies and the Minister of Justice of Quebec with regard to the supervision of bankruptcies and the fight against frauds in this field, a number of administrative questions are still in suspense and some ambiguities still remain.

For all practical purposes, the Federal Bankruptcy Act endeavours to establish rules of procedure with regard to the realization of the assets of a debtor and their distribution amongst the creditors. *This legislation covers, in its application, almost the entire domain of civil rights, which is however, within the exclusive jurisdiction of the provinces, under cover of a juridical regime which is hardly more than a code of procedure.*

84. Inconsistencies do not engender lucidity. A double series of problems result from these ambiguities and infringements.

On the one hand, notwithstanding the agreements entered into to clarify the respective fields of action of each jurisdiction in the prosecution of offences resulting from bankruptcies, there is still overlapping in the methods of investigation, and often each employs its own investigators in connection with the same cases. On the other hand, our Federal Act on Bankruptcy has imported, without sufficient adaptation, the system of Official Receiver, as defined in the English Act of 1914 ; which has had the important result of leading our Receiver to play a role which, to say the least, is of a hybrid nature.

85. It is made quite clear in the 1867 Act that the administration of justice is within the competence of the provinces. However, the position of Receiver, as it has existed since its importation from England, carries with it the exercise of quasi-judicial powers in at least two of the functions which devolve upon him through the Federal Bankruptcy Act :

a) In his acceptance for filing of the assignment, provided that it is in proper form, and in his appointment of the trustee on the advice of the most interested creditors.

b) He chairs the general meeting of the creditors, decides any questions or disputes arising at the meeting, has a casting vote in the event of a tie, has the power to admit or reject a proof of claim for the purpose of voting.

In most cases his decision is subject to appeal before the court. He therefore exercises powers of a quasi-judicial nature, as an officer of the court, even though his role also carries an administrative aspect. Unfortunately the bilateral agreement (Appendix 25) has made no effort to clarify the functions of the Receiver.

The work of the Official Receiver covers several areas and his actions have an enormous impact on the entire administration of the different laws related to bankruptcy. One would have hoped that the Federal and Quebec Ministers of Justice could have come to an agreement with regard to a a joint definition of the role of the Official Receiver. Not only did the two parties hardly discuss this, but it would appear that the Superintendent of Bankruptcies proceeded in a unilateral manner when, on July 1, 1968, he introduced a new system narrowing the functions of the Official Receiver.

86. At least in the pilot district of Montreal, the function of the Official Receiver has been separated from that of the Clerk of Bankruptcy. It would have been easier to understand this separation if the object had been to make of the Receiver an ordinary administrative officer with supplementary powers of investigation.

Such is not the case, as the physical separation of the function still leaves the Receiver with the powers to accept assignments and to act as Chairman of meetings. The change made in the Official Receiver's functions runs the danger of slowing up and complicating the administrative machinery, without improving the relations between the Quebec and Federal authorities. Without necessarily becoming involved with the legislative and constitutional texts controlling the administration of bankruptcy and the fight against infractions related to it, it should have been possible by way of negotiations between the two powers to improve to a much greater degree the coordination of the different services.

And so, one of the key persons continues to be responsible to two authorities which have not yet decided whether they prefer to have a judge-receiver or an administrator-receiver.

This in no way invalidates the agreement reached between Ottawa and Quebec, but it does show how the constitutional text brings about a series of duplications and ambiguities which are conducive to increasing frauds.

d) ABSENCE OF CREDITORS (87)

87. We most definitely believe that the various administrative authorities responsible for carrying out the laws related to bankruptcy should increase their efforts to have a larger number of the creditors attend the meetings

which affect them. There are many reasons given why the large majority of creditors do not consider it necessary to attend the meeting where they themselves approve the choice of the trustee and name their own representatives as inspectors of the bankruptcy. The law and administrative measures will not be effective in the prevention and elimination of frauds unless the creditors attend this important meeting.

In a way, the responsibility for changing the attitude of creditors rests with their trade associations. As an example, we mention here the initiative of one such association (Appendix 26) : it is the kind of statement which every trade association should send out periodically to its members to keep them on the alert. There is no need to look elsewhere for a more effective method of reducing the number and volume of frauds.

For their part, the governments responsible for the administration of the laws related to bankruptcy, should do everything possible so that the meetings of creditors will be held in the judicial district of easiest access to the majority of creditors. At present, all that a bankrupt in bad faith need do is acknowledge a fictitious debt to an accomplice for the latter to be able to bring about the bankruptcy at the moment he chooses and to call for a meeting of the creditors in a place not convenient for the majority of creditors in good faith.

When such practices are used (Appendix 11) creditors who already have little hope of recovering anything from the bankruptcy, refuse to attend a meeting which could only add travelling expenses to their losses.

V—THE DANGER POINTS IN BANKRUPTCY

V — THE DANGER POINTS IN BANKRUPTCY (88-113)

88. To evaluate the difficulties which develop in the administration of a bankruptcy, it might be useful to outline here the chronology of events. We are doing this in conformity with the spirit of our mandate ; we are endeavouring to localize the sensitive areas in the administration of the bankruptcy, those particular points where one is most likely to find defrauders.

Following the route of a bankruptcy *from* the moment of the registration of the petition calling for an Order of the Receiver, or beginning with the assignment of assets, right *up to* the discharge of the bankrupt, it is much easier to see the administrative difficulties, and to introduce measures for more careful control and possible detection.

a) THE PETITION OR THE ASSIGNMENT (89)

89. A failure can come about in two ways : a) a petition in bankruptcy granted by the court ; b) the act by which an insolvent individual or a company assigns property for the benefit of creditors.

The filing of a petition does not necessarily lead to a receiving order being granted. In effect it is possible for an impatient creditor to file a petition which he cannot support with sufficient or satisfactory proof.

Moreover, it should be noted that the person or the corporation subject to a petition in bankruptcy, retains the management of the business right up to the moment when judgment is rendered granting the receiving order. Therefore, generally at this preliminary stage, there is neither a permanent nor interim Receiver having seisin of the property except in those cases in which the petitioner asks for and secures it from the court [1].

[1] To simplify the text, we are using interchangeably the terms a *petition for an Order of the Receiver*, and *petition for bankruptcy*.

b) THE DELAY BEFORE JUDGMENT (90-93)

90. Between the registration of the petition and the decision on the petition, there are certain delays which may result in difficulties in the administration and control of the bankruptcy.

During this lapse of time, the threatened corporation remains entirely free to manage its affairs unless an interim Receiver is appointed immediately. In other words, unless immediate protective measures are taken, the individuals who intend to take advantage of the bankruptcy to earn large profits have, quite frequently, many weeks in which to dispose of the assets at prices advantageous to themselves.

Up to the present, it has been particularly difficult to exercise any kind of control on businesses *between* the registration of a petition and the decision. It can even be said on the basis of the files examined, that this period is the one from which the racketeers profit most.

At this point if defrauders wish to participate, it is easy for them to transfer most of the assets of the business to intermediaries without the creditors being able to take any counter-action at all : in actual fact, at this stage the court has not yet decreed the freezing of transactions.

91. In some of the cases related to the Armand Bécotte gang, it was easy to see connivance between the business on the road to bankruptcy, and the individual who registered the petition. By reason of the relations existing between the petitioner and the bankrupt, the delays preceding the decision on the petition could be extended indefinitely. In other words, it was possible to lengthen the period of time available to the company to dispose of its property. On many occasions a business took advantage of this by completely liquidating its assets to the detriment of the creditors, and to the considerable profit of accomplices.

92. The Bankruptcy Act, in its present state, makes it possible to freeze the administration of a corporation by the appointment of an interim Receiver. In the same way the law provides for the possibility of placing the control into the hands of the trustee or of the Official Receiver himself.

However, following a study of the cases, it seems that recourse to the interim Receiver has been circumvented in the case of frauds. This procedure is only used when the choice of the trustee could be controlled. In other words, the administrators of good faith have a reputation and a method of operation which does not necessitate the application of this provision while the defrauders on the other hand, know how to avoid or negate any procedure which could affect them.

Armand Bécotte for example, would himself on occasion, ask for an Order from the interim Receiver. Why shouldn't he do this if he could thereby give control to a confederate ?

93. It has also been noted that the registration of a petition can in no way be considered as a judgment on the validity of the request.

No one examines the claims presented to justify the registration of a petition. Nor is anyone in a position to check whether they are dealing with, as in the case of the Armand Bécotte gang, an absolutely fictitious promissory note signed without any valid reason by the corporation, payable to Armand Bécotte himself, or to a figurehead.

Various gangs have systematically taken advantage of the weaknesses in the procedures. The threatened corporation either solicited or accepted the intervention of a racketeer, giving him a fictitious claim which permitted him to register a petition of bankruptcy. In this way they were able to determine the time and place of the petition. In the absence of all control, it was then possible for the corporation to utilize the weeks preceding and following the registration of the petition to freely dispose of the assets.

At the moment of decision on the petition, the assets had disappeared ; and the accounting records couldn't be found or had been poorly kept. It was impossible even for an alert trustee to prove that the claim utilized for the petition actually was a real debt.

c) THE JUDGMENT OF THE REGISTRAR (94-96)

94. Before judgment is rendered on a petition for a receiving Order, the court has to wait at least 14 days, but sometimes much more. We have seen that this decision is more often a mere formality, as there is no examination of the bankrupt unless it is being contested.

The judgment itself is of great importance by reason of the fact that the bankruptcy becomes effective from the moment of this decision [1]. The judgment on the petition is therefore the legal act which puts an end to the activities of the corporation affected by the petition for bankruptcy. It is also this judgment which sets in motion the activities of the Official Receiver, and the moment at which the trustee enters the picture. At this step of the procedure, it is still almost impossible to determine whether the claim utilized in the petition for bankruptcy is a true debt of the bankrupt. Until the recent entry into the scene of civil servants of a highly qualified nature, nobody attached much importance to this problem.

[1] The judment is however retroactive to the date of the registration of the petition (Art. 41 (4)).

In other words, the judgment is generally rendered without the balance sheet of the company affected by a petition in bankruptcy being deposited. The registrar is therefore not in a position, other than by impressions, to suspect abnormal activities.

95. It should be pointed out that a conscientious and alert Registrar would begin to suspect fraud when he finds himself dealing all too regularly with the same individuals. These suspicions could develop even more quickly if these individuals were constantly involved as petitioning creditors in a large number of bankruptcy cases.

It was in this way the Registrar in Montreal, Mr. Yvon Desloges, was able to grasp quickly the methods utilized by Armand Bécotte in establishing his network of fraudulent bankruptcies. According to Mr. Desloges, in the course of the years 1963 and 1964 Armand Bécotte and his accomplices were involved in a minimum of 47 bankruptcies.

> "On June 3, 1964, a Mr. Armand Bécotte, residing at 3490 Levesque Blvd., St. Vincent de Paul, and having his principal office at 333 Craig St. E. in Montreal was arrested as a result of a warrant issued by the Fire Commissioner.
> A search warrant was also issued and on that same day the Provincial Police seized a mass of documents which were sent to and kept in the headquarters of the Provincial Police in Montreal.
> Mr. Bécotte had been under investigation, first by the office of the Attorney General, following fires of a criminal nature, and then by myself as Registrar in charge of the Bankruptcy Office, where Bécotte's name, or those of this confederates appeared all too regularly. (. . .)
> With regard to the bankruptcies, the seizure of the documents mentioned above confirmed the fact that, from probably about 1950, Mr. Bécotte was involved directly or indirectly, in the organization of bankruptcies in which various elements of fraud are found. It is difficult at this point to state definitely the number of such bankruptcies, but a rapid review of the files seized in his office indicates that he was involved in between 200 to 300 cases, if not more, of bankruptcies of proposed bankrupcies. (. . .) A procedure favoured by Mr. Bécotte was the following: he was able to secure from future bankrupts a promissory note payable in his favour or in favour of one of his accomplices, that is Maurice St. Martin, Rene Roy, Jules Comeau, Rodrigue Roussel, Montreal Collection Bureau (F.A. Painchaud, registered under this name)."

96. It was thanks to the vigilance of a Registrar that the illegal activities of the Bécotte gang came under suspicion. If he had been able to use more accomplices and change the names of those mentioned in the petitions for bankruptcy and the promissory note more frequently, Armand Bécotte might never have drawn attention to himself! That is to say that the frauds could have or would have continued without the Registrar becoming aware immediately of the situation (the date of the Appendix 14 should be noted).

It is our intention to explain that the connivance between the bankrupts and Bécotte permitted the latter to carry his audacity to great lengths. We

have already mentioned that the interim Receiver was in a position to stop the activities of a corporation immediately. In general way and that is the purpose of the measure, the interim Receiver could effectively prevent the dispersion of the assets of a company between the time of registration of a petition in bankruptcy and the judgment on the petition.

One might be led to believe that all the defrauders were fearful of, and avoided, the decision of the interim Receiver. Bécotte, on the contrary, readily *asked* for the interim Receiver and suggested to him the immediate nomination of certain trustees. Such an audacious procedure would not have been possible if it had not been for the connivance of the bankrupt himself: it was evident that the *debtor would not contest* the petition or petitions, that the Order of the Receiver would follow *automatically,* and that the selected trustee would be named.

The introduction of the interim Receiver remains the most effective measure against the defrauders whose method gambles on the purchasing power of an enterprise. The technique of the Bécotte gang had this in favour of it, that it never endeavoured to either deliberately increase the orders before the bankruptcy, or to abuse in any other way the reputation of the business. Moreover, the gang could ask for an interim Receiver as they knew that they were able to control each succeeding step in the administration of the bankruptcy.

d) CONTENTS OF A BANKRUPTCY FILE (97-98)

97. As soon as the decision of the Registrar is given, a bankruptcy file is opened in the office of the Official Receiver. This file generally begins by a meeting at which the balance sheet is presented.

1. In the case of a corporation the file would include a resolution of the Board of Directors.

2. If it deals with a Proposal, the Official Receiver receives the Proposal itself, and also the balance sheet.

3. If it deals with a corporation, the file would include the minutes of the meeting of the directors in the case of an Order of the Receiver, or more frequently, *merely a copy of the judgment establishing the bankruptcy of the firm.*

As can be seen, the file of the bankruptcy, most of the time, only included items already known to the officials administering the bankruptcy, and we have seen that these documents tell very little. In actual fact it is still very difficult to verify the claims put forward.

The corporation in question ceases its activities immediately and falls under the full control of the trustee. The trustee is required without any

delay, to draw up a balance sheet of the company in bankruptcy and to send a copy to the office of the Official Receiver.

Actually the contents of a file on a bankruptcy, up to the present time has been so devoid of common sense that one almost questions its usefulness.

98. Fortunately, a conscientious Receiver can quickly add useful material to this file. Nothing obliges him to be satisfied with the statutory examinations as prescribed by the Act (Appendices 27 and 28). He could on the contrary, as has been proved by Mr. Paul Devos on many occasions, probe more thoroughly to obtain from the bankrupt, important information, and even to uncover fraud at this stage. We will return to this more important role of the Receiver.

e) PRESENCE OF VARIOUS AUTHORITIES (99)

99. At this stage of the bankruptcy various authorities are acting in the case : the Official Receiver, the trustee and the Registrar of bankruptcies. A distinction should be made between these various functions.

Properly speaking, the diversity of the functions does not constitute different stages in the bankruptcy. However, when the record is submitted almost simultaneously to various authorities, the danger of uncertainty reaches its highest point. Quite obviously the system must endeavour to improve the coordination. To do this it should be possible to either reduce the length of this period of uncertainty or eliminate certain interventions.

First let us spell out the various functions. *The trustee* is undoubtedly an officer of the court, but his fees vary according to his initiative and according to the yardsticks of private enterprise, and it is impossible to consider him as a civil servant. He enters into the bankruptcy after the decision of the Registrar, or at the date of assignment by the Receiver. His first task is to draw up immediately a balance sheet of the bankrupt company and to submit it to the Receiver for examination.

Generally speaking, the function of the *Registrar* is of a legal nature and consists principally of rendering judgment on the petition for bankruptcy.

As to the *Receiver* he plays a double role : on the one hand he acts as the government representative in the administration of the bankruptcy ; and on the other hand he fulfills judicial and quasi-judicial functions. He presides over the meeting of the creditors, controls discussions, and confirms the appointment of the trustee following the vote of the creditors. In actual practice, the trustee designated by the Receiver is the person who was already mentioned in the proposal or the petition for bankruptcy. However,

from the point of view of the law the trustee only receives confirmation of his mandate at the time of the meeting of the creditors when his appointment has been confirmed by the Official Receiver.

From the point of view of definitions, each of the three authorities undertakes a role carefully defined. But on the practical plan, it quite often happens that there is overlapping, or to some extent, a lack of coordination which should be looked into, as this can adversely affect the fight against fraud.

f) CHOICE AND ROLE OF TRUSTEE (100-103)

100. A closer look should be taken at the role and powers of the trustee. Up to the present we have noticed on many occasions that the selection of the trustee depends on the bankrupt himself, or the author of the petition in bankruptcy. Consequently the question should be asked whether the trustee has the full freedom of action so necessary for a thorough supervision of the bankruptcy, or whether unfortunately, his intervention is one of the weak points in the control of the bankruptcy.

The first thought that comes to mind is that as long as the trustee has been recommended by individuals who are already deeply involved in the bankruptcy (the bankrupt or the petitioner), he probably does not benefit from the latitude necessary to fully exercise his authority. Moreover, once the Receiver decides to make full use of his own powers, the trustee finds the area of his authority restricted.

In the course of his public testimony, Mr. Paul Devos himself alluded to the possibility of the Official Receiver refusing to name the trustee suggested if he is asked to do so by important creditors. In other words, even if the bankrupt or the author of a petition approves a trustee, the Receiver can decide otherwise, at the moment the case is opened. At the meeting of the creditors it is they alone who control the choice of trustee.

THE PRESIDENT : Maybe this is so, but before going on to the work of the trustee to which we intend referring further on, I come back to the opening of the file in your office. As soon as one or other, or several of the documents that you have referred to, reach the office of the Official Receiver, what enquiries are undertaken to ascertain whether the documents you receive are correct and are in fact true, almost true or possibly false ?

PAUL DEVOS : It can't be done.

Q. — Why ?

R. — On the basis of the balance sheet which has been sworn to, it is not possible to say at this point whether any of the assets are missing.

Q. — When still at the stage of the reception of the documents, when the file is opened in the office of the Official Receiver, is there no effort made to check statements ?

R. — On occasion I have endeavoured to verify these matters so that the trustees will realize that the Official Receiver can, if he wishes to, leave his office to visit the

actual place of the business involved. On occasion I have done this so that they are aware of it, and will be under pressure to take possession. Now that is all that can be done.

Q. — Were these exceptional cases when you went out for checking purposes ?
R. — Insofar as my time would permit me to do this I can say that it is not so exceptional, that actually it happens about once a month.

Q. — Once a month ?
R. — Yes. That is without informing anyone.

Q. — As far as I can understand, when the file is opened you ascertain that you have received the documents necessary to do this; it stops there ?
R. — Yes.

Q. — And at the point where the trustee enters into action, what is the work done in the office of the Official Receiver ?
R. — Ah, the bankrupt is then called in for his examination; the certificate of nomination is sent to the trustee; finally there are various administrative forms which I sign without scrutinizing carefully.

Q. — And what's the reason for your signing these without looking at them ?
R. — Well, because my little girls are very competent.

Q. — Ah good ! The certificate of nomination — is it generally sent to the trustee who has sent you various documents ?
R. — The same day.

Q. — The same day ?
R. — Sometimes he has to wait two minutes and the certificate is given to him.

Q. — Are there cases where the certificate of nomination has been sent to a trustee other than the one who has brought you the documents ?
R. — It has sometimes happened that a trustee has been named and I have named another one.

Q. — For what reason ?
R. — Because a creditor who represented more than 50 percent had asked me to name another trustee and in such a case I have named the creditor's choice and not that of the bankrupt [1].

101. If the official Receiver exercises his functions in a conscientious manner, the choice of the trustee ceases to be a simple formality and becomes a guarantee of honesty and in keeping with the wishes of the creditors.

From this point of view, when the trustee assumed control of a bankrupt corporation it is much more reassuring today than it was formerly. But the question should still be asked : should the function of the trustee remain in the hands of private enterprise or would it be sounder to entrust the present responsibilities of the trustees to a group of civil servants ?

In a way, the administration of a bankruptcy by a private enterprise is, in itself, somewhat of a paradox. Undoubtedly the Bankruptcy Act has,

1 Stenographic notes, Volume 21, June 27, 1967, pp. 2498, 2499 and 2500.

as one of its purposes, that of dividing the assets amongst the creditors, and it is normal that the latter be in control of the assets rather than the State. What is rather surprising in the present method, is that private enterprise is asked to administer a law and exercise controls which are the responsibilities of the government. It is not at all in conformity with our traditions to have private enterprise benefit by taking over government *controls*. Even in the field of automobile insurance where private enterprise benefits most of the time from the obligations established by the law, control remains in the hands of the State : it is for the State to verify if its requirements are respected, and there would be considerable objection to the delegation of authority in this domain.

Let us go further. It is difficult to admit, at least where principles are concerned, that private enterprise could find attractive benefits in administering businesses which were, by definition, losing propositions. In other words, once the enterprise ceases its activities by reason of its inability to pay its suppliers, should the liquidation be turned over to private enterprise — the trustee — who will remunerate himself from funds already insufficient ?

102. In the past this question has arisen on many occasions without the legislators or the civil servants giving a formal reply.

Without replying directly to the question, it is often pointed out that a government enterprise is unable to give results comparable to those which can be secured from private enterprise. It is feared, for example, that civil servants would not be as zealous in recovering the assets of the company as private trustees, who have a personal interest in having the assets at the highest possible level.

It can also be inferred, as has been done by the Official Receiver of Montreal himself, that it would require twice as many civil servants as it does of trustees today. It is also said that a State enterprise is *by definition* slower and less efficient than private enterprise.

With a touch of cynicism it is also underlined that private enterprise, which alone is affected by the bankruptcy, must pay the costs of liquidation ! In other words it is so well known that governments at all levels are the first to share the remnants of a bankrupt, that it is hard to see why a government would take charge of administering bankruptcies ! The government today, in its various forms, receives what is owing to it without spending anything in the administration of the bankruptcy. Why should it assume costs when it would not result in any greater return ?

103. We should keep in mind, however, that the trustee of private enterprise is in some ways a road block in the unfolding of the bankruptcy procedure.

In actual fact, it is he who creates the critical moment when the public administration temporarily closes its eyes and allows private enterprise to carry on in its own way the administration of the bankruptcy and to even exercise the controls defined by legislation.

It should be noted moreover, that in some cases, as has been seen with the gang operated by Armand Bécotte, the private trustee has not always shown sufficient vigilance in the supervision of the administration, and in the analysis of the balance sheet, of the bankrupt company. As against that, it should be pointed out that the honest trustee has, in the recovery of the property of the bankrupt, a motivation and effectiveness which any government system should emulate.

g) THE DUTIES OF THE RECEIVER (104)

104. The Official Receiver plays an active part at certain crucial moments in the bankruptcy. The Receiver, as opposed to the trustee, is definitely the representative of the State in the administration of a private company having problems.

The Official Receiver only enters the picture at an intermediate step of the bankruptcy and not at the moment of the petition. In other words, the Official Receiver, unless there is an order appointing an interim Receiver, does not function until after the decision of the Registrar, or until the time of the meeting of creditors. As we have already pointed out, however, the Official Receiver can take the part of the trustee when circumstances call for it.

We have already stressed the dual nature of the functions filled by the Official Receiver. The slowness of this intervention should also be noted. By intervening too late in the administration of the bankruptcy, the Official Receiver allows the corporation almost all the time it needs to dispose dishonestly of its assets, even before the decision of the Registrar. Should consideration then be given to applying the formula of an interim Receiver so that an effective control could be exercised in the administration of a company from the moment it is affected by a petition in bankruptcy?

The actual procedures include many weaknesses which are most ably exploited by defrauders. The Official Receiver comes into the picture too late, and he actually has less to do with the administration of the bankruptcy than the trustee. The trustee himself is rarely called upon to intervene at the initial steps of the failure, as his fees are paid by suppliers who are already convinced that they have been deprived of a good part of their goods. In this perspective it becomes a question as to whether the prevention of fraud would be more likely to be achieved by applying the formula of an interim Receiver to all bankruptcies.

If the Official Receiver had available to him a team of government trustees, most of the practical difficulties would disappear. For example, it would be relatively easy, with the help of a team of government trustees, to intervene through the medium of the interim Receiver in almost all cases of bankruptcy.

The government trustees could, under the authority of the Official Receiver, to whom they would be directly responsible, supervise the enterprises affected by a petition for an Order from the Receiver, without the problem of remuneration coming into the picture. Such a basis would create an additional motive for separating more definitely the administrative functions and the judiciary functions of the Official Receiver. In one case he is a *super-trustee,* and in the other, he is a *quasi-Registrar.*

h) THE MEETING OF CREDITORS (105-111)

105. The meeting of the creditors is a moment of great importance in the bankruptcy procedure. We have already seen some of the ways the defrauders can take advantage of this.

At that point the creditors are gathered for the first time, and can question the management of the company in bankruptcy. It is also the moment when creditors can, directly or through the intermediary of the Official Receiver, question the bankrupt about his management of the company. It is then too that the creditors themselves choose the inspectors who are going to represent them in the liquidation of the business, and who would be in a position to constantly check the work of the trustee.

Actually, as we have already said, very few of the creditors take the trouble to attend this meeting. The reasons for this lack of attendance have already been indicated. Such a disinterest is not surprising as it is known that the majority of the suppliers expect little from a liquidation. It should be recalled that the American study which we have referred to, values the losses attributable to bankruptcy at approximately 2 billion dollars, and indicates that $1.9 billion of this is not recovered. Even though the absence of creditors at this meeting is understandable, it nevertheless results in extremely harmful consequences: it becomes very easy for a bankrupt company to choose its own trustees and inspectors without any contestation [1].

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[1] At the height of the Depression, bankruptcies in the United States ran at a rate of about 70,000 a year. By 1946 the rate was down 11,000. Now every year sets a new record: in the fiscal year 1966 there were 192,000 more than nine-tenths of them voluntary personal bankruptcies, and about nine-tenths of those the bankruptcies of people classified as "employees". The total of creditors' (possibly inflated) claims runs near $2 billion a year, of which close to $1.9 billion must be written off. MARTIN MAYER, *The Lawyers,* Dell Publishing Co., Inc., 1967, p. 388.

106. Amongst the many reasons for this disinterest, two stand out : 1) quite often the meeting of the creditors is held far from the place of business of the bankrupt company, and 2) the volume of privileged and guaranteed claims are often so high that the ordinary creditors are generally left with practically nothing to share.

A third element may be added : if the creditors wish to question the bankrupt officially, they must do so at their own expense, by paying for the cost of the stenographic notes (cf. Appendix 1, Evidence of Lieut. Talbot).

Such a situation makes life easy for racketeers who have constantly benefited from the absence of creditors. They also take advantage of this to have the trustee of their choice appointed, and to name either themselves or their accomplices to the positions of inspectors of the bankruptcy. This allows them or their representatives to take the inventory of the property of the bankrupt and even to dispose of it as they please.

This meeting of creditors, therefore, is one of the most critical moments in the operations of the bankrupt estate. The different governments assume an attitude which, to say the least, is paradoxical. Most often it is in the course of the examination of the bankrupt that the elements of fraud are brought to light. But as matters stand, it is up to the creditors to face the cost of this examination as though it were their responsibility to pay for the fight against crime.

The creditors gathered in meeting can do much to detect fraud. Everybody is in agreement that the statutory examination of the bankrupt, even if it is carried on in a routine manner, can sometimes throw light on the true inventory of the bankrupt corporation. It frequently happens that creditors, who are well aware of the management of the bankrupt, can detect a fraud at the time of the statutory examination. These revelations are without any consequence in the absence of stenographic notes for which the creditors are called upon to pay. Ironically enough, if the examination leads to the recuperation of other assets, it is the State, by reason of its privileged claims, which would be the first to benefit by the plus value of the bankruptcy !

107. The importance of this meeting of creditors cannot be over emphasized. More than the registrar, and more than the Official Receiver, the creditors are the ones who can ask the pertinent questions about the operations of the bankrupt estate. More than anyone, they can discover if the petition in bankruptcy has been made by a creditor of good faith, or whether it has been made on the basis of a fictitious claim.

The Bécotte gang is one of the most flagrant examples of what happens when creditors are not present. A petition in bankruptcy followed the securing of a promissory note signed in favour of Bécotte himself. This was sometimes accompanied by a request for an interim Receiver ; in the case

of most of these demands, Messrs. Carriere and Dansereau were suggested as trustees. (We have already explained that the defrauders can only benefit by asking for an Order from the interim Receiver if they are able to control the selection of the trustee.)

In the Bécotte system the claims calling for the promissory note were often fictitious and not based on any real consideration received.

But in practice, Armand Bécotte had reason to know that the debtor would not contest the petition for a judgment from the interim Receiver. And so the Order followed automatically, and the trustee suggested by the petitioner was named. Following this they organized themselves so that at the first meeting of the creditors *the group could select the inspectors of their own choice*. Claude Picard, Armand Bécotte, F.A. Painchaud, René Roy, Maurice St. Martin, Rodrigue Roussel, Jules Comeau. . . Sometimes the inspectors appointed Mr. Picard as lawyer for the bankrupt.

108. In most cases, very little attention was paid to securing tenders for the sale of the assets. In those cases where they agreed to this formality, it could be anticipated that the tender sent in by an accomplice selected by the group, would be accepted by the inspectors. In most cases, however, it resolved itself into a sale by mutual agreement to the profit of one of the members of the group. In some cases they even went so far as to permit the potential bankrupt to sell important assets to one of the confederates some time before the failure.

When necessary, if one or other of the procedures did not appear to be sufficiently advantageous, they had recourse to the Proposal by virtue of the Bankruptcy Act.

In any event, assuming control of the bankrupt had the two following objectives : either to free the bankrupt from a difficult financial situation and permit him to rid himself of his debts, to the advantage of Bécotte and his accomplices, or simply as is indicated very clearly in some of the files, the bankruptcy was solely organized for the benefit of Bécotte et al.

Some of the evidence shows that the assets bought in this manner by the group, were secured at extremely low prices, so low in fact, that even if the sale or the liquidation produced some money, the creditors were never able to secure a fair proportion of what was owing to them.

109. All in all, the facts are quite clear : when the suppliers do not exercise control over the management of the bankruptcy, all kinds of frauds become possible. Actually *if the bankrupt, the trustee and the inspector are in collusion* for the purpose of depriving the creditors of their due, it is not even necessary to have recourse to frauds of too subtle a nature !

The study of some files have enabled us to ascertain without the shadow of a doubt, that signatures have been forged, either to establish a claim, or for the affidavits. It can even be said that by and large there was considerable recourse to creating and using forgeries both for the judicial procedures and by the trustee.

In the Armand Bécotte ring, for example, quite a number of the petitions in bankruptcy were dictated in his office and typed on his own typewriter. Promissory notes made in his favour, were also written in his own hand, while even a superficial examination of the bankrupt company showed that Armand Bécotte had never rendered even the slightest service to the business. In the same way, invoices supporting the petition in bankruptcy were made out on Armand Bécotte's typewriter. Some tenders were also written, always on the same machine, on behalf of accomplices in the gang while Armand Bécotte himself was inspector in the same bankruptcies. In addition, there is reason to believe that the minutes of some of the meetings of the inspectors are inaccurate.

110. It is obvious that such actions are only possible in the absence of the suppliers. For a group of defrauders to be able to so systematically fool the mass of creditors, it was necessary that the latter abstain from attending the first meeting of creditors, and not take advantage of their right to question the bankrupt on the origin of his troubles.

Theoretically, one might place the responsibility for uncovering all the frauds on the Registrar or the Receiver. After all, it is only logical that the government, which benefits from the residual assets, should bear the cost of the investigation.

But it is nevertheless a fact that the suppliers themselves could with the greatest effectiveness ascertain the truth. These two series of facts should be kept in mind in establishing the responsibilities and the benefits.

111. In the same way, the large majority of creditors lose all interest in the bankruptcy as soon as the decision has been made. They do not hope to receive much, and in fact only receive nominal amounts. In this perspective they are not inclined to lose precious time in supervising an administration from which they have no hope of gaining any benefit.

In this "permissive context" it is relatively easy for a bankrupt to secure his release very quickly, and to once again begin commercial activities. Actually this release is given almost automatically if there is no objection to the demand of the bankrupt.

We have already noted some complementary elements. First the creditors who wish to examine the bankrupt with an official transcript must do so at their own expense. Second, when there is justified opposition to the

release of certain bankrupts, it is difficult to secure a decision against the group in control. (Appendix 14)

i) THE FUNCTIONS OF INSPECTORS (112-113)

112. The absence of creditors at a meeting frequently results in flagrant disinterest on the part of inspectors. We are obviously speaking of Inspectors of good faith, — of those who intend doing their best for the creditors.

Even if they have the right to exercise an absolute control over the management of the bankruptcy, many Inspectors show little interest in holding the necessary meetings to maintain this control and to inform the other creditors of the progress of the liquidation. Here again, there are economic difficulties. At the present time the Inspectors of the bankruptcy receive exceedingly small fees, quite obviously not enough to interest a serious businessman in a liquidation.

In our opinion there is need for a complete revision in the scale of remuneration for this work. It is absolutely unrealistic to expect Inspectors to take an active part in the prevention and detection of frauds, if they are only offered nominal fees. If the remuneration were improved, the creditors and the State could count on a much greater interest by the Inspectors elected by the suppliers. With very little additional money being involved, it might be possible to eliminate the formation of new groups of defrauders.

113. The Canadian Institute of Chartered Accountants recommended in its report submitted October 1963, that the scale of fees paid to Inspectors of bankruptcies be revised and substantially increased.

> "The allowances provided in the Act for fees to Inspectors are now clearly too low and require drastic revision. The persons who are in a position to provide the most effective supervision of trustees' activities and to obtain for the creditors the most effective and favourable administration of bankrupt estates are the Inspectors. The Committee recommends that the scale of Inspectors' fees contained in the present Act should at least be doubled to permit Inspectors some reasonable compensation for the time they take in assisting with the administration of bankrupt estates" [1].

We believe that the fees paid at the present time to the Inspectors of bankruptcies are so ridiculously low that even if they were doubled, they would not be sufficient. We believe that it is necessary to place them on an hourly basis so as to take into consideration the sacrifices of a financial nature which these businessmen must make while working as Inspectors of bankruptcies.

[1] Brief presented by the Canadian Institute of Chartered Accountants, October 1963, p. 33.

VI—THE PRINCIPLES INVOLVED

VI — THE PRINCIPLES INVOLVED (114-134)

114. This has been a quick analysis of the various functions related to the administration of bankruptcy and of fraudulent bankruptcy. We have also reviewed the various steps in the bankruptcy. We have endeavoured finally, to indicate the points in the bankruptcy which facilitate the intervention of defrauders. We would now like to deal with the intent of the Bankruptcy Act itself.

The examination of the procedures reveals the existence of quite a number of customs or principles followed by the bankrupts, the creditors and the government in bankruptcy matters. Within the framework of a study confined to fraudulent bankruptcy, we can only make a summary examination of the following principles :

a) that of the limited liability;
b) that of credit;
c) that of control of a bankruptcy by the creditors;
d) that of division of responsibilities between the provincial and federal authorities.

a) THE PRINCIPLE OF LIMITED LIABILITY (115-119)

115. It is within the corporation framework that we find the most costly bankruptcies and the most profitable frauds. The principle of limited liability is the foundation stone of all our economic activities, and it would not be realistic to question this basic principle.

Limited as we are to criminal and penal matters, we can at most indicate the consequences of this principle. It must be admitted that the principle of limited liability which curbs the risk of those starting a commercial or industrial business, retains most effectively the anonymity of the incorporators for fairly long periods. It should also be noted that this frequently results in greater risks to the creditors, than those faced by the real proprietors of an enterprise.

116. The changes made by the Companies Act of Quebec have, and will have the effect of favouring frauds, assuming that the incorporators are no longer called upon to make a reasonable capital investment in an enterprise. There is nothing today which gives any guarantee to a third part who wishes to deal with a newly formed company. Before the recent amendments to Articles 13, 24 and 42 (1964), frauds were, at least theoretically, more difficult. It was essential for the incorporators to make an initial capital investment.

There is no need for us to comment on the civil aspects and advantages of these amendments. We believe however, that, from the point of view of preventing fraud, this original subscription of capital should not have been eliminated but very definitely increased. Moreover, the statutes should have provided for increased penalties in the case of false representations as to the capital subscribed by the incorporators.

In the same way, it was not previously possible to acquire shares clandestinely for services rendered, or for the sale of good will. The law provided that a copy of the contract of acquisition made under such circumstances, be deposited with the Provincial Secretary. This obligation should not have been abolished. The disappearance of this clause left the field open to incorporators who intend to defraud the public by creating the belief that there are considerable personal investments involved, while in reality, the suppliers, and not the incorporators, are taking a financial risk.

117. Without negating the principle of limited liability we believe that it can be applied, without making frauds as easy as they are at present. Incorporation and limited liability should not necessarily mean anonymity ; limited liability should not mean the absence of investment.

The law would remain, in our opinion, within reasonable limits if it required the real owners to make themselves known. In examining a number of the fraudulent bankruptcy rings, it was evident that many companies were formed through the medium of fictitious applicants. In some cases, companies have continued their operation through the use, of fictitious persons. It would be relatively easy to ask the Provincial Secretary to send an acknowledgment of receipt to the home addresses of the applicants for incorporation at the time of the incorporation of the company. If this acknowledgment of receipt is returned with the notation "address unknown", or "moved", the file would immediately come under investigation. Undoubtedly this procedure would give no results in many instances, but at least it would be a beginning.

Without interfering in any way with the foundation of our economic system, it is desirable to give more careful thought to the applications for

limited liability. Unless the law is redrafted, fraud will in the future be as frequent, easy and profitable as in the past, if not more so.

118. We place particular emphasis on the requirement to ask and oblige incorporators of a business to be replaced officially and openly by the real administrators of the enterprise. It is our belief that the real owners of an enterprise should be known to the public within an extremely short time.

The Provincial Secretary should be able to identify *at any time soon after the incorporation,* the real proprietors of every company incorporated. The Secretariat should not be satisfied with merely a list of the applying incorporators : most frequently these are members, or the personnel, of the legal office looking after the details of the incorporation.

The *time* factor here takes on considerable importance. At present it is obligatory that a company supply the names of its owners and directors in their Annual Report to the Provincial Secretary. This is not sufficient. This obligation only affects companies once a year while the majority of fraudulent bankruptcies almost always are begun and profitably concluded in the space of 90 days or less. Faced with these facts, it is obvious that no effective action can be carried out unless the Provincial Secretary is able very quickly to discover the presence of individuals who are known to be racketeers.

We have already indicated the need for the Provincial Secretary to maintain a central index in connection with bankruptcy, and to place therein the names of incorporators or proprietors who have already been found guilty of frauds related to bankruptcies. This recommandation will be doubly fruitful if an effective control is exercised, and if the Provincial Secretary endeavours to ascertain the real owners of businesses as quickly as possible. If this were done, the index itself would prevent a large number of frauds.

119. If companies and administrators neglected to furnish a detailed report within the delay called for, or transmitted incomplete reports, the Provincial Secretary should take rapid and severe action. In addition to recourse to penal action which can be taken against a company and its administrators, the department responsible for the administration of this Act should make more frequent use of the legislative provisions (Article 25 to 25C inclusively of the Companies Act) which provide for the cancellation of the charter in such cases.

Quebec must act rapidly in this domain unless it wishes to leave all the methods of control of bankruptcies in the hands of the federal administration. The Quebec government is already in default. Addressing the Bar of Manitoba in Winnipeg, March 16, 1967, Mr. Roger Tassé, Superintendent of Bankruptcies declared :

As a result of one of these amendments, the trustee is now required to file with the Bankruptcy Branch, in respect of each estate, a report setting out the name of the bankrupt and, where the bankrupt is a corporation, the name and addresses of the directors and officers of the corporation. More important, this report must also set out, when applicable, the names of the persons controlling the day-to-day operations of the bankrupt, as well as the trustee's opinion whether the deficiency between the assets and the liabilities of the bankrupt has or has not been satisfactorily accounted for and, finally, the probable causes of the bankruptcy. The information contained in this report will, of course, be most valuable to the Bankruptcy Branch in assessing whether the bankrupt's affairs should or should not be investigated.

Of greater direct interest to many of you, however, will be the fact that a separate report setting out the name of the bankrupt and the names and addresses of the directors and officers of the corporation, where the debtor is a corporation, as well as the names of the persons controlling the day-to-day operations of the bankrupt, is also required to be filed by the trustee with the Official Receiver. This will permit the dissemination of information relating to previous bankruptcies so that prospective creditors may be in a better position to judge the credit rating of their customers [1].

b) THE PRINCIPLE OF CREDIT (120-122)

120. These remarks of the Superintendent of Bankruptcy lead us to examine more closely the second of the economic principles underlying the administration of the bankrupt, that of credit. Without credit, frauds in bankruptcies would become almost impossible. However, nobody would dream for an instant of sacrificing credit to achieve this result. Here again, it may be possible to mitigate the application of the principle and suggest a more rational use of credit so as to make matters more difficult for defrauders.

Credit is a particularly sensitive area. The government authorities in this case, can only place the responsibility on the suppliers who must find more and more efficient methods to give credit only after careful investigation of the facts. No law should prevent a firm from giving credit to a client if it wishes to do so. Moreover, businessmen will undoubtedly continue to compete with each other by offering ever easier credit terms to their clientele.

Consequently, if it is right to ask of the government authorities that they always be vigilant in the prevention and combating of fraud, it is nevertheless true that private enterprise must also assume a large part of the responsibility in this area, as its own economic habits make so large a number of frauds possible.

[1] ROGER TASSÉ, *Recent Developments in Bankruptcy Law*, in *The Canadian Bar Journal*, X, August 1967, p. 138. (Speech given by Mr. Roger Tassé, Superintendent of Bankruptcy before the Manitoba Bar in Winnipeg, March 16, 1967.)

We cannot, of course, expect that these frauds will disappear just because we do not like them. We cannot either assume that only the extra large cities may be hit by this type of disease or that it is restricted to any particular place in Canada. There will always be individuals who will attempt to use for their own fraudulent purposes, the easy way with which credit may, at times, be obtained. There will always be individuals who will attempt to abuse the bankruptcy process and to make it serve their own illegal benefit. And they may, of course, show up, in any place where there is some commercial, business or financial activity to any noticeable extent.

In this respect, much could be said about the responsibility of the businessmen. They can do much to prevent these fraudulent schemes from succeeding. Businessmen are the ones who grant the credit and, as just explained, credit is the key to the door to these frauds. This points, of course, to the necessity of good and alert credit practices. Creditors eager to sell on any terms, just to beat their competitors, will sooner or later be caught holding the bag.

It must be appreciated that there is no law that can make good, a bad credit judgment. The law can help to minimize the loss once it has occurred and it ought to provide for the punishment of the offenders. But I do not believe that the law could be expected to do more [1].

121. The Canadian Institute of Chartered Accountants recognized moreover, in its brief submitted to the Federal Minister of Justice, October 1963, that the reforms in the field of administration are at least as important as all the amendments which could be made in the Bankruptcy Act :

> Early in the Committee's study, it was realized that the sales and credit policies in our highly competitive economy fostered and even encouraged an over-extension of credit. Such credit policies were entirely innocent in most instances; in others, they bordered on exploitation. This economic atmosphere was ripe for the racketeer and his strategies. Furthermore, the ease with which corporations can be formed and transfers of interests made, has created an impersonal atmosphere in which the moral aspect of business can be easily forgotten. These facts, when examined in terms of the Bankruptcy Act revealed that, while the Act needed certain amendments, one of the principal areas requiring corrective action was in the field of administration [2].

122. Fraudulent bankruptcies emphasize the weaknesses in our economic system. The use of credit brings about, sooner or later, an abuse of credit. Defrauders will take advantage of suppliers who endeavour to secure as many customers as possible. The Katzenbach Report is justified in speaking of the *Challenge of Crime in a FREE Society*.

Without the participation of the creditors at the meeting which concerns them, it is extremely difficult if not impossible, to discover and combat

[1] ROGER TASSÉ, *Ibidem*, pp. 313-314.
[2] Brief presented by the Canadian Institute of Chartered Accountants to the Federal Minister of Justice, October 1963, p. 2.

fraud. In the same way, the best instrument to prevent fraud is an intelligent control of credit which can only be assured by private enterprise itself. These facts should be kept in mind when we try to outline in greater detail, an overall programme of prevention and detection of fraud in the area of bankruptcy. Possibly it should be pointed out that advertising has led certain classes of society to purchase consumer goods amost *without limit*. Is it not a curious paradox to see "sports models" on display inside banks branches ? Would it not be desirable to refuse to abolish the initial down-payment in the case of purchases made through the medium of finance companies ? This phase of the problem is beyond the limits of our mandate.

c) THE PRINCIPLE OF CONTROL BY THE CREDITORS

(123-131)

123. Even though private enterprise is irreplaceable in the control of credit, it should not be assumed that only businessmen are able to combat fraudulent bankruptcies. In the past, governments have too readily assumed that this is strictly a question of the relationship between suppliers and their clientele. In this tradition the State, as such, never assumed any direct responsibility. It is true that it punished the defrauders but private enterprise was left to lick its own wounds.

The principle of control by the creditors was generally accepted. If the creditors decided not to attend the meetings which concerned them, the attitude of the State was to also take little interest in the matter. In examining the bankruptcy procedure we have moreover noted, as have all the analysts, that the meeting of the creditors is the key point in the procedure. This cannot be over-emphasized.

Here again we will quote Mr. Roger Tassé, the Superintendent of Bankruptcies :

> Our bankruptcy legislation is not, in principle, any different from that of other countries. It is predicated on the principle of "creditor control". In fact, until very recently, the prime responsibility for detecting and eradicating irregularites on the part of bankrupts was that of the creditors. For it must be remembered that bankruptcies are administered by trustees on behalf and for the benefit of the creditors. It was felt that the collective execution that is effected by the bankruptcy process — that is the realization of the debtor's assets and the distribution of the proceeds to the creditors — benefits the creditors. Thus, the theory behind the principle of "creditor control" is that the creditors have a prime interest of their own, *firstly*, to scrutinize the affairs of the bankrupt in order to ascertain whether he had been guilty of any wrongdoing, and *secondly*, to aggressively go after, and collect, the assets of the debtors for distribution amongst the creditors. In serving their own interest, it was believed that the creditors would expose frauds and other offences, on the part of debtors and, by the same token, serve the public good. (...)

> The weakness in this system is that, as you know, before a trustee can become involved in any extensive investigations or inquiries into the bankrupt's affairs he has to obtain the creditors' approval as well as, in some cases, their financial assistance. Experience has shown that in many cases the estate does not have sufficient funds to enable the trustee to carry out the necessary investigations or inquiries and the creditors are not prepared to provide the trustee with the necessary financial assistance. And even when the estate has enough funds, the creditors are often not prepared to authorize the trustee to use them for investigation purposes [1].

124. This attitude of the creditors is easily understood. On the one hand they have already suffered considerable losses by reason of the bankruptcy, and they have not always the assurance that the supplementary expenses will result in any tangible benefits ; on the other hand, they have often, with justification, the feeling that they are working at their own expense for the benefit of the government.

If creditors detect any kind of fraud and succeed in increasing the value of the assets of the bankrupt, it is often the governments which benefit, as their claims are privileged. The State satisfies itself before the ordinary creditors receive one cent.

> Why should they get involved, through the trustee in baukruptcy, in sometimes prolonged, complex and costly investigations which might result eventually in a prosecution before the court but which will very rarely result in a larger dividend for the creditors. After all, most of these creditors have, in fixing the price of their goods or services, included an item for uncollectible or bad debts. They are also allowed to deduct their losses on account of bad debts for income tax purposes. I, for one, do not believe that it would be reasonable to expect creditors to invest money in a venture, the outcome of which is often most doubtful, when they can put it into more profitable uses and generate new business. We cannot blame them for their unwillingness to put good money after bad. This is an area of bankruptcy administration where experience has shown that the principle of "creditor control" has not been working effectively [2].

125. Our intention is not to absolve the creditors from their abstentions, nor to invite the State to assume all the cost of administering a bankruptcy. It is no more logical to have private enterprise work uselessly for the monetery benefit of the State than it is to unjustifiably conscript society to serve private enterprise.

We believe that certain controls must remain in the hands of the creditors, but we also believe that the State should, for its part, give up

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[1] ROGER TASSÉ, *Ibidem*, pp. 311-312.
[2] ROGER TASSÉ, *Ibidem*, p. 312.

certain privileges in the interest of soundness and efficiency. We believe, for example, that *the claims of the State should not remain indefinitely as privileged claims.*

126. There are obviously many aspects to this suggestion. We are restricting ourselves here to a study of the problem in keeping with our mandate : that of endeavouring to find methods of preventing and combatting fraud.

However the suggestion does raise serious objections. At the level of principles, distributive justice places the common good above that of the individual creditors. In other words, the State can quite legitimately consider itself as endowed with prior rights by reason of the fact that it represents the interest of all society. The State on this basis has the right to special privileges which include that of being entitled to place debts payable to society itself ahead of debts payable to private enterprise.

Unquestionably private enterprise would be aroused to a greater interest if it were entitled to receive a larger part of the assets. On the other hand, it must be emphasized that sociey has the right under any circumstance to take precedence over a particular group. The objection is to the point and our entire legislation bears this out.

127. In the present context we believe, however, that governments have adequate mechanisms to collect quickly, and at the right time, the amounts due to society.

If the government itself allows its claims to go unpaid for three, four or five years, it must pay the price for its own slowness, and should no longer retain the right to place its claim before those of ordinary creditors. Under such circumstances, to retain privileged government claims in matters of bankruptcy, would be equivalent to encouraging an unacceptable government laxity.

The government, by its own negligence in not collecting in time money owing to it, has frequently been the cause of unduly prolonging the life of businesses which were on the road to failure. If the government had intervened at the right time to collect its taxes, the non-viable business would have closed its doors much sooner, and would not have continued securing credit and merchandise from suppliers.

It is always distateful to see the State, as a creditor, put an end to the activity of a business. However, it is also distasteful to see the State grant unlimited credit over a number of years, and then demand all that is owing to it before ordinary creditors have the right to even the slightest compen-

sation. Unquestionably the government claims should take precedence, but this precedence should not continue indefinitely.

128. In addition to renouncing certain privileges, the State should, in our opinion, assume new responsibilities. It should do this because the prevention and detection of frauds concern the government just as much as they do the ordinary creditors.

For example, it is the government's responsibility to entrust to certain officials the positions of trustee and in this way exercise a more effective control on enterprises faced with a petition in bankruptcy. The assimilation (partial) of the trustee into the civil service does not imply, however, that the government should suppress the control which the creditors can apply at the meetings which concern them directly.

We are not recommending any drastic changes, but we are hoping for modest efforts which will be developed if certain hypotheses can be proved. For example, as we have mentioned, many police officers demand an enquiry when a business which has failed has assets which do not equal one half of the liabilities. In such cases, the government trustee would be called upon to immediately apply the measures called for by an Order of the interim Receiver, until it is established *in fact* that the suspicions of the police officers are justified. It would be time later on to change the procedure, if having an interim Receiver became indispensable.

It is not for us to recommend a complete change in the administration of the bankruptcy. It is our duty to propose measures needed for the earliest possible detection of frauds which develop in the administration of bankrupt estates. This does not mean that we recommend that all trustees be made civil servants, but we certainly believe that the State itself should engage a sufficient number of trustees on a permanent basis who could apply the procedures of the interim Receiver in all doubtful cases. As research develops, it will be much easier to determine quickly what kind of cases might dissimulate frauds.

129. It is unrealistic to expect creditors to display a totally unselfish vigilance. If the assets to be shared increase because the government reserves for itself fewer privileged claims, we believe that the creditors will then be more likely to participate in the meetings. By doing this, the government, contrary to general belief, would lose nothing provided it would speed up the collection of amounts which are due to it.

By having more frequent recourse to the procedure of an interim Receiver, the State could very easily reduce the period of uncertainty which, at the present time, allows a large number of businesses to liquidate assets before the Order of the Registrar freezes their operations. Moreover, the

intervention of a government trustee would permit the examination of the bankrupt without cost from the very beginning of the liquidation. Here again, experience will show to what extent this procedure should be followed.

130. At first glance, it would seem that the State would lose if it renounced its privileges with regard to its claims. We are of the opinion, based particularly on the findings and conclusions of the Mercier Report, that in the case of bankruptcies, the government has never gained anything by considering its claims to be "indefinitely privileged".

> Up to the present, with regard to claims in bankruptcy matters, the various services of the Minister of Revenue have operated as separate entities, and this lack of cooperation has resulted in a duplication of efforts and a considerable loss of time at least with regard to investigations carried out following claims and other contacts with the trustees. In addition, the policy followed in the various services to extend their investigation going back many years, and to produce substantial claims for taxes not collected or not deducted, has not only discouraged the creditors, but has often made enemies of them.
> If one looks at the small percentage of privileged claims which have been paid to the Minister of Revenue in the last five years — see the tables of losses of the Minister — it is realized that this method of procedure by the Minister has not produced the results anticipated (Appendix 8).

The Commissioner Mercier concluded that it was time to abolish the teams of investigators who follow-up the claims in bankruptcy matters for the various services of the Minister, and to replace them by a service which would endeavour to represent and protect the interest of the Minister in bankruptcy matters, liquidations, agreements and proposals. Such a measure would in our opinion, speed up and increase the amounts collected by the Minister of Revenue, but it certainly would not eliminate the antagonisms and conflicts of interest between the Minister of Revenue and the creditors.

131. We would prefer another solution, which is in agreement with the views of a trustee with considerable experience.

> The majority of bankruptcies and liquidations are not fraudulent, and the principal purpose of the Mercier enquiry was to study methods of minimizing the losses to the Minister. For this purpose the principal recommendation dealt with the formation of a special service by the Minister. I approve this recommendation and I will elaborate on this, but I respectfully submit that the best method of diminishing the losses of the Minister would be by reducing the claims by quicker assessments and an effective system of collection. The special service visualized by the Mercier Report would only assure a better collection of the Minister's claims; I suggest that it is more important to reduce the claims both in number and in dollars.

The trustee whose opinion we have quoted here, then explains how the Minister of Revenue manages to collect only 10 percent of the claims in connection with bankruptcies, liquidations, proposals and agreements.

> How many insolvents of good faith have been astounded by the difference between the debt carried in their books with regard to the sales tax service and the demands submitted to the trustee, a difference resulting from the investigation covering many years ? How many Proposals couldn't be agreed to, or have been endangered by this difference ? Enquiries at regular intervals would have permitted these debtors to correct the gaps in the calculations with regard to the tax to be paid on their purchases which would have had the result of diminishing the eventual losses of the Minister considerably.

In Appendix 29 will be found the text of the letter of this trustee, from which have been removed only the signature of the sender and the name of the addressee.

These comments are not intended to resolve the problem which has to do chiefly with civil matters. They are simply meant to show that it may be possible to increase the share of the creditors in a definite manner without causing serious losses to the government collections.

d) THE PRINCIPLE OF THE DIVISION OF RESPONSIBILITIES (132-134)

132. Our administration of bankruptcies remains subject to a number of principles and economic requirements which we share with other societies : limited liability, credit, control by the creditors... In many cases in our opinion, it is possible to give sufficient flexibility to the application of these principles so that the prevention and detection of frauds will be speeded up and reinvigorated.

Our administration of bankruptcy stems from the federative context which in turn results from the Canadian Constitution. That is to say, neither the provincial authority nor the federal power enjoys full autonomy in this matter. The texts of the Criminal Code and Bankruptcy Act are established by the federal power, while the administration of justice in criminal and penal matters devolves upon the provinces.

Negotiations will therefore become necessary to avoid duplication of effort and to prevent a void being created between the two spheres of activity, a gap from which the racketeers profit. Up to now, it has been impossible to arrive at a satisfactory coordination.

The Commission believes that there is no justification today to maintain a system which gives to the federal authority the major part of the responsibility in bankruptcy matters. Bankruptcy is an integral part of the civil domain and therefore should rather be a part of the provincial jurisdiction. Charged with the normal administration of bankruptcy, the provincial power

could more easily assume its responsibilities in the prevention of fraud and the fight against defrauders. We note however, that far from taking into consideration these advantages and giving the provinces an increasing responsibility in the field of bankruptcy, the federal administration has increased its activities in this domain.

133. As has been indicated by Mr. Roger Tassé himself, the federal power has granted to the Federal Superintendent of Bankruptcies, supplementary investigative powers with regard to the Bankruptcy Act. In our opinion this consolidates the bridgehead established by the central power in a sector of the administration of justice which should be the responsibility of the provinces. This encroachment exists not only in the area of bankruptcy, but also with regard to criminal and penal justice, the application of which is unquestionably under provincial authority. All that can be said with regard to the extension of the investigation powers given to the Federal Superintendent of Bankruptcies is that it is difficult to reconcile it with the provincial responsibility with regard to the administration of justice.

The federal government has decided in a unilateral manner to change the work of the Official Receiver, principally in the Montreal division of bankruptcies. The Official Receiver is an official named by the federal power, but remunerated by the Province. It would have been more logical on the part of the federal government, to consult the Quebec authorities before taking such a decision. When it is realized how important the work of the Official Receiver is in the prevention and detection of fraud, it is difficult to understand how Ottawa could alter his responsibilities and the use of his time without even consulting the provinces.

Not only does the Commission believe that the administration of bankruptcy must today be the subject of negotiations between the federal power and the provincial authority, but the Commission would hope that from a long term point of view, the provinces would obtain from Ottawa an amendment to the Constitution which would entrust them with the authority over bankruptcy matters. As we have already said the general administration of bankruptcy is outside of our mandate, but we believe that the present division of tasks makes the fight against crime extremely difficult.

134. The fight against crime, even in bankruptcy matters, will not be truly effective unless there is a single authority assuming full responsibility. We believe that a single authority should have jurisdiction over bankruptcy itself, and over the frauds of various kinds which develop in the administration of bankruptcy.

No longer should we maintain this artificial division between frauds as defined by the Criminal Code and frauds as defined by the Bankruptcy Act.

VII — OBSERVATIONS AND SUGGESTIONS

VII — OBSERVATIONS AND SUGGESTIONS (135-157)

135. We now have in hand a sufficient number of facts from which to draw some conclusions.

1 — Fraudulent bankruptcy gangs have been able to exist and function in Quebec for many years without attracting the attention of the authorities.

2 — Within the present administrative structures, it is relatively easy to effect a fraudulent bankruptcy and gangs find it easy to reorganize.

3 — By professing certain principles, our society constantly runs the risk of abuse and frauds, but it is possible, without going against these principles, to modify their application.

4 — It is difficult to confide the administration of bankruptcy and the fight against fraudulent bankruptcies to different authorities.

Several of our observations are critical of the actual bankruptcy administration, while others underline the necessity of amending the legislation itself. Some of the changes could be made in short order and almost immediately, while others should be spread out over a much longer period, particularly by reason of the negotiations, required with Ministers other than that of Justice, and with the federal government.

a) REGARDING THE ADMINISTRATION (136-150)

1 — The Quebec Secretary (136-137)

136. It seems to us essential that the Quebec Secretary who has the responsibility of applying many of the laws which govern the administration of corporations, tighten the control over the information which should be given by companies with limited liabilities.

The control now in effect is certainly not adequate. The Quebec Secretary already has the necessary powers to cancel the charters of companies who fail to submit the reports required by law. However, he rarely has

recourse to such action. Within the framework of a study devoted to criminal and penal justice, we are not called upon to make recommendations which would apply in a general manner to all corporations. However, by allowing the controls to fall into disuse, the Quebec Secretary runs the risk of having the frauds increase. For example, the Quebec Secretary is supposed to know the real owners of incorporated companies, but all too often he permits the applicants for the incorporation to continue in office for long periods of time, thus dissimulating the real owners.

For obvious reasons, the Quebec Secretary must be informed more rapidly than he is today of any changes in the control of an enterprise.

137. Some individuals have stated before the Commission that the Quebec Secretary should himself, be responsible for disseminating information in bankruptcy matters. The context of the discussion and the profession of our witnesses permit us to believe that this suggestion only concerns the fraudulent bankruptcy. It is their belief that the Quebec Secretary should inform the police forces when an individual previously guilty of fraud in a bankruptcy, makes application for a new incorporation or assumes the management of a corporation already established.

We do not believe that the Quebec Secretary should do this. It is his responsibility, however, to gather and keep available all the information which might be needed by other departments and the police forces. This implies that the Quebec Secretary should constantly *be aware* of the names of the true proprietors of every incorporated society and that he should be ready to answer *legitimate* questions that the other departments and police forces may ask.

The Quebec Secretary should know whether an individual previously condemned for fraudulent bankruptcy has asked for a new incorporation. This would enable the Secretary to know whether former defrauders have formed new enterprises, or have taken control of honest corporations.

We would not wish the Quebec Secretary to go any further. To require him to disseminate such information would be the equivalent of making available, for no useful purpose to the other departments and police forces, information which, in our social and economic system, does not warrant publicity. It is necessary here to maintain a balance between police efficiency and administrative discretion.

If it is believed that such a formula, through excess prudence, becomes ineffective, we would prefer that an Act be passed which would prohibit any individual formerly found guilty of fraud, from forming a new incorporation. In other words, if it is considered that a defrauder should not benefit from a new incorporation for a period of years, it would be preferable to so state in a legislative text which the Quebec Secretary would

have the responsibility of applying. The dissemination of judicial records must be restricted, and the records of defrauders should be no exception to the rule. However, this would in no way prevent the Secretary from exercising a closer surveillance on the activities of certain individuals.

2 — The Minister of Justice (138-142)

138. For several years now the Department of Justice of Quebec has shown a new dynamism in the fight against fraudulent bankruptcies. However, in the light of the recent intervention by the federal power, it is quite evident that the Provincial Minister must speed up his work or run the risk of additional federal encroachments.

It is necessary for the Quebec Minister of Justice to coordinate the efforts of law-enforcement agencies, of the Crown prosecutors, and of the specialized personnel. Moreover, it is his responsibility to take charge of his entire jurisdiction and not to allow the federal administration to pass laws in civil matters, or to administer criminal and penal justice. It is up to him finally to negotiate a new agreement with the federal government on the overall jurisdiction in the bankruptcy domain. Each of these points warrants being studied in detail.

i) THE POLICE FORCES (139-140)

139. In the Province of Quebec, bankruptcy has, up to the present, resulted in many frauds. In his work of prevention and detection, the Quebec Minister of Justice should endeavour, first of all, to form specialized units within the police forces.

The Quebec Provincial Police and the Montreal Police forces have already acquired valuable experience in this field. It is necessary, however, for the Minister of Justice to intervene for the purpose of perfecting the training of the police personnel called upon to prevent and combat frauds. The Quebec Minister should also make certain that the police forces secure from the different government services, (keeping in mind discretion and the desired prudence), the information needed to carry out their investigations.

For example, all information authenticated by the Quebec Secretary should enable the different units of specialists to know without delay the identity of those, who, behind the screen of corporate companies, are endeavouring to defraud the public and the creditors.

The Commission believes that the Quebec Minister of Justice and the Quebec Secretary should jointly establish through regulations or leg-

islative texts, the directives which will apply with regard to the circulation of information gathered by the Quebec Secretary. For various reasons the Commission would look favourably upon the same procedures being adopted with regard to requests for information from the Quebec Secretary, as for issuing a warrant for arrest or for search. In this way the police forces who would like to be informed of the current actions of an individual previously known to be guilty of frauds in bankruptcy could secure from a judge, an order of the court opening to them the records of the Quebec Secretary. There is no need to elaborate on the necessity, here, as in other cases, of only granting warrants of a most specific nature. Such a procedure would allow the police to identify the owners of a business which is acting strangely.

Some people would undoubtedly wish to go much further and disseminate the information more expeditiously. We do not believe that such a procedure would conform either to the economic principles or to a policy of rehabilitation. In any event, if the intention is to prevent a former defrauder from doing business, it should result from the law and not from individual decisions.

140. In cooperation with the Department of Justice, the Quebec Police Commission should see to it that the training of policemen includes in its curriculum the necessary background for effective investigation in the area of frauds. It is not a question of giving police trainees a thorough education in management and accounting. It is rather a matter of preparing a certain number of promising individuals to play a more effective role in this domain.

The Minister of Justice should also make certain that the police forces can, at any time, secure legal and accounting assistance without which police investigation would be superficial. In the present context it is quite evident that this technical aid must be or will become quite extensive as long as the police forces do not develop their own specialists. According to many, this outside support should be the rule. The police forces should not have their own legal specialists or accountants as part of their service : these experts should remain attached to the Minister of Justice. Otherwise the police forces could very rapidly assume dangerous initiatives. We have no fear of this if there are judiciary controls in effect.

ii) THE CROWN PROSECUTORS (141)

141. The work of the Crown prosecutors is closely related to police activities. By reason of the complexity of records of bankruptcy matters, a more constant collaboration is required between Crown prosecutors and the

police force than in any other area. It is necessary therefore, that some of the Crown prosecutors deal exclusively with bankruptcies.

The experiment attempted in Montreal with a team of three Crown prosecutors, concentrating on bankruptcy records, should be continued and even intensified. It should be understood that, notwithstanding the urgency of other matters, fraudulent bankruptcy is a priority. Without the collaboration of permanent Crown prosecutors, police work will remain sterile and paralyzed, while the hearing of the cases before the courts will be seriously delayed.

The Minister of Justice should take necessary measures so that the Crown prosecutors allocated to the study of the bankruptcy records or files should not involve themselves in other matters. It is also important that they receive a sufficient remuneration to guarantee the continuity of the work and the stability of the service.

iii) THE SPECIALIZED PERSONNEL (142)

142. In addition to establishing a close relationship between the Crown prosecutors and the police, the Minister of Justice of Quebec should attach to the supervision of bankruptcies and to the investigations related thereto, a specialized personnel, able to unravel the complexities of the accounting problems arising in bankruptcy cases. There have already been sporadic consultations with chartered accountants, and the results have shown that such a formula is well worthwhile.

It is our belief, however, that the Minister of Justice should go much further : he should engage chartered accountants on a permanent basis and make them available to the police forces and the Crown prosecutors. By this combining of police, legal and accounting competencies, it would soon become possible to prevent and detect frauds. The salaries offered must however be such that there is little danger of bribery and corruption.

3 — The Minister of Revenue (143-144)

143. In fraudulent bankruptcy matters, as well as in problems relating to organized crime, the Quebec Minister of Revenue has to play an important role. The Commission is quite aware of the fact that the regulations and ethics of the Minister prohibit him from revealing most of the information he may have with regard to individuals and corporations.

The Commission is also aware of the fact that it has received a mandate with regard to the administration of criminal and penal justice and that it would be exceeding its powers and the spirit of its mandate by

making recommendations with regard to the general administration of the Quebec Department of Revenue. We believe however, that the Quebec Minister of Justice has the responsibility of securing from other Ministers and services, the assistance he requires to enable him to successfully carry out his responsibilities, and *to offer to others the necessary services for a sound administration of justice.*

It is not our wish to have the Minister of Revenue open his files to investigators of the various police forces of Quebec, but we would hope that the Quebec Minister of Revenue would also make use of the information which would be available at the office of the Quebec Secretary. As soon as the Secretary intensifies his work, he will be in possession of considerable information which will enable the Minister of Revenue to undertake or to complete his own investigations. The Minister of Revenue is in a position to evaluate the revenues declared by an individual or a corporation, and is able to undertake an enquiry if the directors of a corporation in bankruptcy are quite obviously living in a manner which does not conform to their troubled financial situation.

In the opinion of various police forces, the investigators of the Minister of Revenue are quite often under pressure, and do not wish to bury themselves in the study of cases which are too complex. According to some, these investigators even avoid dealing with those cases which would require them to confront individuals known for their illegal activities, or who are known to have contacts with the underworld. The Minister of Revenue has extensive powers when it comes to the prosecution of notorious criminals and he has succeeded on many occasions (as in the case of Al Capone with U.S.) in convicting criminals when the Minister of Justice has previously failed to do so.

144. The Commission is not recommending to the Minister of Revenue that he disseminate all the information he has, but it sincerely hopes that the investigators of the Minister will make extensive use of the files of the Quebec Secretary and will not hesitate to conduct their enquiries or to alert the Minister of Justice when they think they have established that certain individuals, as officials of companies in bankruptcy, are living considerably beyond their admitted means.

For them, as for other police officers the procedure already utilized for warrants, could be applied with regard to requests for information : an order of the court would open the files of the Quebec Secretary. Inversely, all the files would be closed to those who could not substantiate the reasons for their questions.

Our recommendation would be extremely dangerous if it were not restricted to requests approved by the courts.

145. The trustee of a bankruptcy should be surrounded by more government controls than any other businessman.

This can be explained by the fact that the trustee is called upon to carry out under the more or less constant control of Inspectors and representatives of the State, the liquidation of a business. He has the responsibility of selling the assets of the company in bankruptcy. He makes exceedingly important decisions which seriously concern the creditors.

Moreover, amongst the *new* elements which affect an enterprise from the moment of bankruptcy, only the trustee is able to deal at arm's length with the government authorities. The creditors also take action, but they were already in business relations with the management of the enterprise at the time the latter was still carrying on in an autonomous manner.

The trustee therefore is both a new element and an essential one in the administration of a bankrupt business. The trustees are in all cases, private enterprisers and that is the paradox. Many are now questioning whether private enterprise should retain the responsibility of acting in a determinative manner with regard to the administration and liquidation of bankrupt companies.

It is not for us to forecast the future of trustees as members of private enterprise, but it is our duty to state that the prevention and detection of frauds requires the presence of a number of trustees in the employ of the State. These trustees would be ready to act as soon as an Order of the interim Receiver is considered necessary. This would prevent some enterprises, threatened with bankruptcy, from disposing freely of their assets while waiting for the judgment of the Registrar. We note however, that fraud occurs often, well in advance of the petition in bankruptcy, and more rarely during the period preceding the Order of the Receiver. Which points up the importance of the timing. Fraud during the administration of the bankrupt has become more difficult with the new controls.

146. According to the law, trustees without engaging in a witch-hunt, are required to forward their comments and suggestions for the attention of the government in all cases where they are able to detect any kind of fraud in the administration of a bankruptcy. In this way, the investigators and the legislator himself, would be made aware of the activities of individuals who, while remaining within the limits of the law, take advantage of loopholes in the law for dishonest purposes. It is not at all a question of turning the trustees into professional informers, but it is important that those who earn their living by applying government controls considered to be essential fully carry out their duties.

The State should acknowledge the cooperation of the trustees and show its appreciation, by facilitating the work of these specialists in the administration of insolvencies, as much as possible. For example, the Minister of Justice of Quebec should assume the responsibility of paying for the interrogations made by the trustees at the request of the creditors, or even of the Official Receiver himself. Specifically the Commission believes that the government should cover the cost of stenographic notes every time that the trustee, whether or not he is authorized by the creditors, but supported by the Receiver, considers it necessary to examine a bankrupt.

The State should also show its appreciation of the trustees by eliminating some of the "perennial privileges" which protect government claims. By increasing the assets available for the creditors, the State at the same time increases the fees from which a trustee can benefit.

We are not suggesting a complete break with the traditional administration of a bankruptcy, but we do recommend that the State engage a sufficient number of trustees who will be in its own employ and available to it in cases of urgency. All too often the Official Receiver is required to assume the role of the trustee, particularly when the available assets are insufficient to interest private enterprise. We believe that the Receiver already has too much responsibility without adding the responsibilities of the trustee. He should be able to depend upon a number of government trustees who would act in the cases calling for an interim Receiver, and in those cases in which private enterprise refuses to take charge. This would give the State the necessary time to test the idea of a government trustee and to make, over the years, such added decisions which are called for.

147. The Commission endeavoured to secure the opinion of the Official Receivers regarding the possibility of integrating trustees into the public service area.

Mr. Devos was categorically opposed to any radical change in the status of the trustee. However, his opinion should be evaluated. Without a shadow of a doubt, the Receiver, particularly the one in Montreal who is faced not only with a tremendous, almost unequalled work-load, but also with the accumulated delays of many years, has not the time to exercise all the recourses of the law.

Amongst the recourses we have quoted the legislative provision which permits the Receiver to become a trustee in case of necessity. It is easy to understand that a conscientious Receiver would not wish to add to his already too heavy burden, by acting as a trustee in every one of the cases! Nor are we proposing that the Receiver endeavour to do the work of private trustees with his present staff.

> You have asked me whether trustees should become public functionaries. My reply is, "NO". Whether it be at the federal or provincial level, I cannot visualize a department of public trustees which would have to number more than 60 trustees and which would have in addition, 200 employees at various levels, excluding secretaries, typists, and clerks, which would be the minimum required. I see even greater difficulty for these trustees who will be looking for decisions from God knows who, when it is necessary to replace an employee who has been fired, is sick, or who has disappeared in any other manner [1].

Notwithstanding the objections of the Receiver of Montreal, it is our belief that Quebec is justified in negotiating with the central power for the *integration into the civil service of a number of trustees who will be an extension of the actions of the Receiver.*

148. Unquestionably the service would undergo a considerable expansion, but we believe that the intervention of the State is necessary for the controls required by businessmen and because of the proliferation of frauds.

According to Mr. Devos himself, the Receiver is called upon to play a supplementary role in those instances in which the trustees decide to withdraw, and he is also called upon sometimes to act as a substitute for the Inspectors themselves.

> In addition to doing the work indicated above, the Official Receiver has acted as Inspector, as has already been pointed out in some 285 cases of bankruptcy. In addition and in view of the non-renewal of licences of trustees, he has been called upon to act as trustee in almost 700 cases with all the procedures, the worries, the work (letters, telephones, reports) that this involves [2].

In other words, the State would intervene through the medium of the official Receiver and his assistants in the most litigious cases, and in those cases from which private enterprise wishes to abstain. We readily admit that the mechanisms of the public functions have up to the present time, brought about intolerable delays and that undue delays might be expected if the position of a *public trustee* is created, but we do believe that the Receiver will be called upon more and more frequently to exercise an effective control of the work of the trustees, and we would prefer to see this work simplified by giving the Official Receiver ahead of time (for the kind of cases which would be well-defined) the authority and direct control of the procedures by placing him in charge of the trustees of the State. The slowness and parsimony one has come to associate with certain

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[1] Text submitted by Mr. Devos to the Commission during his evidence given July 13, 1967 (Appendix 18).

[2] *Ibidem.*

aspects of public administration, are not necessarily inherent in it, and one can, increasingly, expect a higher standard of performance from the public services.

Notwithstanding such a change, one problem would remain : it is difficult to justify an insolvent business having to pay for the full value of services of a private trustee when it cannot pay its debts.

149. Without going as far as the Commission with regard to changes in his responsibilities, the Official Receiver himself suggested a series of reforms which we have adopted. Their principal purpose is to improve the measures of control that the creditors, the inspectors and the Receiver himself can utilize :

> There is obviously room for certain minor changes in the application of the law which would not call for any amendment to the present Bankruptcy Act.
>
> 1 — I have mentioned in my previous appearance that the bankrupts could go directly to the Official Receiver for the purpose of assigning their property. I have also said that it was physically impossible (stenographic notes, p. 2467). I have never said that this would cost nothing; Article 39 provides that in any event he must deposit the seizable portion of his salary or any other amount determined by the court, for the benefit of his creditors. I repeat that *I have not the physical means to do this.* I would like to be able, and I have said that also, to accept the assigments and name a trustee in accordance with the wishes of those creditors who are unsecured and not related to the bankrupt.
>
> 2 — I would also like to be able in the meantime to have the necessary personnel to immediately take an inventory of the assets of the bankrupt and the necessary conservation measures, which are called for in the circumstances. At the present time this could be done with the help of the bailiffs of the Superior Court without prior reference to the Bankruptcy Act.
>
> 3 — I would also like to have the tenders for the purchases of the assets of the bankrupt sent to, or deposited with the Official Receiver, opened on the date indicated in the notice requesting tenders, in the presence of the inspectors, the trustee and any other interested parties who wish to be present [1].

Here again it is evident that unless the Official Receiver is given a much larger staff than he has at present he is unable to take advantage of all the recourses of the law. The authority is there but not the human resources to exercise it.

Such a description does not call for any comments as it leads to an obvious recommendation. For all practical purposes it is an invitation to Quebec to act as quickly as Ottawa.

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1 *Ibidem*

150. We have already noted that the hearing of bankruptcy cases is on occasion delayed because of the lack of interest of some judges. It would appear, according to experts and judges, that the judiciary in general, considers itself to be inadequatedly prepared to hear such cases.

This results in adjournments which slow down the effectiveness of the judicial apparatus and very noticeably increase the costs. Some fraudulent bankruptcy files can no longer be effectively processed by the courts, because the frequent delays have resulted in witnesses disappearing and the evidence deteriorating.

Bankruptcy cases often require the examination of dozens of witnesses, whose appearances call for considerable expenditures. When these witnesses are required to appear for no purpose, and must be called a second and even a third time, it is not difficult to imagine the expenses involved in the hearing of a case.

Without creating, through legislation, a court of special jurisdiction to hear fraudulent bankruptcy cases, we believe that it should be possible for the Chief Justice of the Superior Court to designate two of his judges, one of whom would sit at the enquiry, and the other at the trial, for a continuing period of three or four months at a time, to hear only cases involving commercial fraud until the backlog of cases is brought up to date.

b) REGARDING LEGISLATION (151-157)

151. Even if the administration of bankruptcy matters were to improve noticeably, it would nevertheless be necessary to amend the law. Notwithstanding recent amendments, the text requires further revision, because the administration of bankruptcy stems from different legislative texts drafted without any unified concept. Revision is even more necessary if it is intended to put an end to the dangerous duality of jurisdiction which now exists in the field of bankruptcy, and which makes the combating of fraud so difficult.

These objectivies will be achieved if it is agreed that bankruptcy is really a civil matter, subject solely to the provincial authority, and if the prevention and repression of frauds is placed squarely on the shoulders of the provinces.

1 — The Quebec Secretary (Acts affecting Companies) (152-153)

152. It is our belief that the Quebec Secretary would be much more effectively equipped to prevent and combat frauds if some of the recent

amendments to the law which he is required to apply, were revoked and the previous text restored, or that they be re-amended on the basis of new concepts.

It is our opinion that Articles 13, 24 and 42 of the Companies Act of Quebec should revert to the text in effect prior to 1964. We believe that the 1964 amendments to these Articles have increased the possibilities of fraud. Today it is no longer necessary for the incorporators of a company to make an initial capital investment, and it has thus become much easier than previously to issue misleading statements with regard to the capital subscribed by the incorporators.

Similarly, the requirement for the deposit of a copy of the contract concerning the acquisition of shares for services rendered, or for the sale of good-will should have been maintained.

In addition the Secretary could at the time of the incorporation of a company send a simple acknowledgment to the home addresses given by the applicants for incorporation. If this acknowledgment is returned to the sender because it did not reach its intended recipient, the Quebec Secretary could immediately start an investigation [1].

153. The Quebec Secretary should also amend the Companies Information Act so that the true owners of a new company identify themselves without delay. For example, the law could provide that the Quebec Secretary be notified of the names of the real principals of the company the moment they replace the applicants for incorporation.

The applicants for incorporation should also be encouraged to withdraw at the earliest possible moment ! For example, as long as the real owners do not formally replace the representatives in the legal office responsible for the incorporation, those individuals whose names are published in the Quebec Official Gazette should remain responsible for all the actions of the new corporation. In this way the legal offices would have good reason to have themselves replaced as quickly as possible in the records of the Quebec Secretary by the real owners, so that they do not assume hazardous responsibilities indefinitely.

In the case of the sale of shares, or more particularly, in the transfer of control of a company, the new owners should be required to identify themselves in the days or weeks which follow the transaction, subject to the penalty of losing the privileges which go with limited liabilities.

In any event, the provisions of the law should be reinforced by penalties including suspension or cancellation of the charter.

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1 This would only serve a useful purpose if the true applicants for incorporation had been given in the first place.

154. The Bankruptcy Act in itself, is a well-articulated document which appears to respond to most of the difficulties in a satisfactory manner. Recent amendments have made it on the whole quite satisfactory.

It will have been noted for some time now, that we have been questioning whether this law should remain a federal right. After a hundred years of federal jurisdiction in the field of bankruptcy, nothing indicates that this administration is the most logical, the most efficent, and the most alert. If the practical side of the Bankruptcy Act is analyzed, it is quickly seen that the legislation relates in its application solely to the domain of civil law which is under the exclusive jurisdiction of the provinces. The law pretends to be of a substantive nature but for all practical purposes it only imposes rules of procedure with regard to the realization of the assets of a debtor and its distribution amongst the creditors. The difficulty arises when the one who establishes the rules of procedure has not the means to prosecute those who abuse them.

We are not raising this constitutional problem as a matter of abstract logic. The effectiveness of the administration depends on it. The functions of the Quebec Secretary are such, that they provide the most important mechanisms for the prevention, and even for the information necessary to carry on an efficient fight against frauds. The Receiver and the police forces must therefore establish a close collaboration amongst themselves and with the Quebec Secretary.

This concern with effectiveness should prompt the government of Quebec to negotiate the integration of other elements of control into the provincial system.

Our mandate certainly authorizes us to indicate to the Quebec government the methods for preventing, discovering and combatting fraud. That is why it is our hope that the government of Quebec will enter into the necessary negotiations with the central power : it would be necessary to examine and debate the question at the level of the inter-provincial conferences, or at meetings of the Attorneys General, to decide whether the Act of Confederation should be amended so as to place the jurisdiction over bankruptcy in the hands of the provinces.

155. Even if the Bankruptcy Act as a whole can be considered a satisfactory text, some articles require clarification.

We will limit ourselves to one example. Article 21 in its fifth line states that "the petition must be deposited in the court having jurisdiction in the locality of the debtor". This has not prevented some racketeers, as has been indicated in the case of the Bécotte gang, from registering the

petitions in bankruptcy all over the Province of Quebec. They were taking advantage of the ambiguities of the first paragraph of Article 4 : "for the purposes of the present Act, each of the Provinces of Canada will be a bankruptcy district ; but the Governor-in-Council may divide any one of these districts of bankruptcy into two or more divisions of bankruptcy, and name them or number them". This makes it possible to argue that the whole of Quebec is one district of bankruptcy and that it is therefore possible to submit a petition in any provincial judicial district. This as we have seen, allows the meetings of creditors to be held so that only the defrauders attend.

3 — Minister of Revenue Act (156-157)

156. It would be desirable in our opinion, for the Revenue Department Act to go even further than it does in Article 46 of its text.

The legislator places a heavy burden on defaulting corporations, in those matters affected by the Revenue Act. Article 46 places an additional burden on the directors, officials or agents of the corporation. In our opinion the statute should go even further and *create a presumption* of responsibility on the directors by imposing on them the burden of exculpating themselves from liability.

A similar provision, as an example, is found in Article 153 of the Income Tax Act. A presumption of right added to Article 46 of the Revenue Department Act would stimulate directors to take an active interest in the honest conduct of the business affairs of the corporation of which they form part, and this might have the salutary result of the possible abolition of the use of the figure-head "gimmick".

157. This would have the effect of bringing the Revenue Department Act in line with the recent amendments made to the Bankruptcy Act.

> The amendments incorporate in the Bankruptcy Act the technique used in income tax matters to deal with this type of problem. They provide that where a transaction is made between two persons who are closely connected or, not dealing at arm's length, this transaction, if it occurs within twelve months prior to a bankruptcy, can now be reviewed. If the transaction is proven to be significantly detrimental to the creditors as a whole, then judgment will be given for that amount of which the creditors have been deprived by the transaction. An important aspect of this amendment is that the onus is on the third party to show that the transaction ought not to be reviewed.

> The amendments also provide that where a corporation, within twelve months preceding its bankruptcy, has redeemed shares or granted a dividend when the corporation was insolvent or that rendered the corporation insolvent, recovery may be made against the directors or against certain of the shareholders of the bankrupt corporation. Here again, the onus is on the recipient to show that, immediately after the receipt of the benefit, the company was not insolvent [1].

[1] ROGER TASSÉ, *Recent Developments in Bankruptcy Law* in *The Canadian Bar Journal*, X, August 1967, p. 319 (Address given by Mr. Roger Tassé, Superintendent of Bankruptcy before the Manitoba Bar in Winnipeg, March, 16, 1967.)

VIII — A GLIMPSE AT THE MERCIER REPORT

VIII — A GLIMPSE AT THE MERCIER REPORT
(158-168)

158. We did not wish to set forth our own recommendations before analyzing the recommendations found in the Mercier Report (Appendix 8) presented to the Quebec Minister of Revenue in 1965. In some areas, our mandates are the same, although the Commissioner dealt particularly with methods to improve the collection of taxes by the Minister of Revenue, while we are interested rather in the prevention and dectection of frauds.

> The Commissioner Mercier first of all recommended: that any assignment of goods, petition in bankruptcy, or Proposal be made directly through the Official Receiver, without the intervention of any trustee; any intervention of a trustee at this stage of the procedure, would disqualify him from acting as trustee in the bankruptcy itself or after the Proposal is accepted.

We are in agreement with this recommendation even though we do not see it as too effective a measure. The main thing remains that the Receiver utilize freely, and in all doubtful cases, his authority to substitute one trustee for another.

159. The recommendations 2, 3 and 4 of the Mercier Report also concern the functions of the trustee.

> The second one asks:
>
> that on the deposit of any assignment of property, petition in bankruptcy, or Proposal, the Receiver name a trustee after having consulted at least three of the principal creditors, not guaranteed and not connected with the debtors; these consultations to take place at the meeting of creditors.

This recommendation warrants being applied. However, we have doubts as to the interpretation of one point: should the Receiver make public the names of those who have recommended a trustee? The answers could lead to very different consequences and possibly they are worthwhile trying on an experimental basis.

160. The third and fourth recommendations of the Mercier Commission then define the *duties* of the trustee more specifically.

> 3. That the appointed trustee, accompanied by a representative of the Receiver or a bailiff chosen by the Receiver, prepare without delay the inventory of the assets of the debtor, which must be certified by the trustee, by the agent of the Receiver or the bailiff, and by the debtor or the bankrupt.

The trustee already quoted (Appendix 9) openly criticized these two last recommendations. With regard to the third recommendation he wrote :

> Notwithstanding their experience, the trustees must often have recourse to the services of experts for the inventory taking, the determination of unit prices, and the reason for the deterioration in the business of the debtor ; this also applies to the evaluation of the machinery. What qualifications would the agent of the Official Receiver or a bailiff have to do such work ? As a practical result the official would twiddle his thumbs while the inventory is being taken at the expense of the assets or at the expense of the Crown.

On the one hand, we agree *with this trustee* that it is necessary to continue having recourse to the services of specialists when the evaluation calls for technical knowledge. But we also believe, *with the Mercier Commission,* that the State must be represented when the inventory is being taken.

The objection raised by our critic does not stand up in those cases where the trustee would be an official of the State, which would avoid the danger of a duplication of work by a private trustee and a civil servant.

161. With regard to the fourth recommendation, the same trustee wrote :

> The enquiry suggested here is carried out when necessary, after the meeting of the creditors, under the direction of the Inspectors. It should not be forgotten that the trustee must respect the delays provided by the Act. In the cases of bankruptcy, he must prepare the final balance sheet, including the inventory, before the meeting of the creditors which must be held within 21 days. The notice must be mailed four full days before the meeting. And in the case of Proposals, the notice which includes a balance sheet as of the date of the Proposal, must be mailed within the eleven days after the deposit of the Proposal. It would be physically impossible for the trustee in most cases, to prepare the condensed statement in time for the meeting of the creditors ; it is moreover, the kind of investigative work which cannot be done hastily if it is to be of any use. I don't understand the phrase : "an Order of the interim Receiver would not change the duties of the trustee". An interim receiver is named while waiting for the nomination of a trustee ; the two are not named at the same time. Mr. Mercier indicates that he wishes that the trustee named in the petition become necessarily and automatically the interim Receiver. In my opinion, this recommendation seems to contradict the recommendations one and two, and its application could result in even more serious abuses than those which it is intended to correct.

We believe that the difference between the duties of the interim Receiver and those of the trustee will be considerably reduced if our suggestions

of having more frequent recourse to the interim Receiver are adopted. The same result would be obtained if some of the trustees were considered to be officials of the State directly responsible to the Official Receiver.

162. Morever, it is quite true that it would sometimes be difficult to prepare a condensed statement in time for the meeting of the creditors. In these cases it would be necessary to demand that the trustee (even public) still report at the meeting of the creditors the difficulties met in determining the extent of the deficit. This would permit the creditors, who know better than anyone else the nature of the business of the bankrupt, to direct the work of the inspectors and the trustee in establishing the condensed statement.

In other words, the general obligation would remain, even for the public trustee, to prepare a condensed statement in time for the meeting of the creditors, while requiring him to justify to the creditors the fact that he has not had sufficient time for this work, should this be the case. It would then be up to the meeting of creditors to fix another date for the trustee to file the condensed statement of the bankrupt's affairs. In this way it would be impossible for the trustee to avoid or to delay unduly, the completion of the condensed statement.

This would not resolve very much. It would be extremely difficult to have the creditors attend a second meeting. Analogous difficulties are found in trying to hold meetings of shareholders. At least, however, this would assure the immediate presence of the Receiver or his representative.

163. For various reasons we do not think it necessary to endorse the fifth recommendation of the Mercier Commission :

> that the Receiver be required to demand from the trustee a guarantee of an amount corresponding approximately to the realizeable value of the assets.

In fact, (even if some of the trustees will no longer come from private enterprise), one must agree that the present provisions of the Bankruptcy Act (Article 8, paragraph 1) appear sufficient. Moreover, the guarantees furnished in all the cases of bankruptcy, are already the object of periodic study by the Superintendent of Bankruptcies.

Should some trustees become officials of the State, the necessity of guarantee would disappear. It would simply be up to the Receiver, when hiring the personnel to carry out his functions, to make the necessary enquiries, so that the interest of the public in general and the creditors in particular are safeguarded.

164. On the other hand, we attach great importance to recommendation six of the Mercier Commission :

That the tenders for the purchase of assets of bankruptcies be deposited with the Receiver and opened by the latter in the presence of the trustee and the inspectors.

The trustee already quoted wrote, however, without explaining his astonishing reservation :

I do not see too practical a result from this recommendation which would have the immediate effect of overloading the official Receiver.

For our part, we believe it is necessary to control the procedure of tenders for the purchase of assets of the bankruptcies. It is essential to begin by calling for tenders. These submissions must be addressed to the Receiver personally. However these tenders may only be opened in the presence of the trustees and the inspectors.

To take full advantage of this procedure, the Receiver should keep a record of the tenders made public. In this way, an alert and well-informed Receiver could exercise a satisfactory control.

He could undertake the necessary enquiries if it appeared to him that the tenders were definitely too low and out of proportion with the real value of the assets. We believe that certain tenderers would be much more circumspect if they knew that the representative of the State retained on file a copy of their offers.

165. At the end of its work, the Mercier Commission recommended :

that the procedure of summary administration be permitted only in those cases where the amount of the unsecured claims is below $25,000.

We do not understand the meaning of this recommendation.

However, to once again quote the trustee who has allowed us to utilize his comments :

the procedure of summary administration is provided in the case where the assets are not sufficient to pay the costs of an ordinary bankruptcy. Who will make up the deficit when the unsecured liabilities exceed $25,000 ? It is the realizable value of the assets which, quite logically, determines whether summary administration shall apply.

Within the framework of a study devoted to fraudulent bankruptcy, we think that we can leave aside the matter of procedure for summary administration. We believe that the chapter of the Bankruptcy Act which deals with summary administration and which is applicable, particularly to private individuals, should be part of a separate Act and should not apply to Quebec where there is, thanks to the Lacombe Law, a special system with regard to regular payments of debts.

This does not mean that the Provincial administration should be relieved from its obligation of seeing to it that the payments made in virtue

of the Lacombe Law are made more regularly and continuously. It would seem in fact, that the majority of individuals utilizing the provisions of the Lacombe Law stop carrying out their obligations after several weeks without serious consequences.

166. In its recommendations eight and nine the Mercier Commission intended to amend the field of application of the laws already in effect :

8 — That the right of recourse to the Winding-Up Act be restricted to certain companies with special charters, such as banks, trust companies and others.
9 — That the invalidity of a settlement as against the trustee in virtue of Article 60 of the Bankruptcy Act, be extended to transactions between a company and its shareholders, or with an affiliated company ; any person who would have received such advantages would be called upon to reimburse same for the benefit of the creditors as a whole.

We are in agreement with these recommendations which have also been forwarded to the Superintendent of Bankruptcies and to the Minister of Justice of Canada by the Canadian Institute of Chartered Accountants in October 1963 (Appendix 30). This matter has already been adjusted by the recent amendment (July 15, 1966) concerning allowable transactions.

167. In its tenth recommendation, the Mercier Commission asked :

that the Receiver see to it that the provisions of Articles 117 and 118 of the Bankruptcy Act, dealing with the duties of the bankrupt, be vigorously applied.

On this subject the Commission believes that the situation differs according to whether one is dealing with one judicial district or another. The personal ability of the Official Receiver plays a major role in the control exercised over the administration of bankruptcies.

We believe that such a recommendation is of too general a nature to result in precise directives. We are in agreement that the State should be asked to observe more care in the choice of Official Receivers, but a better selection of Receivers will not eliminate the necessity of making organizational changes in the administration of bankruptcies.

168. In its eleventh and last recommendation, the Mercier Commission asks the Superintendent of Bankruptcies to make more frequent use of certain powers which are given to him by the Bankruptcy Act :

That by virtue of the provisions of Article 3, paragraph 5 of the Bankruptcy Act, the Superintendent, see to the organization of a permanent service of investigation, or that this service be created by virtue of all other legislative provisions, this service being called upon to report on each enquiry to the Attorney General for appropriate action.

We believe that the agreement reached between the Superintendent of Bankruptcies and the Minister of Justice of Quebec, has already answered this wish of the Commissioner Mercier. The terms of the agreement reached, even detailed the division of responsibility in matters of investigation between the Minister of Justice of Quebec and the Superintendent of Bankruptcies.

We believe, however, that the Minister of Justice of Quebec too must conform to the spirit of this provision in the Bankruptcy Act and organize on a permanent basis, auxiliary services which are essential if the work of the police forces and the Crown prosecutors are to be fruitful.

FINDINGS AND RECOMMENDATIONS

FINDINGS AND RECOMMENDATIONS

1 — The following summarizes the findings and recommandations of the Commission. Some of the recommandations describe the ideal to be attained eventually, others could be put into effect immediately.

2 — The three principal reasons motivating our interest in fraudulent bankruptcies are :

a) Quebec has for some time been attributed with the title of national champion in bankruptcy matters ;

b) Long before the Commission was formed, fraudulent bankruptcies had been the subject of many public discussions in this Province ;

c) Quebec and Ottawa both consider the problem serious enough to warrant negotiations and joint efforts (paragraph 1).

3 — Generally speaking, organized crime does not appear to be directly implicated in Quebec fraudulent bankruptcy rings. This does not at all mean that organized crime would not endeavour to obtain its share of the benefits : it has undoubtedly exercised pressure on Quebec criminals operating in this sector.

4 — Bankruptcy itself is not within the mandate of our Commission. The Commission, however, has taken the liberty of examining provisions of a civil nature whenever the law or the procedures seem to particularly facilitate the work of defrauders.

5 — Some of the hearings dealing with fraudulent bankruptcies had to be held in camera. Whenever possible the Commission has indicated in its report the substance of these "exploratory meetings" provided this information in no way endangered any person or affected seriously or unfairly, public interest or individual rights (paragraph 9).

6 — The study of statistical reports shows that the number of bankruptcies appear to be definitely decreasing on the Canadian level,

while the average cost of a bankruptcy is increasing. For the whole of Canada, the number of bankruptcies, proportionate to the number of commercial and industrial enterprises, is at its lowest level since 1960. However, overall losses continue to increase. Despite some encouraging signs, Quebec still experiences more than its share of commercial bankruptcies.

7 — Experienced police officers believe that approximately half of Montreal's bankruptcies warrant serious examination. Their opinion is based on the following: when the assets of a bankrupt company represent less than half of its liabilities, there is reason for an enquiry. Other specialists believe this criterion to be inapplicable (paragraph 23).

8 — Various motives have persuaded us to examine closely the legislation and the administration in bankruptcy matters:

a) In Quebec the sheer volume of bankruptcies makes frauds easier, and more difficult to detect;

b) Specialists who had uncovered a number of frauds, were unable to bring these to the attention of the court because of a shortage of legal personnel;

c) When so many frauds occur, the law itself merits a serious examination to determine whether it is not too full of loopholes and difficult to apply.

9 — Despite the historical background, the Commission for the following reasons, does not believe that it is sound to leave the administration of the Criminal Code to the provincial authority, while reserving bankruptcy legislation to the federal authority:

1) The two authorities have often shown themselves incapable of coordinating their efforts;

2) Dubious practices can develop without timely intervention by legislation and administrative control (paragraph 28).

10 — RECOMMENDATION 1:

That Quebec begin discussions with the Canadian government to end the concurrent jurisdiction now in effect in bankruptcy matters.

11 — RECOMMENDATION 2:

That Quebec negotiate with the Canadian government to place bankruptcy matters under the exclusive jurisdiction of the province.

12 — RECOMMENDATION 3:

That the intention to place bankruptcy and insolvency matters under the exclusive administrative and legislative jurisdiction of the Province of Quebec, take into consideration the need for:

a) a federal bankruptcy law covering insolvent debtors whose assets are located in different provinces;

b) inter-provincial agreements, multi-lateral and reciprocal, which will be needed for the implementation of judicial decisions with regard to the realization of the assets of a bankrupt who carried on business in more than one province.

13 — Such recommendations are all the more easy to understand since bankruptcy is according to all evidence and in spite of a certain number of frauds, essentially a civil domain which, in our opinion, should justify provincial precedence.

14 — Still other ambiguities affect bankruptcy. Indeed, aside from being an area of concurrent jurisdiction, aside from being chiefly a civil area and only secondarily a criminal one, bankruptcy is a domain controlled by men who, in some cases, are both judges and administrators (paragraph 32).

15 — RECOMMENDATION 4:

That the powers of the Official Receiver who now exercises powers of a judicial and quasi-judicial nature, be modified so that the Official Receiver be strictly a public administrative official who would however retain his wide investigative powers as well as complete authority to supervise the administration of bankruptcy cases by the trustees.

16 — RECOMMENDATION 5:

That the Registrar, who usually exercises the powers of the Court, be invested with all those judicial and quasi-judicial powers now exercised by the Official Receiver so that bankruptcy and insolvency rules observe to a greater extent the fundamental distinction which exists between judicial and administrative authority.

17 — The study of the activities of various fraudulent bankruptcy rings (paragraphs 34 to 44) reveals that the defrauders knew extremely well how to take advantage of the weaknesses of the legislation and the administration in bankruptcy matters. Specificially, some of the best precautionary measures provided by the law were reduced to the level of simple formalities: meeting of the creditors, examination of the bankrupt, appointment of inspectors...

18 — Without a shadow of a doubt, the fact that government debts are privileged, contributes to the indifference of ordinary creditors with regard to the administration and surveillance of a bankruptcy. In most cases, once the State has deducted the amounts owing to it, there is nothing left for the ordinary creditors.

19 — **RECOMMENDATION 6:**

That only the Registrar having jurisdiction in the district where the insolvent debtor has his registered offices, his principal place of business or the majority of his assets would have the competence to accept an assignment of property or the deposit of a proposal and to preside at the general meetings of creditors.

20 — **RECOMMENDATION 7:**

That the Registrar of the division where an assignment of assets is filed appoint the trustee.

21 — **RECOMMENDATION 8:**

That the Official Receiver should always be able to examine the tenders concerning the sale of assets of a bankruptcy. For this purpose tenders should be addressed directly to the Official Receiver so that he may open them in public at a time selected by him, and list them in a specific register accessible to any interested party. Following this the tenders would as usual, be handed over to the trustee of the bankruptcy.

22 — **RECOMMENDATION 9:**

Unless otherwise decided by the majority of the creditors, the location of bankruptcy of a debtor (by virtue of an order of the Receiver given upon petition or upon assignment) be that of the judicial division of the locality of the debtor as defined by Article 3 (k) of the Bankruptcy Act.

23 — **RECOMMENDATION 10:**

That the priority of payment of creditors now in force by virtue of the Bankruptcy Act, which provides for the Crown, in the right of the Province, to be paid by preference from the proceeds of the sale of the assets, whether for taxes or levies, be modified so that this priority would exist only for a limited period of time.

24 — **RECOMMENDATION 11:**

At the expiration of this "priority period", it is recommended that the claims of the Crown in the right of the Province be treated in the same manner as ordinary claims.

25 — In the past, many frauds went unnoticed because of an almost complete lack of qualified personnel. Particularly at the level of the Crown, judicial action has often been delayed because none of the Crown prosecutors had acquired the necessary experience.

26 — **RECOMMENDATION 12:**

That at the level of the Crown — in Montreal and for the appellate district of Montreal — at least three lawyers specializing in bankruptcies and commercial frauds be permanently and exclusively assigned to cases and prosecutions of such a nature, at least until such a time as all of the arrears are cleared up.

27 — **RECOMMENDATION 13:**

That at the level of the Crown — in Quebec and for the appellate district of Quebec — at least two lawyers specializing in bankruptcies and commercial frauds be permanently and exclusively assigned to cases and prosecutions of that nature, at least until such a time as all of the arrears are cleared up.

28 — **RECOMMENDATION 14:**

That the offices of the Crown prosecutors particularly in Montreal and Quebec, insure the continuity of their files by establishing, in the case of fraudulent bankruptcies and commercial frauds, a system of indexing and information constantly kept up to date.

29 — **RECOMMENDATION 15:**

That the department of Justice preserve and develop its own central judicial section and maintain constant contact with the offices of the Crown prosecutors.

30 — **RECOMMENDATION 16:**

That this central judicial section, under the direction of a specialist in bankruptcy and commercial fraud, coordinate, supervise and assist the activities of the various Crown prosecutors acting in this domain.

31 — **RECOMMENDATION 17:**

That the offices of the Crown prosecutors which will include Crown prosecutors specializing in fraudulent bankruptcy, also be staffed with at least two chartered accountants who, by their technical assistance, will help the lawyers in their enquiries and in their search for evidence.

32 — **RECOMMENDATION 18 :**

That the lawyers assigned to the various offices of the Crown be available to the members of the Provincial Police in charge of enquiries into frauds, particularly in bankruptcy matters, as well as to the members of the municipal police services assigned to similar enquiries.

33 — **RECOMMENDATION 19 :**

That the police officers assigned to the fraud-enquiry squads, especially in bankruptcy matters, be specifically trained for this work and that they benefit from the technical assistance of the Crown prosecutors and accountants assigned to these departments.

34 — Generally speaking, the work accomplished until now by the squads specializing in frauds is excellent. However, we draw attention to a fact which inquiries sometimes overlook (paragraph 57). Checking with suppliers the total volume of merchandises supplied to a debtor during the period immediately preceding a bankruptcy is often overlooked. This is a serious oversight in a sensitive area, as fraud is usually perpetrated in two phases :

a) massive increase in purchases over a short period of time ;

b) rapid liquidation of inventories before a bankruptcy.

35 — **RECOMMENDATION 20 :**

That the work of police officers charged with the enquiry into frauds, particularly with regard to bankruptcies, be supervised and directed by the Crown prosecutors and the accountants assigned to these officers.

36 — **RECOMMENDATION 21 :**

That the Department of Justice revise the salaries offered to Crown prosecutors so that the scale of salaries encourages both the recruitment and the retention of the best practitioners in the service of the State (paragraph 60).

37 — The examination of fraudulent bankruptcy files shows that some trustees have regularly failed to fulfill in an honourable and thorough manner, the duties associated with their office and have not always shown sufficient vigilance in protecting creditors rights. Fortunately such acts remain the exception. Moreover, in most cases, the Superintendent of Bankruptcies has already taken action by suspending the licences of a number of trustees.

38 — Similarly, the study of cases reveals that some lawyers, with full knowledge of the facts have, to say the least, played a questionable role in some bankruptcy cases. These are certainly the exception, but one must admit that these exceptions take on considerable importance at a time when a large percentage of bankruptcy cases are concentrated in the hands of a small minority of practitioners (paragraph 64).

39 — **RECOMMENDATION 22 :**

That the Bar of Quebec through its provincial syndic examine the professional conduct of several members of the Bar who appear to be involved in fraudulent bankruptcy cases in a manner contrary to professional ethics. That the enquiry of the provincial syndic include a detailed examination of the professional activities of these lawyers.

40 — Looking closely at the number of postponements in cases of fraudulent bankruptcies, one gathers the impression that the majority of judges simply do not wish to be involved in these extremely complex cases (paragraph 67). Indeed, a fraudulent bankruptcy case often leads to extremely involved studies and accounting analyses and to an administrative investigation for which not everyone has either the inclination or the competence.

41 — **RECOMMENDATION 23 :**

Particularly in Montreal, it is necessary that the Court of Sessions of the Peace assign two full-time judges to the hearing of commercial fraud cases, including those deriving from bankruptcy, at least until such a time as all of the arrears are cleared up.

42 — **RECOMMENDATION 24 :**

That the assignment of those judges destined to fulfill these special functions in the Court of Sessions of the Peace in Montreal (and periodically, in Quebec as well) be made by the Chief Justice of the appellate district.

43 — **RECOMMENDATION 25 :**

That the judge or judges assigned to these special functions sit for a three month period, either at the preliminary enquiry, or at the trial, so that these cases might be placed on a peremptory roll and witnesses called for a definite date.

44 — **RECOMMENDATION 26 :**

That the Chief Justice replace the three judges assigned to these special functions every three months so as to keep the hearings from

becoming monotonous, and prevent excessive uniformity in the sentences.

45 — It is imperative that the various public services involved in the administration of bankruptcy recognize the necessity for better information in that field. However, excessive diffusion of strictly confidential information should be avoided. The question of the relations to be created between the Quebec Secretary and the police forces should therefore be approached with care. Theoretically, one should hope for better communications between the two services but, in practice, discretion must also be maintained (paragraph 71). For instance, it must not be incumbent on the Quebec Secretary's office to forward to the various police forces, copies of all the documents and information which it receives, even though they might pertain to fraudulent bankruptcies. This would represent a constant duplication of efforts and, sometimes an encroachment upon the fundamental rights of the individual.

46 — RECOMMENDATION 27 :

That the Quebec Secretary's office be responsible for the organization of its own index on : applications for incorporation, real owners of enterprises, the bankruptcies and frauds pertaining to them.

47 — RECOMMENDATION 28 :

That the Quebec Secretary and the Department of Justice jointly formulate a firm policy with regard to the diffusion of information maintained by the Quebec Secretary.

48 — RECOMMENDATION 29 :

That the policy adopted with regard to information kept by the Quebec Secretary be revealed to the National Assembly and to the public.

49 — An effort must be made to achieve a balance : put an end to the present laxity without, however, excessively and arbitrarily spreading information of a confidential nature. Once the policy will have been firmly and clearly established, the Quebec Secretary will probably be able to better participate in the fight against commercial frauds and give a more useful answer to the legitimate and specific questions asked by the different law enforcement agencies.

50 — So that the Quebec Secretary will be in a position to better answer the needs of the public, certain legal provisions must be modified.

51 — RECOMMENDATION 30 :

That Articles 13 and 24 of the former Companies Act of Quebec (R.S.Q. 1941, ch. 276) be reinstituted so that the directors of a company be personally responsible in those cases where the business was started without a certain capital being subscribed.

52 — RECOMMENDATION 31 :

That the compulsory capital subscribed represent a fixed percentage of the authorized capital. The former law provided a minimum of 10 percent, which appears to be the least that could be expected.

53 — RECOMMENDATION 32 :

That the Companies Act of Quebec (R.S.Q. 1949, ch. 276) reinstate Article 42 so that the deposit of a copy of a contract with the Quebec Secretary be again compulsory when the payment of shares is made otherwise than by cash.

54 — RECOMMENDATION 33 :

That the Quebec Secretary's office, through the intermediary of its companies branch send an acknowledgment of receipt to the actual applicants for incorporation so as to confirm their existence.

55 — RECOMMENDATION 34 :

That the Quebec Secretary immediately ask for an enquiry if the acknowledgment of receipt sent to an applicant for incorporation comes back, stamped "address unknown", "moved" or any other such endorsement.

56 — RECOMMENDATION 35 :

That the Quebec Secretary carefully check the proposed corporate name, or trade name so as to avoid the fraudulent use by individuals of similar names which might result in confusion for the public.

57 — RECOMMENDATION 36 :

That the Companies Information Act compel the real owners of an enterprise to identify themselves forthwith to the Quebec Secretary's office.

58 — RECOMMENDATION 37 :

That the Quebec Secretary more thoroughly verify the information which must be submitted in conformity with Articles 3 and 4 of the Companies Information Act (R.S.Q., ch. 281).

59 — RECOMMENDATION 38 :

That there be more frequent recourse to the provisions of those articles of the Companies Act of Quebec (R.S.Q. 1964, ch. 271) which provide for the suspension of a charter when a company does not comply with a request for information.

60 — In our opinion, it would be proper to give corporate directors additional reasons to respect the laws which concern them. In other words, we believe that it is necessary to compel the true owners of an enterprise to identify themselves. We also believe that the directors who fail to discharge their obligations according to the law, should suffer the consequences on a personal level.

61 — RECOMMENDATION 39 :

That the provisions of Article 46 of the Department of Revenue Act (R.S.Q. 1964, ch. 66) be modified so that the presumption juris tantum which is directed at acts of commission, also affect omissions : thus directors would also have to exculpate themselves from their faults of omission.

62 — RECOMMENDATION 40 :

That Article 153 of the Provincial Revenue Act (S.R.Q. 1964, ch. 69) be in line with the preceding recommendation (39) so that directors here as well, be obliged to clear themselves of their faults of omission by virtue of a presumption juris tantum applicable to acts of commission as well as to acts of omission.

63 — RECOMMENDATION 41 :

In conformity with the line of thought expressed in the two preceding recommendations (39 and 40), that any statute establishing a tax, i.e. retail sales tax (R.S.Q. 1964, ch. 71), tobacco tax (R.S.Q. 1964, ch. 72), restaurant tax (R.S.Q. 1964, ch. 73), gasoline tax (R.S.Q. 1964, ch. 74), and all similar taxes be modified so as to respect the two established principles :

a) that the presumption juris tantum which affects directors by reason of their acts of commission, also affect them by reason of their acts of omission ;

b) that the directors thus presumed at fault be given the opportunity to exculpate themselves of their acts of omission.

64 — Independently of any modifications which might be made to the law for the application of which the Provincial Secretary is responsible, the most important measure against fraudulent bankruptcy would

be to substantially increase the personnel on which the Official Receiver has to rely. It is even our belief that the Official Receiver should be able to count on a certain number of trustees hired directly by the State on a permanent basis and thereby enabling him to apply an interim receivership in all cases where he deems it necessary.

65 — RECOMMENDATION 42 :

That the Province of Quebec itself hire on a permanent basis, a certain number of public trustees who will be able to apply an interim receivership in all cases where the Official Receiver will deem it necessary.

66 — RECOMMENDATION 43 :

That interim receiverships be applied until further notice in all cases where it appears that the assets of a bankruptcy represent less than half of the liabilities. This regulation to be progressively modified as experience will have supplied better criteria for a more rapid detection of frauds.

67 — RECOMMENDATION 44 :

That the remuneration offered to those who undertake the responsibilities of inspectors of bankruptcies be revised as quickly as possible.

68 — RECOMMENDATION 45 :

That the above recommendation (44) be extended to the remuneration of inspectors of bankruptcy on an hourly or daily basis, so that it be equivalent to that which they earn in their normal activities.

69 — Considering the important part played by credit in our economic system it is quite normal to find credit at the source of the majority of bankruptcies and commercial frauds. In most of the cases which we had occasion to examine, credit played a major part, and only a small minority of bankruptcies would have degenerated into frauds without that factor.

70 — RECOMMENDATION 46 :

That the government, private enterprise and unions jointly undertake a publicity compaign so that the general public and more particularly industrialists, suppliers of material and businessmen be made more aware of some of the requirements for a healthy administration. For example, that particularly perilous situations be stressed to them :

a) when orders emanate from new clients who are totally unknown, and call for delivery of merchandise or goods purchased on credit ;

b) when credit references emanate from sources whose identity have not been carefully checked or whose real value is relatively unknown ;

c) when credit rates and payment conditions are such, that payments become impossible from the start...

71 — **RECOMMENDATION 47 :**

To combat fraud in commercial matters more efficiently the State take over the examinations deemed necessary by the trustees.

PART TWO

ARMED ROBBERY

1 — THE SITUATION IN QUEBEC

1 — THE SITUATION IN QUEBEC (170-179)

169. We have already explained (Volume 3, Section 1, Part 1) that Quebec holds the national crown in the field of armed robbery ; sixty-five percent of the Canadian figures are Quebec's contribution.

Even though Quebec may not be in too unfavourable a position vis-à-vis the total of the crimes of violence against property, our province finds itself in an alarming situation for the most dangerous of these crimes.

It is not that Quebec has a monopoly on armed robberies. The Canadian or American statistics show clearly that other regions and various states have known, or are experiencing epidemics similar to that from which we suffer. However, the court and police statistics of Canada show that Quebec for some time has been afflicted every year with more armed robberies than all the other Canadian provinces combined [1].

It is also noticed (Appendix 31) that our questionable fame has spread abroad, and that we are considered today, even in the United States, as the most serious contender for the title of "World Champion of Armed Robbery".

a) MORE NUMEROUS ATTACKS (170-172)

170. The Table I tells the sad story of the supremacy of Quebec in the area of armed robberies and burglaries of banking establishments. In fact, if the figures from 1963 to 1966 are combined, it is seen that Quebec alone was responsible for 475 out of the 787 armed robberies and burglaries which took place in Canada. From year to year, Quebec dominates : in

[1] For the purpose of this study, we will draw largely on the figures of the Dominion Bureau of Statistics. We will also use in part the excellent studies and compilations made by the Canadian Banker's Association and contained in thier brief. At the request of the Commission, the Canadian Banker's Association subsequently undertook to carry on its work and supply additional tables. However, a major part of our analysis stems directly from the research made by the Montreal police force under the direction of Mr. Guy Tardif. We will utilize this information when we deal with the Montreal situation (paragraph 180).

1963, 125 out of 172 crimes ; in 1964, 104 out of 188 ; in 1965, 112 out of 178 ; and in 1966, 96 out of 167 crimes.

TABLE I

ARMED ROBBERIES AND BURGLARIES — BY PROVINCE

	1963		1964		1965		1966		TOTAL 1963/1966
	(1)	(2)	(1)	(2)	(1)	(2)	(1)	(2)	
British Columbia	10	1	23	2	22	2	26	6	92
Alberta	Nil	1	1	2	5	2	7	Nil	18
Saskatchewan	Nil	Nil	3	3	Nil	2	Nil	2	10
Manitoba	1	1	1	1	Nil	Nil	2	Nil	6
Ontario	34	Nil	51	7	36	3	32	2	165
Quebec	125	5	104	9	112	16	96	8	475
New Brunswick	Nil	Nil	2	2	2	1	2	Nil	9
Nova Scotia	2	Nil	3	2	1	Nil	2	Nil	10
Prince Edward Island	Nil	Nil	Nil	1	Nil	Nil	Nil	Nil	1
Newfoundland	Nil	1	Nil	Nil	Nil	Nil	Nil	Nil	1
	172	9	188	29	178	26	167	18	787

(1) Armed robberies and attempts at armed robberies.
(2) Burglaries and attempted burglary of banks.

171. Table II supplies additional information about these armed bank robberies and burglaries.

This table shows the number of bank branches, including sub-agencies, and the number of crimes which were committed in them in 1966, and the comparison between Quebec and Ontario becomes even more overwhelming than in Table I. Ontario with 2,078 bank branches suffered only 34 crimes (32 armed robberies and attempted armed robberies — 2 burglaries or attempted burglaries). Quebec, on the other hand, has 1,606 bank branches, and suffered 104 crimes (96 armed robberies and attempted armed robberies — 8 burglaries and attempted burglaries).

If, instead of comparing Quebec with Ontario, the comparison is made between Quebec and British Columbia, we are afforded some meager consolation in that another province is almost as bad. British Columbia, with hardly more than 25 percent of the bank branches in Ontario, is afflicted with almost the same number of crimes as the latter province : 32 crimes in 588 banks branches. Relating the number of crimes to the number of branches, British Columbia is second to Quebec : in 1966 1 branch out of 18 was attacked in British Columbia ; 1 out of 15 in Quebec.

TABLE II

AVERAGE OF CRIMES IN BANK BRANCHES (INCLUDING SUB-AGENCIES AND BRANCHES

	Number of * branches	Number of crimes (1966)	Average number of crimes per branch
British Columbia	588	32	1: 18
Alberta	462	7	1: 66
Saskatchewan	321	2	1:160
Manitoba	279	2	1:139
Ontario	2,078	34	1: 61
Quebec	1,605	104	1: 15
New Brunswick	132	2	1: 66
Nova Scotia	189	2	1: 94
Prince Edward Island	29	Nil	—
Newfoundland	17	Nil	—
Yukon and North West Territories	17	Nil	—
CANADA	5,807	185	1: 31

* To December 31, 1966.

172. These tables confirm our initial overall judgment — the bandits are more frequently at work in the branch banks of Quebec than in the branch banks of other Canadian provinces. To this should be added an important element — bandits secure the greater part of their loot in Quebec.

In the course of recent years, it was in Quebec that the larger part of losses recorded by banks and credit unions following armed robberies, took place. According to a reliable source, the losses incurred by Quebec during a very recent year, even attained 89 percent of the total of the Canadian losses. That document gave the following percentages :

1963	80.6%	of the Canadian losses
1964	34.2%	took place in Quebec
1965	74.1%	
1966	89.4%	
six first months of 1967	80.2%	

All in all, Canadian losses in four and a half years amounted to $7,137,000 out of which Quebec was responsible for $4,921,000.

b) THE IMPORTANCE OF MASKED GANGS (173-174)

173. The Table III underlines an important element which is another major difference between the Quebec situation and that of the other Canadian provinces, and that is whether an armed robbery has been committed by a lone bandit or by a group [1].

Crimes committed by gangs are better organized and can more easily escape police detection. Furthermore, it is much easier for gangs than it is for individuals, to increase the number of crimes and even to start a crime wave in a region. The mere fact that a gang has been formed, indicates the participation by professional criminals, if not habitual criminals. In other words, when a gang sets to work it might well be suspected that there is participation by individuals whose principal source of revenue is derived from crime.

The Table III presents a rather disturbing image of the Quebec situation. Quebec is the only Canadian province where the majority of armed robberies are committed by gangs and not by lone bandits. In Quebec the exception is, not the activity of a gang but the action of a single bandit. For example, in 1963, only 20 armed robberies in Quebec were the work of a lone individual while 105 crimes of the same type were committed by gangs. In 1964 the margin is somewhat reduced but it is still definitely in favour of groups : 25 crimes committed by an individual as against 79 by groups. In 1965 20 crimes out of 92 were committed by a lone bandit. In 1966 only 13 of the 96 armed robberies were committed by individuals [1]. During that period, the great majority of crimes committed in Ontario were the work of lone bandits : 27 as against 7 gang roberries in 1963 ; 41 as against 10 in 1964 ; 19 as against 17 in 1965 and 27 as against 5 in 1966. In British Columbia too, where the problem of armed robbery is almost as crucial as in Quebec, more crimes are committed by lone bandits : 9 single bandit as against 1 gang robbery in 1963 ; 19 as against 4 in 1964 ; 19 as against 3 in 1965 and 21 as against 5 in 1966.

174. Other information adds still further to the gloom generated by this description of armed robberies committed in Quebec. In particular, it should be pointed out that Quebec bandits have, in addition to working in gangs, the habit of using disguises. Table IV establishes a comparison between Quebec and Ontario as to the number of armed robbery attacks committed by masked bandits.

[1] As an example of the "success" which can be achieved by *one* gang, reference should be made to the file of the Kyling gang (Appendix 32).

TABLE III

ARMED ROBBERIES — KIND OF ATTACKS

	1963		1964		1965		1966	
	Gang	Lone bandit	Gang	Lone bandit	Gang	Lone bandit	Gang	Lone bandit
British Columbia	1	9	4	19	3	19	5	21
Alberta	—	—	1	4	1	4	2	5
Saskatchewan	—	—	1	—	—	—	—	—
Manitoba	—	1	—	—	—	—	—	2
Ontario	7	27	10	41	17	19	5	27
Quebec	105	20	79	25	92	20	83	13
New Brunswick	—	—	2	—	—	2	—	2
Nova Scotia	1	1	1	2	—	1	—	2
Prince Edward Island	—	—	—	—	—	—	—	—
Newfoundland	—	—	—	—	—	—	—	—
	114	58	98	90	113	65	95	72

In the words of the Canadian Banker's Association: "According to the above-mentioned figures, it can be seen that during the year 1966 and 1967 the percentage of crimes perpetrated by masked or disguised criminals, rose to an average of 85 percent in the branch banks of Quebec. The comparative figure for the Province of Ontario was approximately 13 percent" [1]. Without the shadow of a doubt the use of disguises results in serious additional problems for the police who are called upon to make arrests and to establish the identity of the guilty persons.

TABLE IV

COMPARISON BETWEEN QUEBEC AND ONTARIO AS TO THE NUMBER OF ARMED ATTACKS COMMITTED BY MASKED BANDITS

		Number of armed attacks	Masks or other disguises %		Not masked or disguised %	
1966	Quebec	96	80	(83.3%)	16	(16.7%)
	Ontario	32	5	(15.6%)	27	(84.4%)
1967	Quebec	165	141	(85.4%)	24	(14.6%)
	Ontario	84	10	(11.9%)	74	(88.1%)

c) SMALLER PERCENTAGE OF ARRESTS (175)

175. Other factors should be mentioned. If one considers the figures for 1967, it would seem that the margin is becoming smaller between the number of armed attacks perpetrated in Ontario, and the corresponding number for Quebec.

In 1963, Ontario had 1,967 bank branches, and 30 armed robberies were recorded. Quebec during the same year had 1,514 bank branches and suffered 125 armed robberies. Four years later, in 1967, Ontario had 2,107 bank branches and numbered 90 armed robberies. In the course of the same year, Quebec reached the figure of 1,600 bank branches and 175 armed robberies.

Consequently, in the space of four years, the number of armed robberies tripled in Ontario, while it increased by approximately 40 percent in Quebec. However, it would be wrong to consider these recent fragmentary and

[1] Brief of the Canadian Banker's Association.

uncertain indications as particularly reassuring. Even if the number of armed robberies is increasing in Quebec at a slower rate than previously, we have hardly made any progress. For the situation to improve, it would call for the arrests of a much greater number of criminals. We are far from doing this. The Table V supplied by the Canadian Bankers' Association shows that in Quebec the number of arrests is much smaller than in the neighbouring province. There seems to be some improvement from 1965 to 1966 but the figures for 1967 dispel this illusion very quickly. The figures for 1967 show that 112 bandits participated in bank robberies committed in Ontario during 1967, and that 64.2 percent of these criminals were arrested and brought before the courts. In Quebec, during the same period 449 offenders participated in 175 robberies, but only 19 percent of them were arrested and judged. [1]

TABLE V

ARMED BANK ROBBERIES

	1965		1966	
	Number of crimes	Percentage of cases where arrests where made	Number of crimes	Percentage of cases where arrests where made
British Columbia	24	33	32	46
Alberta	7	71	7	42
Saskatchewan	2	50	2	0
Manitoba	Nil	—	2	100
Ontario	39	38	34	64
Quebec	128	19	104	34
New Brunswick	3	33	2	100
Nova Scotia	1	100	2	50
Prince Edward Island	Nil	—	Nil	—
Newfoundland	Nil	—	Nil	—

d) FEWER GUILTY PLEAS (176)

176. The situation is further complicated by the fact that of those charged in Quebec fewer plead guilty than the accused brought before the Ontario courts [2].

It is easy to understand that the hooded bandit should feel safer from police detection than the bandit who does not use any disguise. So our

[1] The figures for 1967 in particular cannot constitute a sound basis for analysis, as they had not yet undergone the "judiciary processing" at the time the authors of the brief utilized them before the Commission.

[2] Thus the difficulties of police detection result in a slowing down of the police administration, and a great deal of extra work for the Crown.

Quebec bandits in gangs, organized, masked, believe that they have more chances than their Ontario counterparts of escaping the hazards of the court. It is therefore not al all surprising that 81 percent of the accused brought before the Ontario courts, plead guilty at their appearance, while only 38 percent of the Quebec accused do likewise. It is not possible to explain such a difference by arguing that there are different police procedures.

e) LONGER LEGAL PROCEDURES (177-178)

177. Under such circumstances, it is not at all surprising that the legal procedures take much longer in Quebec than in Ontario. As can be seen in Table VI, the lapse of time between the date of arrest and the end of the trial is today much greater in Quebec than in Ontario. However, there has been considerable improvement during the last few years.

TABLE VI

NUMBER OF DAYS BETWEEN THE DATE OF ARREST AND THE END OF THE TRIAL

Year	Quebec	Ontario
1964	284	130
1965	282	116
1966	148	115

In 1964 the period of time from arrest to judgment was twice as long in Quebec as in Ontario: 284 days against 130. In 1966 Quebec had already reduced the margin between the date of arrest and the end of the trial, to 148 days, while Ontario saw its figure reduced from 130 to 115.

It would be an oversimplification and an unfairness to conclude from these summary figures that our administration of justice is abnormally slow in this field. The facts already given show that the guilty pleas are much less frequent in Quebec than in Ontario; and the procedure is therefore much longer when the Crown must secure the evidence to prove guilt than when the individual pleads guilty. The Table VII which compares the pleas of guilt recorded in both provinces, shows quite definitely the considerable margin which separates Quebec from Ontario.

178. These facts explain the situation: they do not do away with it. A number of unfortunate cases arise for which some slowness in our administration of justice is responsible. We borrow the following examples from

the documentation submitted to the Commission by the Canadian Bankers Association. We will reserve until later the necessary comments with regard to the deterrent force of sentences.

TABLE VII

COMPARISON BETWEEN QUEBEC AND ONTARIO AS TO THE NUMBER OF PLEAS OF GUILT RECORDED

		Number of cases reported	Guilty pleas registered	%	Others	%
1964	Ontario	26	25	(96%)	1	(4%)
	Quebec	66	30	(45%)	36	(55%)
1965	Ontario	19	13	(68%)	6	(32%)
	Quebec	74	31	(42%)	43	(58%)
1966	Ontario	16	14	(87%)	2	(13%)
	Quebec	62	18	(29%)	44	(71%)

EXAMPLES OF DELAYS IN THE COURTS, VIOLATIONS OF BAIL, AND LIGHT SENTENCES

July 3, 1962

On this date, the branch of the Bank of Montreal located in the Rockland Shopping Centre was the scene of an armed attack. Some time after this attack, Roland Berthiaume was arrested and appeared on July 6, 1962 before Judge "A" under the count of indictment called for by Article 288 (d) of the Criminal Code of Canada. A plea of "not guilty" was recorded and the preliminary enquiry was fixed for July 12, 1962. On that date the preliminary enquiry took place before Judge "B". Berthiaume was indicted, and a voluntary deposition fixed for July 19, 1962. Without a lawyer to defend him on July 19, the accused was sent to trial the date of which was provisionally set for the month of April 1963. On November 8, 1962, he was granted bail.

During the month of April 1963, the case was brought before Judge "C", who adjourned the date of the trial to June 5, 1963. On this date the case was called before Judge "B" who prorogued it to October 2, 1963, at the request of the defence which stated that it was not ready; the lawyer for the Crown made no objection.

On October 2, 1963, the case was called before Judge "D". The date was fixed for November 19, 1963, and the case was called before Judge "C". The latter ordered the cancellation of the bail of Berthiaume and also ordered that he be incarcerated. The date of the trial was set for January 8, 1964 because of the large number of cases which were on the rolls for that day. The Judge "C" deferred the date of the trial to March 10, 1964 when it was again brought to his attention; the defender then asked for bail of $20,000 on immoveables

which was granted. The date of judgment was postponed to March 25, 1964 at the request of the defenders, who stated that they were not quite ready, which did not seem to upset the lawyer for the Crown.

The trial began March 25, 1964 before Judge "E" and continued March 26, 1964, April 10, 1964, April 17, 1964, May 1, 1964, May 20, 1964, June 4, 1964, June 18, 1964 and finally June 25, 1964. The Judge "E" stated that he would render judgment the following day, that is June 26, 1964, the date on which the accused was acquitted.

March 20, 1964

Pierre Morissette was accused of an attempted armed robbery of the Provincial Bank of Ste. Anne des Plaines, Province of Quebec. He was freed on bail after the first hearing. March 26, 1965 he pleaded guilty to attempted armed robbery, and was condemned to *six months in prison*, and this without regard to previous convictions related to burglary, breaking and entering, and simple theft.

March 26, 1964

This deals with the Bank of Montreal located at the corner of Hochelaga and Bossuet Streets in Montreal. André Martin, one of those indicted under the charge of armed robbery, was condemned to a sentence of 2 years in spite of a legal record going back to 1955, which included burglaries, breaking and entering and simple theft, the theft of a truck, receiving stolen goods, attempted assault and armed robbery. The other accused, Yves Bergeron was also condemned to a sentence of two years.

April 5, 1964

The accused was arrested the night of April 5, 1964, while running away from the branch of the Canadian Imperial Bank of Commerce located at the intersection of Roche and Mount Royal Streets in Montreal. Subsequently he was charged with burglary.

He was freed on bail, and judgment was fixed for May 18, 1965. On May 18, 1965 the judgment was deferred because of the absence of a witness. On account of the large number of trials on that day, the case was postponed until autumn. The case was finally fixed for March 17, 1966, then adjourned successively to May 13, August 31, December 9, February 20, 1967, and April 26, 1967 On this last date, the accused pleaded guilty and was retourned for judgment on May 29th. May 29th, judgment was put off until September 25th. September 25th, it was put off to December 11th. December 11th, the sentence was carried over to April 8, 1968.

July 27, 1964, August 26, 1964

On July 27, 1964, an agency of the Bank Canadienne Nationale at St. Dominique was the scene of an armed robbery. August 26, 1964, an agency of the Banque Canadienne Nationale St. Damase was the scene of an armed attack, but no money was taken.

November 20, 1964, Jacques Lajoie, Jacques Diamond, and Ronald Léveillé were arrested and on the same day they appeared in St. Hyacinthe under indictments against Articles 406 (a) and 288 (d) of the Criminal Code. They pleaded "not guilty" and the preliminary enquiry was fixed for November 27, 1964. The preliminary enquiry was successively postponed to December 4, December 11, December 21 and subsequently took place December 28, 1964.

On December 30 they made a voluntary statement and were sent back to the Assizes February 3, 1965. Judgment was then deferred until April 21. They were found guilty and Ronald Léveillé was condemned to a sentence of three years. The sentences of Diamond and Lavoie were adjourned until June 18, 1965; Diamond was condemned to a sentence of 10 years and Lavoie to 7 years.

August 7, 1964

On this date, the branch of the Bank of Montreal in Calumet in the Province of Quebec was also subjected to an armed robbery. Three men were subsequently arrested; one of them was Gilles Simon whose trial under the indictment of possession of stolen goods was fixed for June 16, 1966. The judgment in the Court of Assizes of Quebec, was postponed as follows: to September 28, 1966, November 29, 1966, January 30, 1967, April 12, May 26, June 29, September 28, and April 10, 1968.

June 25, 1965

Three men, all armed with revolvers stole money from the three cashiers at the branch of the Bank of Nova Scotia in Grenville, P.Q. An inspector of the bank was threatened when he said he could not open the vault. The three men involved in this affair, Denis Nadeau, Florian Jacques and Gustave Lamothe were subsequently arrested and pleaded guilty to the offence. On August 13, 1965 they received the following sentences:

Denis Nadeau	— 1 year
Florian Jacques	— 2 months
Gustave Lamothe	— 6 months

August 24, 1965

On August 24, 1965, an armed robbery took place at the branch of the Bank of Montreal located at the corner of Christophe Colomb and Mount Royal. Yvon Dubreuil was charged in this case and he was granted provisional liberty after his preliminary enquiry. While he was waiting for judgment, he was killed by an accomplice during an armed robbery of another branch bank.

May 6, 1966

On this date a branch of the Banque Canadienne Nationale at St. Ours was the object of an armed robbery and one hour later Andre Lefort and Berthold Gaudet were arrested. On May 10, 1966 they appeared in Sorel before Judge Peloquin and pleaded "guilty". Their judgment was postponed until May 17, 1966. Lefort then pleaded "not guilty" and on May 24, 1966 he was sent to his preliminary enquiry. The sentence of Gaudet was adjourned to June 1; on this date he was given a sentence of one year. On May 17, the preliminary enquiry of Lefort took place and he was returned for judgment; he was given his freedom on bail. February 28, 1967 the judgment was adjourned to March 28, then to May 30. On this date the prosecutor for the Queen was not ready and the judgment was deferred until July 4. The bail was renewed. On this last date, Andre Lefort pleaded "guilty" and the sentence was fixed for August 29; the bail remained. On August 29, Lefort was condemned to one year in prison and a fine of $200.

June 8, 1966

On June 8, 1966, a branch of the Banque Provinciale of Canada, located at 911 Saint Cyrille West, in Sillery, Quebec was the scene of a robbery. Three

suspects were arrested and remanded for trial to the Court of Assizes in autumn after the preliminary hearing before Judge Paul Roy. The suspect, Jean Paul Boies, while still under arrest following this robbery was found guilty of a charge brought against him by the Income Tax Office. He was condemned to one year in the penitentiary.

At the autumn Assizes the three suspects asked for a speedy trial before a judge. The trial began before Judge "A" but it was then adjourned to January 16, January 20, February 1 and to February 28 on account of the sickness of the Judge who was to preside.

February 28, 1967 Judge "A" was still absent and consequently bail was agreed to and fixed at $1500 in the case of Albert Parent and Andre Rheaume, and they were liberated.

April 10, 1967 the case was submitted to the Chief Judge of the City of Quebec for the purpose of deciding whether or not another trial was necessary because of the illness of the Judge.

It was discovered that the three suspects at the time of the robbery, were out on bail following a charge of robbing a postal truck at Lac St. Jean in the Quebec region. Moreover, it appeared that the three had long court records.

June 23, 1966

Three or four armed hooded bandits broke the window of the branch of the Royal Bank at the corner of Dorchester and Guy Streets in Montreal. The employees were forced to lie down on the floor and the cash was taken from three cashiers. The police quickly spotted the vehicle used for the get-away and one of the bandits was arrested while trying to escape in his automobile. Revolvers, machine guns and part of the money were found in the vehicle. The bandit arrested was Claude Savaria; he was found guilty and condemned to a sentence of *20 months.*

October 10, 1966

Jacques Beauchemin and Conrad Lemire were arrested approximately 1 hour after having committed an armed robbery at the Provincial Bank of St. Cyrille and after having attempted a second robbery of the Banque Canadienne Nationale at St. Zéphirin. They were caught in possession of the stolen money and of a loaded revolver and appeared at Drummondville.

November 8, 1966	— Lemaire pleaded guilty of armed robbery.
" " "	— Beauchemin pleaded guilty to armed robbery and to theft of an automobile.
" " "	— The two were released on bail and the trial was set for February 14, 1967.
February 14, 1967	— The trial was adjourned to March 19, 1967.
March 19, 1967	— The trial was deferred to May 9, 1967.
May 9, 1967	— Lemaire and Beauchemin were condemned to one day's imprisonment.

179. The reason we are postponing discussing this question of sentences, is because the deterrent effect of sentences in the domain of armed robbery, as elsewhere, warrants a separate study. At the present time we are only endeavouring to have a better understanding of the Quebec reality so that we can undertake the study of causes and remedies with full knowledge of most of the important elements.

Even now it is possible to establish some kind of an inventory. The statistics show that Quebec, in addition to being subjected to more bank robberies than any other Canadian province, also has an abnormally low percentage of arrests. We have already noted that the existence of organized gangs and the anonymity provided by disguises, explain, at least in part, this poor result.

The Quebec reality therefore, presents two sides : (1) Quebec suffers a larger number of attacks; and (2) Quebec is less able to protect itself than other provinces.

At this stage we can, therefore, agree with the summary prepared by the Canadian Bankers' Association :

a) in the course of the years 1963 to 1966 there were a larger number of armed attacks against bank branches in Quebec than against branches located in all the other Canadian provinces ;

b) from 1963 to 1966 there were almost three times more armed attacks in Quebec than in our neighbouring province, even though Ontario has a much larger number of bank branches. In the course of 1967, however, the margin between Ontario and Quebec seems to have narrowed ;

c) in the province of Quebec, the majority of armed attacks against banks have been perpetrated by gangs of two or more. In 1966, 86 percent of armed attacks committed in Quebec, have been carried out by such gangs as against 16 percent in Ontario and 25 percent in all of the provinces other than Quebec ;

d) if the experience of 1966 were to be repeated, Quebec could envisage that *1 bank branch out of 15* would be the victim this year of an armed attack or a burglary. This compares with a rate of 1 out of 66 in Ontario, and 1 out of 52 in Canadian provinces other than Quebec. The experience of the first six months of 1967 shows that the Quebec rate may even reach the level of *1 out of 12*.

II — THE SITUATION IN MONTREAL

II — THE SITUATION IN MONTREAL (180-183)

a) RATE VICTIMIZATION OF BANK (180)

180. For many reasons a study of armed robberies in Quebec must reserve a special place for the Montreal situation. To describe this, we have drawn largely from the study made by the Montreal Municipal police under the direction of Mr. Guy Tardif.

From the cutset, Table VIII shows the seriousness of the problem. While Quebec easily heads the Canadian provinces with a rate of "victimization" of *one branch bank out of 15* the City of Montreal has even exceeded this : for the year 1967 it had 99 armed attacks against 482 bank branches, which is a rate of "victimization" of *one branch out of five.*

TABLE VIII

DISTRIBUTION OF BRANCHES AND ROBBERIES BY INSTITUTION

INSTITUTION	Number of branches	Number of robberies	Rate of victimization
Credit Unions	98	7	1/14
Banque Canadienne Nationale	84	23	1/ 4
Bank of Montreal	55	9	1/ 6
Royal Bank of Canada	55	13	1/ 4
Savings Bank	53	9	1/ 6
Provincial Bank	48	18	1/ 3
Canadian Imperial Bank	34	3	1/11
Toronto-Dominion Bank	32	12	1/ 3
Bank of Nova Scotia	21	4	1/ 5
Other banks	2	1	1/ 2
TOTAL	482	99	1/ 5

On analysis, it is seen that the rate of victimization varies considerably from one "institution" to the other. In other words, all banks are not attacked with the same frequency. At one extreme we find the Credit Unions and the Canadian Imperial Bank of Commerce : their rates are respectively 1 branch out of 14, and 1 branch out of 11. At the other extreme is found the Banque Provinciale and the Toronto-Dominion Bank, both of which have a rate of robbery slightly higher than 1 branch out of 3.

b) INFORMATION ON CRIMES : HOUR, DAY ... (181)

181. Certain hours appear to be particularly propitious for armed attacks against bank branches, as is indicated by Table IX. An analysis of the hourly distribution shows that the early business hours of the banks are the most dangerous.

TABLE IX

HOURS OF ARMED ROBBERIES IN MONTREAL

— 1 robbery took place between 9:00 and 10:00 hrs
— *27 robberies took place between 10:00 and 11:00*
— 16 robberies took place between 11:00 and noon
— 10 robberies took place between noon and 13:00
— 15 robberies took place between 13:00 and 14:00
— 11 robberies took place between 14.00 and 15:00
— 17 robberies took place between 19:00 and 20:00
— 2 robberies with no indication

In the same way, Table X shows that certain days are particularly "vulnerable". Thursday and Friday show more armed attacks than all the other days of the week together.

TABLE X

DAYS WHEN ARMED ROBBERIES ARE COMMITTED IN MONTREAL

— 26 robberies on Friday
— 25 robberies on Thursday
— 17 robberies on Tuesday
— 15 robberies on Monday
— 15 robberies on Wednesday
— 1 robbery on Sunday

The research service of the Montreal police has also endeavoured (Table XI) to establish constants between the police districts and the armed attacks. To understand this table it is necessary to know that the territory of Montreal is divided by the police, into four divisions which are unequally sub-divided into 16 districts. On reading the Table XI it is noted that the armed robberies are distributed quite unequally from one district to the other, and even from one station to the other.

For example, the west division which includes Stations 9, 10, 12, 14 and 15, shows the poorest "business". However, the fluctuations are extra-

ordinary within the division : Station 15 shows a rate of victimization of 1 out of 4, while Station 9 although situated in the same division, only suffers from a rate of victimization of 1 branch out of 24.

TABLE XI

DISTRIBUTION OF THE NUMBER OF BRANCHES AND THE NUMBER OF ROBBERIES BY POLICE DISTRICT

	Number of Branches	Number of Robberies	Rate of Victimization
Centre Division			
Station 1	29	2	1/15
Station 4	32	8	1/ 4
Station 16	33	9	1/ 4
Station 17	23	3	1/ 8
Total	117	22	1/ 5.4
East Division			
Station 3	40	7	1/ 6
Station 6	28	3	1/ 9
Station 7	22	5	1/ 4
Total	90	15	1/ 6
West Division			
Station 9	24	1	1/24
Station 10	51	4	1/13
Station 12	22	1	1/22
Station 14	25	2	1/12
Station 15	38	10	1/ 4
Total	160	18	1/ 8.9
North Division			
Station 5	3	0	0
Station 18	30	13	1/ 2
Station 19	45	13	1/ 3
Station 20	37	18	1/ 2
Total	115	44	1/ 2.6
GRAND TOTAL	482	99	1/ 5

It is quite evident that the north division is faced with special problems : with a number of branches almost equal to those in the centre division (115 against 117) the north division has twice as many armed robberies (44 against 22). This is undoubtedly due to the fact that the access and exit roads are much more accessible in the north sector of the city thus permitting robbers to make their escape with less difficulty.

c) MODUS OPERANDI OF CRIMINALS (182)

182. Under the general heading of *modus operandi* Table XII gives considerable information for the year 1967 in which there were 99 armed bank robberies. In it, the research service of the Montreal police has grouped the data concerning the number of individuals involved in each of the robberies, the various disguises used, the methods used to obtain the money from the bank branches, and to escape . . .

On examination very few constants become apparent. (It will be noted in Section C that six of the criminals are believed not to have been armed, although the study deals particularly with armed robbery).

Three groups of equal importance exist with regard to the *choice of arms :* 33 carry machine guns, 30 have shot guns and 30 have revolvers or pistols. It is extremely interesting to note that during the year 1967, no person was either killed or wounded in the course of about 100 armed attacks against bank branches. According to the experts of the Montreal police, "in one out of every four cases, different forms of violence were committed before, during or immediately after a robbery. *In all these cases, these acts of violence were unprovoked and were only intended to frighten*" [1].

More than 20 of the offenders did not make use of an automobile to escape. Here again, it is quite possible that some of them did in fact escape by automobile but that there were no witnesses. If such were the case, the already high percentage (77 out of 99) would be even higher.

TABLE XII

MODUS OPERANDI

A — *Number of authors*

In 21 cases the robbery was committed by only 1 person.
In 34 cases the robbery was committed by 2 persons.
In 26 cases the robbery was committed by 3 persons.
In 14 cases the robbery was committed by 4 persons.
In 4 cases the robbery was committed by 5 persons or more.

B — *Disguises*

Disguises were utilized in 83 cases; none was noticed in 16 other cases. The disguises utilized are: dark glasses (13 cases); silk stockings to hide the face (12 cases); handkerchiefs (4 cases); various masks (54 cases).

[1] This confirms the statements of Director Jean Paul Gilbert of the Montreal police (Appendix 33).

C — Arms

Almost all of the perpetrators were armed, that is in 93 cases out of 99.
In 33 cases they brandished machine guns.
In 30 cases they had shot guns.
In 30 cases they brandished revolvers or pistols.

D — *How the robbers asked for the money*

In 93 cases there was a verbal threat.
In 3 cases they presented a written threat.
In 3 cases different methods were used.

E — *Violence*

In 74 cases no shot was fired.
In 25 cases the bandits fired their weapons.
In 2 cases the police made use of their arms.
The 25 cases of violence committed by the bandits were divided as follows;
— In 3 cases they fired their machine guns.
— In 9 cases they fired the shot guns.
— In 13 cases they fired a revolver or a pistol.

F — *Methods of flight*

In 77 cases out of 99 the malefactors made their getaway by motor vehicle. In 68 cases, stolen vehicles were used. In 9 cases the stolen vehicles carried licence plates which had also been stolen from other vehicles. In order of preference, the robbers utilized the following automobile makes, which were almost all stolen vehicles:
— in 16 cases a Pontiac was used.
— in 15 cases a Chrysler was used.
— in 14 cases an Oldsmobile was used.
— in 9 cases a Buick was used.
— in 23 cases various other makes were used.

d) INCREASING NUMBER OF ROBBERIES (183)

183. It is difficult to determine exactly the amounts taken from banking establishments in 1967. According to the study already quoted, the total proceeds reached $535,509.00, which is an average of $5,409.00 per robbery on the basis of the 99 crimes. In 90 percent of the crimes, the robbers were able to escape with the loot; in 9 cases, still according to the same study, there were no spoils. Moreover, an amount of $43,444.00 was recovered. The Table XIII gives a distribution of the stolen amounts [1].

[1] These figures should be kept in mind when the number of persons involved in these crimes are counted. Consideration should be given to the following alternatives: *either* the same individuals are always involved in these crimes, *or* the spoils for each bandit are quite meagre.

TABLE XIII

VALUE OF THE AMOUNTS STOLEN

AMOUNT STOLEN			NUMBER OF ROBBERIES
Less than		$ 500	2
$ 501	—	$ 1,000	5
$ 1,001	—	$ 2,000	10
$ 2,001	—	$ 4,000	25
$ 4,001	—	$ 6,000	16
$ 6,001	—	$ 8,000	12
$ 8,001	—	$10,000	5
$10,001	—	$12,000	8
$12,001	—	$15,000	3
$15,001	—	$30,000	3
Plus de		$30,000	1
TOTAL			90

III — THE PRESENT FIGHT AGAINST ARMED ROBBERY

III — THE PRESENT FIGHT AGAINST ARMED ROBBERY
(184-192)

a) THE POLICE FRAGMENTATION (184-187)

184. Faced with this far-reaching problem, how do the police forces react ? The answer to this question assumes great importance : it is indeed essential to determine whether the Quebec epidemic of armed robberies results from the ineffectiveness of our police forces, and whether we can count on them to resolve it [1]. The Table XIV adds several pessimistic points to those which we have already raised. It shows that the Toronto Metropolitan police do twice as well as the municipal police of Montreal when it comes to apprehending a bank robber on the day of the crime (67.7 percent against 34.5 percent).

TABLE XIV

ARRESTS MADE (1967)

	Number of arrests	At the place of the crime	During the get away	Later in the day	Number of arrests made the same day
In Montreal	29	2	6	2	10 (34.5%)
In Quebec (other than Montreal)	21	—	1	8	9 (42.9%)
Metropolitan Toronto	31	5	7	9	21 (67.7%)
In Ontario (other than Toronto)	21	3	5	3	11 (52.4%)

Notice should also be taken of the terms of comparison utilized in Table XIV : *Metropolitan* Toronto and City of Montreal. The results would

[1] Some prefer to have confidence in the deterrent effect of sentences. We will get to that (paragraphs 188-191).

be without question even worse if we were to compare Metropolitan Montreal, divided as it is, to Metropolitan Toronto, which has united its police forces under a single government.

We have already indicated with regard to the different divisions of the Montreal police, that the proximity of access roads makes the north part of the City particularly attractive to bank robbers. We have also noted that the bank robbers show a definite preference for quick-starting automobiles. However, these explanations in themselves are not sufficient. For Quebec to be thus submitted, year after year, to actual waves of armed robberies, and for the rate of detection to remain, notwithstanding all efforts, at such an unsatisfactory level, must mean that our fight against crime suffers from insurmountable handicaps and lack of effort or resources. For our part, we believe, as do the senior officers of the Montreal police force, and as do a large number of experts, that the fragmentation of the police forces on the Island of Montreal and in the suburbs is one of the most obvious causes of the ineffectiveness of our fight.

185. The absence of permanent coordination appears to us to be both obvious and detrimental. Undoubtedly, the men of the various police forces are learning to collaborate with each other but the different *institutions* jealously preserve their autonomy, and nobody as yet has the necessary authority to build and maintain a common front and a unified policy.

Over and over again the example is given of the criminal who perpetrates an armed robbery within the limits of the City of Montreal and who has only a few yards to go to find himself in another municipality. He thus enjoys, at least for several important minutes, a kind of immunity which allows him to disappear from sight quite easily [1].

It should not be decided prematurely that Montreal finds itself constantly in a worse position than any of the other large centres. Toronto, thanks to its administrative cohesion is able to carry on a more effective fight today, but many of the large American centres have merited and still merit an even worse reputation than Montreal. Besides, the rest of Quebec also has its share of problems (Appendix 34) as the fragmentation of police forces affects the whole Province.

186. At the level of police work, the fight against armed robbery lags considerably, even though the statistics indicate certain improvements, viz., a better percentage of arrests, less delay in the procedures, a lower rate of increase in the number of crimes . . .

[1] Undoubtedly the pursuit can be carried out to a certain point, but the practical difficulties increase rapidly, so much so that the general judgment remains substantially correct.

All in all, police work which should be the most effective weapon suffers from various limitations by reason of the fact that the polices forces are subject to many authorities and quite often must respect geographic frontiers which the criminal gangs can ignore completely. As in other sectors of crime, shortcomings in police work result almost necessarily in an increase in the number of crimes. At this point a vicious circle commences : as the police work is inadequate, the criminals have more freedom of action ; as the criminals show themselves to be more active, the police are bogged down more and more. And so the wheel turns !

187. Up to recently, there was very little realization of the influence which the fragmentation of police forces could have on crimes. Today the Association of Fire and Police Chiefs deplores publicly the lack of coordination between the various police forces and looks most favourably to the creation of mechanisms to deal with this problem, such as the Police Commission.

However, even the specialized groups such as the Canadian Bankers Association, have traditionally placed more importance on the severity of penalties than on the regrouping of polices forces. We reproduce (Appendix 35) the correspondence of the Canadian Bankers Association with the Attorney General of Quebec in Autumn 1963. It is revealing to note that at that period the Association had not dared, or did not wish to deal with the problem of the proliferation of police forces. Today the idea of collaboration and coordination of police forces has made considerable progress and everybody, from chiefs of police to the banking institutions, *is convinced that one of the real causes of the Quebec volume in certain sectors of crime, is definitely the fragmentation of police forces.*

b) SENTENCES IN CONFORMITY WITH THE AVERAGE

(188-191)

188. While the public and specialized associations are beginning to show themselves more demanding with regard to police coordination, the attitude is practically unchanged with regard to the relationship between the sentence and the crime. In 1969 just as in 1963, the question is still being asked : Are the number of armed robberies and burglaries higher in Quebec because sentences are consistently lighter ?

In the opinion of some, Quebec criminals are treated too mercifully by the courts and they constantly abuse the leniency of society. The following extract from a speech made by Mr. Maurice A. Massé, Vice-President of the Bank of Montreal, appears to us to be particularly revealing :

For this purpose it became evident to us very quickly that the recurrence of crime could not be imputed to several isolated factors. On the contrary, it seems evident to us that it is much more the reflection of numerous problems which our society must face up to. We are thinking here more definitely of the increased unemployment, of the limited means available to the judicial apparatus, and of which the most striking result is often the number of crimes not cleared up, and which remain unpunished. We have also in mind *some paroles whose results have been, to say the least, disturbing*. As an example, here is an extract from an article published in the "La Presse" on March 16, 1967 under the title "Released 1151 days ahead of time and recaptured 2 weeks later":

"It was with a great deal of astonishment that the Judge T.A. Fontaine acceded to a petition and signed a warrant of imprisonment for 1151 days against a bandit who had been freed from the penitentiary by the Parole Board 1151 days before the expiration of this sentence. (The sentence was 5 years imprisonment for two armed robberies). With robberies of this kind increasing daily in our city, said the judge, one can rightly ask whether such reductions in the sentence do not contribute to some extent to encourage the audacity of criminals of all kinds and of bandits in particular."

B... had been freed from prison after having served 20 months and several days of this sentence. Two weeks later he was recaptured at the wheel of a stolen car and he was again condemned to one year in prison [1].

189. Mr Massé then made reference to an American bishop whose statements went even further:

"Today, by reason of the mistaken attitudes of some social workers, of several incompetent judges, of soft-headed thinkers and of some whining women, compassion is shown not to the individual who has been victimized, but to his assailant; not to the police but to the narcotics traffickers. The new saviours of a perverted society say: "I don't condemn you! Go and sin again!" May these judges and social workers who negate the difference between good and bad, learn, without themselves being victims of attempts, that all criminals are not necessarily sick people".

This suffices for the public to recognize a thesis defended both eloquently and often. That the deterrent effect of sentences should be raised when the fight against armed robberies is being discussed is, without question, normal. Recourse to firearms is, and rightly so, in the eyes of public opinion, one of the most dangerous crimes.

However, it would be a mistake to believe that the proliferation of armed robberies in Quebec results from a leniency on the part of Quebec courts. In fact, the average of the sentences given for bank robberies, places Quebec within the average for Canadian provinces. Table XV shows, for example, that armed robbery will earn its perpetrator a sentence of 6½ years, if it is committed in Quebec, 6 years and 3 months if it is committed in Ontario, 8 years detention if it is committed in Alberta, 8 years and 5 months if it is committed in British Columbia.

[1] Speech made during the conference organized by the Society of Criminology of Quebec at the University of Montreal, April 20, 1968.

In some ways the Quebec sentences are not considered altogether satisfactory. Indeed, according to exponents of the exemplary sentence, it would be normal to impose much heavier sentences when dealing with a crime epidemic. In other words, their thinking is that Quebec should impose much heavier sentences than Ontario since our average of armed robberies is much higher than that of our neighbouring province. In the same line of thought these individuals stress that British Columbia, faced with an almost identical problem, reacted with sentences which are on the average, 2 years longer than the Quebec sentences (8 years and 5 months against 6 years and 6 months). On this basis, the partisans of the exemplary sentence, appear to be right: Quebec sentences are not, on the whole, exemplary. On the other hand Quebec cannot be criticized for being more merciful than some of the other provinces. And as we have already said, the sentences imposed in Quebec are very close to the national average.

TABLE XV

AVERAGE OF SENTENCES GIVEN FOR BANK ROBBERIES — 1966

	Armed	Not armed
British Columbia	8 years and 5 months	3 years and 2 months
Alberta	8 years	4 years
Saskatchewan	—	—
Manitoba	3 years and 6 months	—
Ontario	6 years and 3 months	3 years and 4 months
Quebec	6 years and 6 months	3 years and 11 months
New Brunswick	—	—
Nova Scotia	5 years	—
Prince Edward Island	—	—
Newfoundland	—	—

190. Table XVI details the general information in the preceding paragraph. It gives the list of sentences handed down for armed bank robberies during 1966 in the three Canadian provinces most involved with this type of crime.

It should be noticed on the one hand, that 28 out of 43 sentences given in Quebec were between 1 and 5 years, while 50 percent of the sentences given in British Columbia were between 10 and 16 years of detention. On the other hand it should also be pointed out that Quebec is the only pro-

vince to give sentences of more than 16 years (one of 19 years, one of 20 years). It should also be stressed that none of the sentences handed down in Quebec in the case of armed bank robberies, carried a sentence of less than 2 years.

TABLE XVI

SENTENCES GIVEN FOR ARMED BANK ROBBERIES — 1966

Sentence	Quebec	Ontario	British Columbia
1 year		1	
2 years	4		1
3 years	4	2	
4 years	5	1	1
5 years	15		1
6 years	1	1	
7 years	1	3 (5 strokes of the whip added in one case)	
8 years	3	1	
9 years	1		
10 years	5	1	1
11 years			
12 years		1	
13 years	1		
14 years	1		1
15 years			1
16 years			
17 years			
18 years			
19 years	1		
20 years	1		
Total sentences	43	11	6

One can see that it becomes extremely hazardous to draw general conclusions from a limited number of sentences. Undoubtedly in some isolated cases, it could be proved quite easily that an individual has deliberately abused the clemency of the court or the generosity of the Parole Board. However, the margin is still too slim between Quebec an the other Canadian provinces with regard to sentences, to be able to find there the chief and conclusive explanations of the great disparity which exists between Quebec and the other provinces with regard to the number of armed bank robberies.

We are therefore reluctant to follow the lead of the Canadian Bankers Association who preferred in 1968, just as they did in 1963, to attribute a large part of our violent crimes to judicial clemency. The Canadian Bankers Association have the following reaction to Table XVI :

> 34.9 percent of those who are condemned in Quebec receive a sentence longer than 5 years; in Ontario the proportion of sentences exceeding 5 years is 63.6 percent. In British Columbia, the proportion is 50 percent.

191. The Canadian Bankers Association continues its analysis in the same vein when it declares :

> Even if one takes into account the fact that in the Province of Quebec the courts have handed down some severe sentences which have raised the average jail terms, the figures which are seen in the preceding tables indicate that a more lenient treatment is generally granted to Quebec criminals guilty of armed bank robbery [1].

To dissipate any uncertainties of interpretation, the Association draws its own conclusion :

> Taking into consideration the fact that in Quebec the robberies committed against banks are of a more violent nature, it would seem obvious that the sentences handed down to those who are guilty of these crimes should be more severe. The banks believe that the sentences given by the courts play an important role in the prevention and control of crime, and even if it is difficult to establish an equitable and full comparison of the sentences handed down by various jurisdictions, one has a feeling that the sentences given by the courts in the Province of Quebec, have not corresponded in an appropriate manner to the high level and to the nature of the crimes which exist in the province [2].

According to the Commission, this evaluation of the problem does not appear to be justified. On the one hand it is not at all certain, as the work done by the Montreal police force has shown, that violence is more prevalent in Quebec armed robberies than in those of other provinces. Furthermore, in our opinion, it has not been established that the Quebec courts have shown themselves to be unduly lenient. Even before taking into consideration the human elements which the courts have certainly considered, as we have already said, Quebec is just about within the Canadian average. Finally, if one wants to criticize the slowness of our judicial administration, it undoubtedly becomes necessary to ask as many questions of the police forces as of the judiciary. In other words, while it is important that the courts proceed with the greatest possible speed in judging the bank

1 Brief submitted by the Canadian Bankers Association November 30, 1967.
2 *Ibidem.*

robber, it is even more important that the police forces increase their coordination and efforts to clear up a larger number of crimes [1].

c) LOW RATE OF POLICE DETECTION (192)

192. We have already noted that the fragmentation of the police forces explains to a great extent, the ineffectiveness of the fight against armed robbery. Insufficient as it undoubtedly is, police detection should nevertheless not be discounted.

Table XVII gives the results of the police investigations with regard to Montreal. The figures were tabulated three months after the end of the year 1967, and deal with the crimes committed during that year. The figures are therefore not necessarily complete, as it is quite possible that unsolved crimes might be successfully resolved by the police during succeeding weeks and months.

TABLE XVII

RESULTS OF POLICE INVESTIGATIONS

By April 1, 1968, that is 3 months after the end of the year :

— 24 of the 99 affairs had been resolved.
— 46 of the 250 malefactors involved had been arrested.

Out of the 46 arrests :

— 22 took place at the same time or immediately after the robbery.
— 9 took place at least 1 week after the robbery.
— 8 took place between 1 week and 1 month after the robbery.
— 6 between 1 month and 6 months after the robbery.
— 1 took place 8 months after the robbery.

The arrests were made :

— in 37 cases by the police.
— in 7 cases by employees of the bank.
— in 2 cases by witnesses.

The actual inventory ? One case out of four has been cleared up. The proportion of malefactors arrested ? That is even lower, as only 46 out of 250 involved have been arrested. There is reason, however, to clarify this last statement, as from all evidence, some malefactors have committed

1 Without saying so openly, some representatives of the security services of the banks let it be understood that the offences are increasing because the courts are not harsh enough. An example of this is found in the text of an address given by M. Leon Pronovost, Security Service of the Provincial Bank of Canada at the *"2nd Congress on Criminology of Quebec"*, Editions Beauchemins, 1966, pp. 154-158.

more than one crime. The figure of 250 therefore carries with it quite a percentage of error. It nevertheless is true that the number of arrests shows, once again, that the effectiveness of the Quebec police forces can hardly be compared with that of the police of other provinces and particularly with that of the Toronto police force.

Table XVII shows moreover, that the majority of arrests took place at the same time as the robbery or very shortly after. Apparently, the chances of apprehending the criminal or criminals are much better if the police are able to intervene at the time of the action or very shortly thereafter.

Finally, it is especially interesting to note that an appreciable percentage (9 out of 46) of the arrests have been made either by employees of the banks or by witnesses. Undoubtedly the bank employees in question are generally former policemen and a number of them were, up to quite recently, armed. This calls for consideration : on the one hand the banking institutions have themselves made quite an effort to see to the security of their branches ; on the other hand, something isn't quite right with regard to police intervention, as the majority of criminals are able to escape, and approximately 20 percent of those apprehended are caught by others than the police.

IV — IMPORTANT PERSPECTIVES

IV — IMPORTANT PERSPECTIVES (193-201)

a) ORIENTATION OF THINKING (193-194)

193. Up to the present we have limited ourselves to figures covering the years from 1962 to 1966. As more recent statistics become available, it has been possible to see that the most pessimistic predictions made during the preceding years have been realized and even surpassed. In other words, the police forces must resign themselves to a reality which is even worse than was predicted by the most gloomy prognostics. For example, where the Canadian Bankers Association foresaw that 1 bank branch out of 15 would be attacked by armed gangs in actual fact the rate has reached 1 branch out of 12.

For *Time* magazine of April 18, 1969, it was therefore only realistic to paint an extremely harsh portrait of Quebec (Appendix 36). Quebec has assumed the definite appearance of a province where the gun is still the law in different circles. The magazine affirmed, for example, that the amount of losses suffered daily by the banking establishments were almost at their peak in the City of Montreal (only New York having attained a higher rate). In addition, they considered that the rate of apprehension and police detection was, in the case of Quebec, at an abnormally low level with every criminal gang having an 80 percent chance of escaping arrest and even questioning.

From the point of view of sentences and paroles, Quebec differs very little from the other Canadian provinces, and even American States, and there is nothing to give rise to the suspicion that Quebec criminals benefit from a more favourable treatment than those of other provinces.

It nevertheless remains that the rate of violent crime against property continues to be, by reason of armed robberies in Quebec, at a high level : Quebec, as we have indicated (volume 3, tome 1, part 1) has no abnormal increase in the field of violent crimes against property, but it certainly must examine its conscience with regard to increases in the most disturbing categories of this type of crime viz. armed robberies [1].

[1] We repeat that this phrase "violence against property" must be constantly questioned. Even in the opinion of the Montreal police, violence was not used in all the armed robberies studied.

The article in *Time* to which we have referred, raises an interesting hypothesis. According to a Professor of McGill University, Quebec criminals do not feel that they are hurting Quebec by attacking a bank branch. The phenomenon of national alienation has, in fact, reached such a degree of exasperation that the criminals cannot bring themselves to consider the banking establishments as belonging to the Quebec collectivity. *To steal from a bank is equivalent to stealing from a perfect stranger...*

194. In our opinion, there is no easy answer to the various problems raised by Quebec's "mania" for armed robbery. It can be seen that different methods must be adopted to free our society from this plague. At the present time there has be an arbitrary selection of those reforms which are most urgent and likely to be fruitful. In effect, reforms must be made on several levels : in legislation, as in sentences, in police work, as well as within the banks themselves.

In the field of legislation, one can envisage, for example, an increase in the sentence for those who utilize disguises. There should also be a more precise definition of a firearm and more severe enforcement of registrations.

The "sentence" is a most sensitive problem. It is neither desirable nor possible for a Commission such as ours to take issue with the deep convictions of a judge. Moreover, quite a number of analysts, attributed our sad leadership in the domain of armed bank robberies to the clemency of Quebec courts, which would appear to call for drastic action at the level of sentences [1]. It could also be suggested that priority be given to police work, thereby making possible more successful results :

1 — It is possible, by supplementary legislation to make available new devices to police forces, wire-tapping, search warrants...

2 — Above all, the police could be required to regroup and coordinate their efforts and form a common front.

With so many avenues open, the merits of the possible intervention should be evaluated.

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1 We do not believe that any conclusive evidence has as yet been offered to support this statement. In our opinion,

1 — it has not been proven, that the Quebec courts systematically give less severe sentences to bank robbers ;

2 — it has not yet been proven that long prison sentences have been more effective than other sentences in the fight against armed robberies.

b) THE FIGHT ON MANY FRONTS (195-201)

1 — Responsibilities of banks (195-197)

195. These different working theories orient our recommendations in various directions.

a) In our opinion, the banking institutions bear a responsibility for the increase in armed robberies. Undoubtedly, as was stated by the directors of these institutions, fairly large sums of money are being constantly invested in new security devices and even in the rewards offered to those who can give information concerning the bank robbers. However, these precautions and these expenditures should not obscure the fact that the different banking institutions have today a tendency to transform their various branches into show places.

b) We are not accusing the banking institutions of favouring armed robberies ! However, it is not possible to disassociate completely the architecture of banking institutions from this kind of crime. The banks have not the right to disinterest themselves from this aspect of the problem without running the risk of resembling someone whose only interest is to increase his profits, leaving to others the responsibility of taking the necessary precautions, or of paying the piper [1].

For a number of years, the preventive methods adopted by the banks have been continuously revised with the purpose of reducing risks and losses. All the methods suggested by the police authorities or offered by different manufacturers have been studied intensively and utilized when they have been considered likely to reduce the possibilities of theft.

In 1964, an independent expert undertook an extensive research into the alarm systems in use in the branches. Following his report, with the collaboration of manufacturers, some of the alarm mechanisms were transformed and modernized to increase their effectiveness as much as possible. These systems connected to the control rooms of protection companies or directly to the police stations, answer all the requirements of the "Underwriters" and of the police authorities. In the Province of Quebec alone, the charter banks have spent during the last 6 months, more than $2,7 million for the installation of modern alarm systems, the maintenance of which costs more than $230,000 a year.

Considerable amounts of money have been invested in the construction of vaults and the purchase of equipment for the protection of their assets and those of their clientele. The vaults, safety boxes and tellers cages have been equipped so that they cannot be opened when the malefactors appear.

During the last 10 years, several banks have organized their own security service under the direction of former police officers. Others have engaged the services of private security agencies. These agents are in constant contact with the

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1 Moreover, the banks have anticipated such insinuations. They have done this in statements which prove, if nothing else, that there is a greater concern for security in Canada than in the United States.

various police forces and frequently take part in the investigation by supplying information which in some cases, has given excellent results.

These services are fully aware of the preventive methods used in the United States, and are using them if they are advantageous for their respective institutions. It is estimated that the annual cost of administration of these services, is more than $300,000. Their tasks consists principally of preventing theft, frauds and the misappropriation of funds ; to protect the employees and to inform them of the manner in which they should act when they are confronted by bandits and forgers ; to inspect the branches and agencies for the purpose of determining their vulnerability, also to inspect their methods of protection and make improvements; to check the condition of the vaults, the safety boxes and the systems of alarm; to recommend the adoption of rules and the eventual issuance of instructions concerning security, and to see that they are observed.

The chartered banks collaborate closely with the government and the police authorities. In 1963 they submitted briefs to the Minister of Justice of Canada and to the Ministers of each of the ten Provinces with the purpose of helping them in their efforts to combat crime and violence. The same year they participated in a world enquiry conducted by the International Criminal Police (Interpol) into the methods of protection utilized in banking institutions. The results of this enquiry have made it possible to state that the preventive methods against thefts have been perfected to a greater extent in Canada than in most of the countries. In 1967 they submitted an extensive brief and made representations to the Commission of Enquiry into the Administration of Justice in Criminal and Penal Matters in the Province of Quebec. In the course of recent years, meetings have been held with groups representing the Postmaster for the purpose of studying the problem of attacks made against postal trucks and post offices. Following these interviews, they have agreed to make many changes in their procedure of sending money and securities by registered mail; this has resulted in the reduction in the danger of losses and thefts while at the same time increasing the cost of operation. Since 1924 the Canadian Bankers Association has had a policy of rewarding citizens who inform the police forces and who assist them in their investigations leading towards the arrest of the authors of bank thefts and bringing them before the courts. In my opinion, this is a most important feature in the arrest and conviction of criminals. For the period from January 1, 1962 to December 31, 1966, the Association has made 374 money rewards for a global amount of $209,498. Of this number 109 for an amount of $81,698 were for thefts committed in the Province of Quebec.

To substantiate the fact that banks are making serious efforts to protect themselves, I draw your attention to an article which appeared in the "Daily Commercial News" of Toronto, March 29, 1966 under the heading "Security", the English translation of which is as follows :

> " This has to do with Mr. Ralph Groves, a Montreal architect who returned to New York where he had participated in a meeting of security advisors. Mr. Groves was of the opinion that amongst the comments which had been recorded, some of them should be made known to the readers of the "Daily Commercial News".

One of them is that Canada might be behind the United States in certain domains but not with regard to that of security.

In addition the architect Groves said :

> " Recently in New York, in the course of a detailed study on the security mechanisms in banks, a comparison was made between the alarm installations in the business offices of certain Canadian banks with those of American banks of equal importance and they have also compared the protection measures adopted by the respective managers of these institutions.
> It was noted with astonishment, that Canada was ahead in the area of effectiveness and administration. These statements were made by security analysts, part of group of experts representing almost all the areas of criminal science and psychology; these are the men who make a specialty of protecting banking institutions and their handling of gold bars, bank notes and securities of all kinds. They also help in the protection of government centres where money is put in circulation and even lend their support to art galleries and museums.
> Some of these advisors who actually carry out investigations in security for Canadian banks in Montreal and Toronto have stated that the methods of constructing bank buildings in Canada are much more advanced than in the United States.
> After an inspection of the branches of certain banks in smaller cities in Canada from one ocean to the other, a consultant "Dr. D. Hurst" has said that the methods of protection in Canadian banks were 12 percent superior to those of American banks of the same categories. He has added that in the smallest Canadian cities the branches of these banks were equipped with costly vaults and strong boxes and they were a credit to the administrators of Canadian banks.
> The analyst W.N. Kearns, has revealed that on the occasional visit to Canada, as an advisor on the problem of armed robberies, he had noted that the administrators of Canadian banks were not content to follow the normal course of things but that they were anxious to find a solution to this kind of crime. He was also of the opinion that the result of the studies undertaken by the Canadian banks would place them years ahead of American banks.
> The support of the insurance companies in the prevention of crime should be stressed, as they have already begun to grant more favourable rates to banks which have introduced new methods of security in their activities ".

I believe that there is need to refute certain criticisms directed against banks with regard to the protection methods they are using and their attitude with regard to losses suffered, under the pretext that they are insured. We have occasionally heard it said : " the banks are not concerned with the losses suffered during armed robberies or by breaking-in ". I admit that the banks are insured against this kind of loss for the same reason that other careful enterprises insure themselves against losses by fire, etc.

Any informed person knows that in the evaluation of risks and insurance premiums, the loss experience is the most important factor, and when this is bad the premiums are increased proportionally. Those who pretend that the banks are content to insure their losses are unquestionably in error. Such an attitude would not have any advantageous result from the pecuniary or any other point of view.

It is frequently said that in the new branch banks, the modern architecture, the open counters without any cage as is seen in the local branches for a number of years, are an invitation to gangs. This might seem a valid point for many, but may I be permitted to ask the following question : " What would be the use of a cage when the personnel both inside and outside is confronted by bandits armed to the teeth ? "

The banks probably could make their branches inattackable. However, the service to the clients would suffer and would be both inefficient and disagreeable.

It is often repeated that the banks in Quebec should maintain armed guards in their branches. This measure of protection has been studied seriously. It is probable that an armed guard could control the single bandit or the amateur. However, there is considerable proof that he could do very little against organized gangs who have a free rein in the province of Quebec.

I could cite many cases where a guard has been disarmed and where even more recently, one of them was killed in an exchange of bullets with a gang of robbers. For the guards in the branch banks to act effectively, they must be better armed than the bandits and ready to use their arms as quickly as the latter without taking into consideration the important factors which prevent them from doing this, such as the security of witnesses for example.

Taking everything into consideration it must be admitted that armed guards are not the solution to the problem in the province of Quebec.

To conclude I must say that I am of the opinion that the banks are doing everything they can to protect themselves against the bandits and that they are increasing their efforts to improve the methods of prevention available to them. They collaborate fully with the authorities in the effort to fight crime and protect society.

I admit that it will never be possible to fully eliminate bank robberies, nevertheless I am of the opinion that the epidemic of thefts of all kinds which has existed for a number of years in the province of Quebec can be done away with, and that the problem concerns the forces of law and order which appear to have more or less lost control of the situation in the area of prevention of crime and violence.

196. This problem should be placed in its right perspective.

For some years it has been noted that the amounts stolen from banking institutions tend to become smaller. Although the number of crimes committed in Quebec, Ontario and British Columbia are increasing, the amount of the losses do not show any great increase. The situation gives the impression that an equal number of criminals are today obliged to perpetrate a greater number of crimes to obtain the same amount of money as in days gone by. This might be explained by the trend in modern business to do away as much as possible with liquid cash.

In other respects, one has the impression that the banks have taken into consideration, as it was normal that they should, the human and financial risks caused by the present epidemic of armed robberies. In a commendable manner, the banks have placed the greatest importance on assuring the security of their personnel and clientele and in Quebec have spent, during 1967, approximately $3 million in the hope of establishing more effective security measures.

On the other hand the banking institutions appear to have calculated that the losses incurred as a result of armed robberies are, in the last analysis, so small that it would be ridiculous to radically change the architecture of most of the branches, and to once again give to banks the appearance of fortresses.

197. The banks are also to be commended for having in some branches, withdrawn weapons from their personnel, to avoid gun battles which would have endangered the lives of personnel or clients. In fact, statistics show that bank tellers or managers never use their firearms. Apart from their unwillingness to endanger lives, it is also most likely that the armed personnel are neutralized by the bank robbers before they can use their weapons. We are fully in accord with this attitude as there is absolutely nothing to indicate that the arming of bank personnel has ever influenced the fight against armed robberies. If additional amounts are to be spent to improve the security measures inside the banking establishments we believe it would be much more desirable to increase the number of alarm bells and signals available than to try to transform inexperienced banking personnel into police officers.

We are not including in these remarks those whose profession it is to act as security agents, and who should be hired more frequently.

2 — Research regarding police efficiency (198-199)

198. Once again we stress the utmost importance of research in this sector of crime.

One example of the kind of research needed, is indicated by the number of false alarms coming from banking establishments. Table XVIII shows that the police service of Montreal has in one year responded to 3,884 false alarms coming from bank branches, — that is an average of approximately 8 false alarms for each bank branch, or each credit union in the City of Montreal.

If we endeavour to relate them to the number of attacks against each type of institution, these figures raise a new series of hypotheses. For example, the Toronto-Dominion Bank whose rate of victimization is highest (12 branches attacked out of 32), is also that which shows the least number of false alarms (4.7 per branch). It is possible to compare the number of armed robberies perpetrated against each banking institution with the number of false alarms emanating from each. The relationship thus created (Table XIX), is at first glance quite revealing. *The banks most seriously affected by attacks,* the Toronto-Dominion Bank and the Banque Provinciale, *have a lower number of false alarms than the others:* the average is 13 false alarms per attack in the case of the Toronto-Dominion Bank, and 20 per attack for the Banque Provinciale.

In a second group is found the Banque Canadienne Nationale (one branch out of 4 is attacked), the Royal Bank (same rate of victimization), the Bank of Nova Scotia (1 branch out of 5 is attacked) and the Savings Bank (1 branch out of 6 is attacked). The number of false alarms per

attack follows this listing very closely. The Bank of Nova Scotia had 28 false alarms per attack, the Royal Bank counted 32, the Canadian National Bank, 34, while the Savings Bank reached a rate of 40 false alarms per attack. The Bank of Montreal is very close to the level of the Savings Bank (9 robberies against 55 branches) and had an average of 66 false alarms per attack. We find that the Canadian Imperial Bank of Commerce whose rate of victimization was just under 1 branch out of 11, and the Credit Unions for which the rate of victimization is 1 branch out of 14, had a fantastic number of false alarms: 105 false alarms per attack in the branches of the Canadian Imperial Bank of Commerce, and 110 false alarms per Credit Union attacked.

TABLE XVIII

NUMBER OF FALSE ALARMS ORIGINATING FROM BANKING ESTABLISHMENTS

Institutions	Number of Branches	Number of False Alarms	False Alarms per Branch
Credit Unions	98	769	7.8
Canadian National Bank	84	781	9.3
Bank of Montreal	55	597	10.9
Royal Bank of Canada	55	445	8.1
Saving Bank	53	360	6.8
Provincial Bank	48	353	7.4
Canadian Imperial Bank	34	315	9.3
Toronto Dominion Bank	32	152	4.7
Bank of Nova Scotia	21	112	5.3
Others banks	2	0	0
TOTAL	482	3,884	8.1

TABLE XIX

NUMBER OF ARMED ROBBERIES RELATED TO THE NUMBER OF FALSE ALARMS ORIGINATING FROM BANKING ESTABLISHMENTS

Institutions	Number of armed robberies	Number of false alarms	False alarms per armed robberies
Credit Unions	7	769	110/1
Canadian National Bank	23	781	34/1
Bank of Montreal	9	597	66/1
Royal Bank of Canada	13	445	32/1
Saving Bank	9	360	40/1
Provincial Bank	18	353	20/1
Canadian Imperial Bank	3	315	105/1
Toronto Dominion Bank	12	152	13/1
Bank of Nova Scotia	4	112	28/1
Others banks	1	0	

199. While it would be presumptuous to draw conclusions from such fragmentary figures, the established relationships are sufficient to justify some work in this direction.

From the statistics now available it would seem quite reasonable to assume that the most effective deterrent is the rapidity of police action. While the sentence itself does not seem to have any impact, the rate of victimization is quickly lowered as soon as a constant contact appears to be established between the banking establishments and the police stations. It is not that we would approve or suggest a system of excessive use of false alarms. However, it cannot be denied that the bandits appear to avoid banking establishments whose policy it is to call the police at the slightest suspicious sign. Research carried on over a much longer period could either affirm or negate such a hypothesis. If it proved to be correct the banking institutions would undoubtedly place more emphasis on improving contacts between their branches and the police stations rather than on more pressure to have sentences increased.

3 — Research on criminals (200-201)

200. To show to what extent research is essential, we borrow from the Montreal police force another series of data (Tables XX, XXI and XXII) regarding the typology of bank robbers, their legal antecedents and the efficiency of our administration of justice when dealing with this sector of criminality.

The information on the typology of robbers shows us that bank robbers are generally about 27 years old, have little schooling, little professional competence, little effective stability. In Table XXI, one is impressed by the length of most of the criminal records. However, 8 out of the 46 indicted for armed robbery had no previous convictions. This makes the record of the repeaters even more impressive. In fact, the previously mentioned 199 crimes and offences must now be divided amongst 38 individuals (and not 46). This Table XXI raises questions as to the rate of police detection. Since the large majority of armed attacks against banking institutions are committed by repeaters, it would appear that the police work should consist of checking the actions of known criminals.

This affirmation is all the more justified since this group of 38 repeaters is apparently responsible for a large number of crimes of violence of all kinds: assault and battery, sex attempts, infractions with regard to offensive weapons... As the number of violent criminals remains to a great extent limited and somewhat stable (cf. Part 1), the field to be checked is restricted. Here research assumes the utmost importance: it will permit ascertaining whether the majority of crimes of violence are committed by a few

individuals, whether most of the repeaters involved here are already known to the police forces for crimes of violence, even whether all the armed robberies are the work of an extremely limited group... At this point one would have a much better idea of how many individuals have divided the one half million dollars stolen in one year in Montreal.

TABLE XX

TYPOLOGY OF ROBBERS

The description of suspects having very little value, as much because of the unnerved state of the witnesses, as by the large number of cases where disguises were used — we should keep in mind that there were 83 cases of disguise — it is from the individuals arrested that we have endeavoured to determine a typology of bank robbers.

A — *Sex*

The 46 individuals arrested were men. The descriptions of the 250 suspects who participated in bank robberies, included 5 of women.

B — *Ethnic Origin*

— in 36 cases those indicted were French Canadians.
— in 4 cases they were English Canadians.
— in 5 cases they were Italians.
— in 2 cases they were of other nationalities.

C — *Age*

The average age of the individuals arrested for robbing banking establishments is 27 years. The following is their distribution by age groups :
— 2 individuals were less than 18 years.
— 10 individuals were between 18 and 22 years.
— 14 individuals were between 23 and 27 years.
— 11 individuals were between 28 and 32 years.
— 6 between 33 and 37 years.
— 3 individuals were older than 38 years.

D — *Schooling*

— in one case the indicted person was illiterate.
— in 32 cases those indicted had received a primary education.
— in 10 cases they had received a secondary education.
— in 3 cases there was no information.

E — *Family Status*

— 34 said they were single.
— 12 said they were married.

F — *Occupation*

— 7 said they were unemployed.
— 14 said they were day workers.
— 14 said they had a trade.
— 3 individuals said they were merchants.
— 1 individual was an office worker.
— in 8 cases no informations was given in the file.

TABLE XXI

COURT RECORDS

Most of the individuals arrested were not first offenders as is indicated by the following figures. Out of 46 indicted

— 35 had court records from the time they were adults,
— 23 had convictions from the time they were minors,
— only 8 had no record either as an adult or as a minor.

The quantitative and qualitative contents of these records are impressive. We find :

— 9 crimes of assaults and battery,
— 7 sex attempts,
— 39 robberies,
— 28 burglaries,
— 19 automobile thefts,
— 34 simple thefts,
— 14 infractions involving use of offensive weapons,
— 49 various crimes and offences.

and imposing total of 199 crimes and offences for 46 individuals, who, it should not be forgotten, hardly 27 years of age.

TABLE XXII

THE ADMINISTRATION OF JUSTICE

By April 1, 1968, 30 cases out of 46 had been judged and 17 were still pending before the courts.

The court decisions in these 30 cases were as follows :
Of those charged :

— 7 were released,
— 3 were interned,
— 2 were granted suspended sentences subject to good behaviour,
— 18 were sentenced to prison terms.

The prison sentences varied from 4 months to 25 years :

— 3 individuals were condemned to less than 1 year in prison,
— 3 individuals were condemned to 2 years in penitentiary,

— 2 were condemned to 3 years in the penitentiary.
— 1 individual was condemned to 4 years in the penitentiary,
— 2 individuals were condemned to 6 years in the penitentiary,
— 2 individuals were condemned to 7 years in the penitentiary,
— 2 individuals were condemned to 8 years in the penitentiary,
— 1 individual was condemned to 15 years in the penitentiary,
— 2 individuals were condemned to 25 years in the penitentiary.

The delays were significantly shorter in the decided cases than in those matters pending. In fact, in the decided cases there was an average period of 4.3 months between the time of arrest and the decision of the court, while in the case of affairs pending, the average length of time at the date of this study was 9 months.

201. Table XXII broadens our field of thought.

1 — One can see that the Montreal police have retained in the list of *authors of crime* those charged whose innocence had been established by the court : *seven of those charged were released...*

2 — One can also see that three of those charged were interned which raises another question : what is the place in court records of individuals judged unable to stand trial or classified as mentally ill ?

As can be seen, the study made by the Montreal police recalls most of the ideas which occurred to us while investigating the area of violent crimes against property, viz., police intervention and even simple contact with the police, are as important and even more so than the severity of the sentences handed down by the courts. The study makes it possible to take a closer look at the identity of the criminals. Although some questions are still unanswered, we are of the opinion that the direction taken by these research efforts, is good and most rewarding. This alone might lead to a better understanding, and the possible rehabilitation of more criminals, without which society will never be effectively protected.

FINDINGS AND RECOMMENDATIONS

FINDINGS AND RECOMMENDATIONS

1 – For many years, Quebec has been constantly afflicted with more armed robberies than all the other Canadian provinces together (paragraph 169).

2 – Quebec has fewer branch banks than Ontario so that there is no purpose in looking to these figures for an explanation of the serious Quebec situation.

3 – If the statistics are established proportionally to the number of branch banks, only British Columbia comes close to the Quebec situation : in 1966 1 branch bank out of 18 was attacked in British Columbia ; 1 out of 15 in Quebec.

4 – The majority of financial losses also are suffered in Quebec : some sources indicate that Canada has lost $7 million in four and a half years of which Quebec's share was $4.9 million.

5 – Quebec is the only province where the armed robberies are consistently the work of groups composed of masked bandits (paragraph 173).

6 – The statistics appear to show a more rapid increase in the number of armed robberies in Ontario than in Quebec.

7 – The rate of police detection is much lower in Quebec than for all of Canada ; in 1967, 64.2 percent of the 112 Ontario bandits were brought before the courts ; 19 percent of 439 Quebec bandits were arrested and charged.

8 – The guilty pleas are much more frequent in the Ontario courts than in Quebec : 81 percent in Ontario against 38 percent in Quebec (paragraph 176).

9 – Thanks to the definite improvements made recently, the judicial procedures of Quebec in the case of armed robberies are almost as rapid as those of Ontario. In 1964 284 days against 130 ; in 1964 148 days in Quebec against 115 in Ontario.

10 — In the case of Montreal, the rate of victimization in 1967 was one branch out of five (paragraph 180).

11 — The rate of victimization varies from one branch out of fourteen (1/14) in the case of credit unions to one branch out of three (1/3), in the case of the Provincial Bank and the Toronto-Dominion Bank.

12 — It appears that some areas, particularly those where access roads are more numerous, are more susceptible to armed robbery : with a number of branches almost the same as that which is found in the center division of the Montreal police (115 against 117), the north division has twice as many armed robberies (44 against 22).

13 — According to the experts of the Montreal police force, "once out of every four times, different kinds of violence have been committed before, during or immediately after the robbery. In all cases, these acts of violence were purely precautionary and were only intended to frighten." (paragraph 182).

14 — In those cases where it was possible to secure information, the average amount of each robbery was $5,409.

15 — The average of the sentences handed down for armed robbery places Quebec almost at the same level as the other Canadian provinces affected by the same plague. For example, if the armed robbery was committed in Quebec, the author received a sentence of six and a half years of detention, six years and three months if it was committed in Ontario, eight years if it was committed in Alberta, eight years and five months if it was committed in British Columbia (paragraph 189).

16 — In an effort to assure the greatest security of their clientele and personnel, and for the better protection of the money entrusted with them, the banking establishments in Quebec have spent in the course of 1967, an amount approximating $3 million for security measures (paragraph 196).

17 — The number of false alarms coming from banking establishments are surprising : for example, the Montreal police forces replied in one year to 3,884 false alarms, that is an average of approximately 8 false alarms for each branch bank, or each credit union in the City of Montreal (paragraph 198).

18 — The banking institutions whose rate of victimization is the highest are also those which have the least number of false alarms (viz. Bank of Toronto : 12 branches attacked out of 32, 4.7 per branch).

19 — The available information describes the bank robber as an unmarried man of 27 years of age, little schooling, without any real professional competence and without any definite stability.

20 — Eight out of the 46 Montrealers found guilty were involved in armed robbery without having ever been condemned for another crime. Furthermore, the group of 38 repeaters are apparently responsible for a large number of crimes of violence of all kinds : assaults, sexual attempts, infractions with regard to offensive weapons...

21 — The examination of the Quebec statistics with regard to armed bank robberies shows that :

1) The rate of victimization was lower when the bank branches communicated more frequently with police forces.

2) The number of armed attacks is higher and the rate of police detection lower in those regions where police coordination is unsatisfactory.

22 — **RECOMMENDATION 1 :**

That the Quebec National Assembly revise the Police Act so as to render obligatory a much greater coordination of police forces, and to form regional decision centres which would be given considerably authority over the different police forces of a region or of a large agglomeration.

23 — The Police Act in its present form, does not underestimate the importance of telecommunications amongst the various police forces. We therefore, are limiting ourselves to the hope that there will be an ever-increasing appreciation of the value of an information network with the establishment of a real coordination of police forces.

24 — **RECOMMENDATION 2 :**

That the regional decision centres should also be information centres available to local or regional police forces.

25 — We believe that the recent amendment adopted by to the House of Commons of Canada in the "Omnibus" bill, will permit a closer surveillance of the registration of firearms. Furthermore, the Provincial authority has not yet fully carried out its responsibilities with regard to the application of this Article of the Criminal Code. Undoubtedly, the Code does not go far enough, but Quebec does not even take advantage of what is permitted.

26 — **RECOMMENDATION 3 :**

That the Quebec government itself issue permits for the carrying of arms and that it verify with the firms selling firearms that for each sale of a firearm there is a corresponding permit.

27 — Conscious of the fact that in Quebec, the worst problem with regard to armed robberies against banking institutions results from the presence and action of organized gangs, we wonder whether the law should be amended to take this into consideration.

In fact, various organisms have recommended to us an increase in the penalties in the case of bank robbers who use disguises to avoid police investigation. Furthermore, in the face of the statistics already given, should there not be an increase in the penalty for the criminal who deliberately participates as a member of an organized criminal gang? This raises the problem of the part to be played by the judge in the fight against crime. In other words, even in the absence of more severe laws, it is still possible for the Quebec judge to be much harsher if he believes that the only way to fight force is by force. This question points up the whole problem with regard to the deterrent effect of sentences.

28 — We do not ask for longer sentences against those found guilty, but we certainly agree that the judges should consider the fact that an individual is part of an organized band as a critical factor. In other words, criminal association should be considered as an alarm signal.

The sentence might not be any longer but it would most definitely call for the entry into the picture of the specialists in human sciences.

29 — We wish to draw attention to the absolute necessity of rehabilitating a much larger number of bank robbers. In fact, the figures indicate that repeaters are responsible for most of these crimes. We know that repeaters are responsible for the majority of these crimes. We have also learned from the studios made by the Institute of Criminology of the University of Cambridge that "the armed robber unquestionnably belongs to the most dangerous category of criminals : operating in gangs, using specific techniques which call for more than average intelligence" (from the Second Congress of Criminology of the Province of Quebec, p. 136). We also know that "these are the predators most of the time repeaters, relatively imprevious to the efforts required for an eventual and hypothetical resocialization. These are individuals who are wedded to a criminal life." (Ibidem, p. 136).

30 — The use of disguises by armed robbers results in part from the fact that these criminals are individuals already known to the police and for whom anonymity is imperative. As already indicated there are exceptions but generally speaking the statement is true. As long as the repeaters will be left to themselves behind the prison walls, they will, upon release constanly return to this type of crime ; they will continue to mingle with their own kind, to constantly form new gangs, and they will again use these disguises which frustrate the police in their efforts.

For these reasons it is hoped that an increasing number of bank robbers will be submitted to an appropriate and intensive treatment to break the vicious circle.

31 — **RECOMMENDATION 4 :**

That the fact that an individual has committed crimes of violence by deliberately and consciouly associating himself with an organized group, should be considered by the courts as an aggravating and determining factor calling for an intensive treatment.

32 — In the same way, disguises appear to us to be clear proof of deliberate intent, and we believe that the judges have the right to treat these masked criminals accordingly. The Canadian statistics show that the percentage of arrests is lower as the use of disguises increase. Despite the fact that banking institutions have been using close circuit television, the result is far from satisfactory for the simple reason that the film of a robbery rarely makes it possible to identify the criminals. In addition, disguises result in the police forces having little hope of an immediate arrest unless they happen to be present at the time of the crime. It is extremely difficult to identify the masked bandit after the event, and only he weakest alibi is required to clear the accused.

33 — **RECOMMENDATION 5 :**

That the Quebec courts consider the masked bandit as a particularly dangerous individual, a fact which should prompt them to conclude that special treatment is absolutely necessary.

34 — We wish to draw attention to the urgency of equipping the metropolitan zone of Montreal with light helicopters which would be under the direct authority of the coordinating Centre covering the entire territory. The conclusive experiments carried out in Los Angeles show that the helicopters could in a large number of cases be the effective answer to our present problem of armed robberies. At the rhythm with which armed robbery attacks occur against banking institutions of the region of Montreal, one or two helicopters could be kept busy constantly.

35 — **RECOMMENDATION 6 :**

That the police forces of the region of Montreal sign an agreement at the earliest possible moment to put into service light helicopters which would be directly responsible to a metropolitan coordinating and decision-making centre.

36 — Banks and credit unions are still uncertain as to whether or not to arm the personnel of their branches. In the past there has been no established policy. Some of the establishments armed their employees or at least certain of them. Other have always preferred not to. Still others during the passage of years, have adopted varying practices.

In our opinion, it is useless and dangerous to arm the personnel of banking institutions. If it is intended that the banks should have constant protection, it would be much better to utilize security personnel specifically trained for this purpose.

37 — RECOMMENDATION 7 :

That no employee of a bank or a credit union be supplied with a firearm, unless his training and his exclusive functions make him a professional in matters of security and the use of arms.

38 — Without always being able to check this, it would appear that some of the bonds stolen during an armed bank robbery or burglary, are never recovered for the very good reason that they are placed in safety deposit boxes of banking institutions and it is even stated that they are used as collateral. Police forces and insurance companies have, in this area, a direct interest in obtaining additional information from the banking institutions.

39 — RECOMMENDATION 8 :

That the police forces and the insurance companies study in collaboration with the banking institutions the possibiliy of making a more careful check of the collateral used as security with banks.

40 — Notwithstanding the several excellent research projects undertaken recently, the Quebec situation warrants continued and extended research. Only recently have we begun to ask specific questions and yet the essential research work is slow in getting under way.

41 — RECOMMENDATION 9 :

That the Department of Justice of Quebec in collaboration with the Provincial Police and the Montreal Police, undertake or authorize research studies related to armed robberies.

42 — As examples, we quote here without necessarily endorsing the actual wording, the research topics suggested at the Second Congress of Criminology in Quebec (1968) by Mr. Guy Tardif in charge of the Planning Service of the Montreal Police.

a) Some banking establishments are clearly more victimized than others : the question is to know why.

b) The protective methods of banks do not appear to be too effective. A further study of this should be made.

c) Would there be any relationship between the architecture of banking establishments and their rate of victimization ?

d) The increased number of false alarms, in addition to being onerous, is in itself a source of danger. These two statements generally accepted in police circles, must be verified.

e) The study of bank robberies show that the fragmentation of the territory and of the police efforts are a hindrance to effectiveness. What are we waiting for to act in an area where Toronto has preceded us by 10 years, namely to organize "a Metropolitan Police Service" ?

f) Where do these machine guns, pistols and revolvers come from ? If it is true that no weapon of this kind is manufactured in Canada, they must be imported in which case, why is it not possible to exercicse a better control ?

g) The facility with which certain motor vehicles can be stolen should be the object of a special study.

h) Is there need for so much money in the cash drawers ? And, while we are on this subject, why not study the effect of a more general use of cheques and bank notes in almost all transactions ?

i) Shouldn't these preventive measures be supplemented by an efficient information service ? Since the police already know the experts in bank robberies - recalling that 80 percent of them have a police record - shouldn't the activities of these individuals be observed, if not by following them, at least with the help of electronic equipment ?

j) For those robberies which could not be foreseen, shouldn't the police be able to act more rapidly ?

k) Should there not be a study made immediately of the advantages of utilizing light aircraft and particularly the helicopter, and that not only in emergencies but as a method of patrol ?

l) What would be the impact of a true judicial police force of the European type in connection with the resolving of bank robberies ? Some believe that it will be necessary to reach the stage of professionalizing investigators. This question should also be studied.

m) Finally, there is reason to take a look at the court and the penal and post-penal agencies regarding the delays in justice, the disparity of sentences, the rehabilitation in institutions, parole. Adequate measures should be undertaken to protect society with regard to individuals who show themselves to be hopelessly anti-social and notorious repeaters.

43 — We believe that the present economic evolution will result in a continuing decrease in the amount of liquid cash in circulation in banks. We therefore do not believe that armed bank robberies in the

future will result in greater losses. On the contrary, we already see signs of the bank robbers increasing the number of crimes for smaller amounts. At the present time, the losses caused by bank robberies are much lower than the losses from frauds of all kinds; with time, the difference will be even greater.

44 – In short, the efforts should be carried out on many fronts :

a) The role of the banking institutions : It would be in the interest of the banks to periodically review their security measures. Furthermore, it would be to their advantage to continue the trend of reducing the liquid cash retained in their branches.

b) Role of the police forces : The police forces must above all, improve the coordination of their different services. In the Montreal region in particular, it is essential that all the police forces agree to experiment with a light helicopter service to be utilized for patrolling and pursuit. Finally, as the available statistics indicate a lowering in the rate of victimization when there is an increase in the number of false alarms, the police forces should endeavour to retain the advantages of these contacts, while eliminating if possible, the disadvantages and useless costs which result from these incidents.

c) The role of the judge : In our opinion the judges can, without any risk, consider bank robbers, particularly those who use disguises, as individuals requiring special treatment.

d) The role of the legislator : Various measures should make it possible to exercise a more effective control on the sale and registration of firearms. In addition, the Provincial authority should exercise the necessary pressure to put an end to the police fragmentation and to speed up the research work in the different sectors of Quebec criminality.

PART THREE

AUTOMOBILE THEFTS (202-234)

202. In our comments on non-violent crimes against property, we have noted that Quebec even today, has a lower share of responsibility. In other words, the Quebec percentage in relation to the Canadian figures, is still not comparable to that which our demography calls for. Yet, Quebec has the lion's share in certain sectors, such as that of automobile thefts to which we will devote this next section.

Various representatives of the police forces have declared before the Commission that Quebec suffers from more than its share of automobile thefts. Most of them, moreover, do not hesitate to state that our province is a favourite area for such thieves. In the same way, the central information offices attached to the different insurance companies, describe the Quebec situation as alarming and particularly critical.

Generally speaking, we must endorse this judgment. We, however, reserve the right in the course of this study, to make certain distinctions, or to indicate reservations with regard to these excessively broad judgments. Here again, we will have massive recourse to statistics to see whether "the real epidemic of automobile thefts which exists in Quebec" [1] really places us in a different situation from our neighbouring provinces and the American States. As we have done for fraudulent bankruptcy and for armed robbery, we will propose different improvements in the present méthods of prevention and counteraction.

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[1] *Brief of the Canadian Automobile Theft Bureau*, p. 2.

I—THE SITUATION

I — THE SITUATION (203-206)

a) THE NUMBER OF VEHICLES STOLEN (203)

203. The available statistics come from the Dominion Bureau of Statistics, and permit a comparison between Quebec and the other Canadian provinces.

As a basic document, we reproduce in Table XXIII the figures from the Dominion Bureau of Statistics which give us :

a) the number of vehicles stolen from 1963 to 1966 ;

b) the rate of thefts by 100,000 vehicles registered ;

c) the rate of recovery.

Even a first glance, the figures are surprising. On the one hand, contrary to current statements, it is impossible to establish that the number of stolen vehicles increases rapidly and considerably from year to year. Undoubtedly the number of vehicles stolen during the year 1966 in Canada, was approximately 1300 more than in 1963. But actually, the peak of the curve was reached in 1964 when 40,325 vehicles were stolen from their owners.

In Quebec, the changes are even more marked. In four years, the number of stolen vehicles in Quebec territory has fallen by 2,222, that is a reduction of 15 percent in the number of vehicles stolen. During the same period, the thefts in Ontario increased from 11,911 to 14,001, that is an increase of more than 2,000. For the years 1965 and 1966, Ontario has suffered a greater number of automobile thefts than Quebec.

British Columbia, for its part, without reaching the peaks of Quebec and Ontario, nevertheless had an increase of more than 25 percent in 4 years (4,966 against 3,882) in the number of thefts. Consequently, in absolute figures it is noted that :

1 — For 1965 and 1966 the number of automobile thefts is greater in Ontario than in Quebec ;

2 — While Quebec saw the absolute number of thefts reduced by approximately 15 percent from 1963 to 1966 Ontario increased by

an equal proportion, while British Columbia increased by approximately 25 percent.

3 — Noticeable increases took place in the following provinces: New Brunswick, Saskatchewan and Newfoundland.

TABLE XXIII

NUMBER OF VEHICLES STOLEN FROM 1963 TO 1966 RELATED TO THE RATE OF THEFT PER 100,000 VEHICLES REGISTERED AND THE RATE OF RECOVERY

	Stolen vehicles	Rate per 100,000 vehicles registered	Rate of recovery
Canada			
1963	37,700	620.6	92.6 %
1964	40,325	631.9	91.7
1965	37,419	558.3	91.7
1966	39,023	554.7	94.9
Newfoundland			
1963	449	565.3	99.6
1964	362	411.4	98.9
1965	492	530.3	99.8
1966	515	538.1	99.8
Prince Edward Island			
1963	78	220.9	100.0
1964	109	310.9	99.1
1965	93	250.3	100.0
1966	111	314.5	100.0
Nova Scotia			
1963	752	354.7	97.9
1964	667	299.3	99.6
1965	759	324.8	96.6
1966	756	322.3	98.3
New Brunswick			
1963	505	322.1	99.4
1964	576	348.4	97.9
1965	586	336.0	99.0
1966	716	389.8	94.6
Quebec			
1963	14,752	1,067.6	84.1
1964	14,342	995.1	81.3
1965	12,469	842.1	79.8
1966	12,530	805.1	89.8

TABLE XXIII (cont'd)

	Stolen vehicles	Rate per 100,000 vehicles registered	Rate of recovery
Ontario			
1963	11,911	525.1	98.4 %
1964	14,099	592.1	97.9
1965	13,491	536.1	97.9
1966	14,001	529.6	96.6
Manitoba			
1963	1,592	490.1	98.2
1964	1,582	466.0	98.0
1965	1,320	385.6	98.4
1966	1,505	421.9	97.7
Saskatchewan			
1963	1,118	292.5	98.6
1964	1,333	336.0	97.4
1965	1,193	285.0	97.2
1966	1,363	310.8	98.2
Alberta			
1963	2,594	462.8	95.3
1964	2,745	470.3	97.3
1965	2,363	389.4	98.7
1966	2,461	385.2	97.6
British Columbia			
1963	3,882	586.0	98.9
1964	4,413	615.8	95.1
1965	4,589	583.6	96.3
1966	4,996	595.5	98.7
Yukon and North-West Territories			
1963	67	606.0	100.0
1964	97	821.0	100.0
1965	64	510.6	100.0
1966	69	525.2	100.0

b) THE RATE OF THEFTS BY 100,000 REGISTRATIONS (204-205)

204. It is obvious that these figures should be adjusted and brought down to a common denominator. In fact the number of registrations and the population differ to such an extent from one Canadian province to the other that it would be utopian and unfair to try to compare absolute figures

from one province with those emanating from another. The Dominion Bureau of Statistics has therefore chosen as its basis for calculation, the number of registrations. In other words, the number of automobiles stolen is determined by taking into consideration the volume of automobiles in each province.

This criterion is as good as any other as the rate of increase in the volume of automobiles has slackened to a pace almost equal to the rate of increase of the population. Nevertheless the demographic growth has less importance than the fact that the average age of the population is younger, which must temper the statistics.

Let us elaborate on this point. The majority of automobile thefts are perpetrated by young people and that being so, *it becomes necessary to establish in statistical terms the evolution in the number of thefts as related to the number of youths less than 18 years, or less than 20 years old.* In formulating these thoughts, it is not our intention to invalidate in any manner the figures supplied by the Dominion Bureau of Statistics. We simply regret that the basis of calculation, particularly on the Provincial plan, does not place sufficient emphasis on the connection between certain sectors of criminality and the age of the population.

205. Such as they are, the statistics show that Quebec is in a category by itself. The figures for 1963, for example, attribute to Quebec a rate of 1,067.6 vehicles stolen for every 100,000 registrations, against 525.1 for Ontario. In 1963 the national average was 620.6 particularly by reason of the Quebec figures.

This new way of looking at reality still permits us to point out the rapid improvement in the Quebec figures. In the space of several years, that is from 1963 to 1966, the Quebec rate was approximately 20 percent lower, going from 1,067 to 805, while Ontario remained at about the same level (525 against 529). British Columbia, another province greatly affected by automobile thefts, was no more able than Ontario to lower its rate (586 in 1963 ; 595 in 1966). That is to say in the period of four years Quebec succeeded in reducing by about one half, the difference which separated it from its two closest rivals.

c) RATE OF RECOVERY (206)

206. The third point put forward by the Dominion Bureau of Statistics, also gives reason to hope. Moreover, it enables us to localize our principal problem.

The statistics show, that Quebec has consistently recovered 15 percent to 20 percent fewer stolen vehicles than other provinces. From 1963 to

1966, for example, Quebec was never able to attain a recovery rate of 90 percent, while all the other Canadian provinces were consistently above this level.

This describes the vicious circle in which we find ourselves : the thefts are more numerous in this province because thieves enjoy a greater immunity ; the rate of recovery is lower in this province because the police are overwhelmed by the increasing thefts.

Quebec is still not at the level of the national average, notwithstanding the very definite improvement in the reducion in the number of thefts and in the increase in the rate of recovery, but there is reason to believe this situation will be completely changed in the near future.

II — THE OPINION OF SPECIALISTS

II — THE OPINION OF SPECIALISTS (207-221)

207. We should take a moment to refer to the briefs which were submitted to the Commission. In the present case, there is an almost total absence of comments from the different organisms on this aspect of Quebec crime. In fact, only the Canadian Automobile Theft Bureau analyzed the situation and made specific recommendations. The thoroughness of the work done by this organization justifies the considerable references to its brief.

Following the format of the brief, we will examine five principal points :

a) The actual situation ;

b) The deficiencies in the Quebec system of control of automobile vehicles ;

c) The gaps in the Canadian system of control of automobile vehicles ;

d) The sanctions and the sentences ;

e) Methods of appealing to the public and the manufacturers.

At the end of this examination we will be in a position to evaluate the recommendations set forth by the Canadian Automobile Theft Bureau.

a) THE ACTUAL SITUATION (208-210)

208. According to the brief of the Canadian Automobile Theft Bureau, a non-profit organization formed by the principal insurance companies of Canada, and whose first objective is the reduction of automobile thefts in the country, it can be said that :

> "... following the pattern of what is happening in the United States, *automobile theft in Montreal is the third most frequent crime and the second most costly.* In Quebec it is estimated that it actually costs the insurers, payments in the order of $4.5 million, not to mention the considerable losses incurred by the ordinary citizens, victims of these thefts.

But it is worse than a simple loss of monetary capital, there is also and more particularly that of human capital. *Experience shows that for young people automobile theft is a jumping off point towards crime.* It is universally recognized as a crime of youth. It is estimated that almost 90 percent of the automobile thefts are committed by young people below 25 years of age; 62 percent are committed by youths below 18 years of age. The automobile theft is also a step along the road towards the commission of other crimes: burglaries, banks robberies, etc.

Finally it is undeniable that this crime leads to increased danger for other automobilists on the road by reason of the generally "exhilarated" state of mind of the delinquent...".

209. The Canadian Automobile Theft Bureau then endeavours to secure from the statistics a more methodical description of the Quebec situation. The organization says that "automobile thefts in Quebec began by being practically negligible at first, then their rise became meteoric". Thus according to the findings of the Canadian Automobile Theft Bureau, the average of the automobile thefts in Quebec remained between 2,000 and 3,800 from 1953 to 1960. At that point there was a rapid rise in the statistics with a peak of 14,805 in 1963, with 8,686 in Montreal alone.

"This sharp growth which took place between 1961 and 1963 is attributed to the appearance of *organized gangs.*

In relation to the whole of Canada, Quebec ranks first with regard to the number of vehicles stolen, and last with regard to the average recovery."

The organization admits further on and as we have already pointed out, that there have been substantial improvements in the Quebec rate since 1963.

210. According to the Canadian Automobile Theft Bureau:

"Automobile theft in Quebec, as elsewhere in North America, can be divided into two principal categories:

1 — the temporary *borrowing* for the purposes of a joy-ride by adolescents who abandon the car shortly after having used it (approximately 60 percent);

2 — the organized thefts by gangs who undertake both the stealing of the vehicles and the disposal of them, as such, or by parts (approximately 30 percent).

This differentiation of the offences leads to different results. The sentences should not be the same for a youth in search of excitement as for the leaders of the organized gangs. The material losses would obviously not be the same, dependent upon whether the owners recover their vehicles, or whether the insurance companies must consider them as complete losses.

"...With regard to the material losses suffered by citizens, the organized thefts committed by professionals is definitely more important.

Their activity can be separated into two categories: some of them are in the automobile business, unloading them on used car dealers in the province, across the country, in the United States, even in Latin America and Europe, where Canadian vehicles were recovered last year; others specialize in the sale of car parts. It would seem that these different fields of activity are carried on by separate gangs."

The organization then describes the classical method of operation of these gangs:

"1 — The thefts are usually committed by very young people, under 18 years of age... They steal on order and average a remuneration varying from $25 to $200 for a vehicle, of a specified year and a particular colour. The work is relatively simple: it consists of starting the car and driving it to a specific location, quite often several blocks away from the street on which the theft took place, where a member of the gang will take possession of the vehicle.

2 — Once the car is stolen, the most important task is to remove all identifying marks.

3 — Once these operations of camouflage are completed, if they are able to obtain a registration certificate and licence plates, the car can be sold.

4 — ...or converted immediately into separate parts which will be sold to garages. That is why these last mentioned gangs are usually directed by individuals involved in the business of buying and selling used automobile parts. Quite often the gang will place its men in garages specializing in the repair and restoration of vehicles so that, with these men as go-betweens, orders for parts are placed with firms operated by the gang".

b) THE DEFICIENCIES IN THE QUEBEC SYSTEM (211-214)

211. It is quite understandable that the Canadian Automobile Theft Bureau would devote a good deal of time to the difficulty of identifying stolen vehicles. Statistics have already shown that the rate of recovery is at its lowest level in Quebec with the result that insurance companies are called upon to spend more, and maintain higher premiums, in Quebec. Without a shadow of a doubt, the losses to companies and users would be smaller if the methods of identifying vehicles made it possible to retrace stolen automobiles more rapidly;

"When professional automobile thieves steal a car, except in cases where there has been extremely quick police action, it is practically impossible to recover the vehicle because of weaknesses in our system of registration, which make it possible to secure licence plates and a legal certificate with relative ease. As soon as a thief has these in hand, he can circulate in peace because the certificate and licence plates are the only things which can be checked in a routine manner by the police... It is unfair to ask the police to check the serial number of a motor, or the chassis of every vehicle they stop.

Any change in the present system of registration should therefore have as its purpose to make the issuance of certificates and plates more difficult and strict, as the present system makes it very hard to identify a stolen vehicle.

> The forms V-I-N, ... are contracts of sale for vehicles, printed in blank, which the Provincial Government supplies to authorized dealers ... At present, any person presenting a V-I-N form, duly completed, can secure from any registration bureau in the Province, without question, a certificate and licence plates ... For the one year, 1965, 2,500 of these forms were stolen in different garages ...."

212. According to the Canadian Automobile Theft Bureau it would be relatively easy to prevent this kind of fraud.

> "The Motor Vehicle Bureau could, for example, ask for two copies of the form instead of one, as is the case at present; it could then file one according to the present system, and the other in accordance with the special numbering of these V-I-N forms.
>
> However, the better decision would be to permit only authorized dealers or their representatives carrying an identification card in the name of the garage, to secure, and only in the office located in their district (so that the issuer would only be dealing with people he knew) plates and a registration certificate on presentation of the V-I-N form. This would prevent the defrauders from using these stolen forms."

The brief of the Canadian Automobile Theft Bureau furthermore recommends making these blank certificates valid up to a certain time so as to restrict their use only to authorized dealers or at least to prevent the defrauders from making use of them.

> "The blank certificates ... are official forms used as registration certificates and which are used in the case of loss of certificate or transfer of vehicle ... One method of restricting the use of these certificates would be to make them temporary; for example, by limiting their validity to 15 days after the date indicated thereon, by means of a special stamp affixed by the issuer in the licence bureau."

213. The brief stressed that our methods of controlling expired plates is just as inadequate as our method of controlling the certificates of sale made available to authorized dealers by the government.

> "At present due to the laxity of our legislation with regard to the control of plates showing the identification number of the vehicle, the defrauder need only go to one of the automobile cemeteries and buy for a very modest sum a discarded vehicle which still retains this item."

According to the brief, the law not only forgets essential controls, it also makes illegal the methods which could be adopted by the dealers, police or garages to prevent fraud.

> "To counteract this traffic it would be necessary to amend the Highway Code (Article 35) so as to permit removing these identification plates when a vehicle is placed in an automobile cemetery, scrap heap or with a scrap iron or demolition company. This should be done by the garagist himself who, after having duly registered the said identification number in his books, could make the routine inspection of police easier by marking this on the vehicle."

In fact, it is quite ridiculous that it should be just as illegal today to take the precaution of removing the plates from a vehicle put into an automobile cemetery as it is for the person who steals the plates to make fraudulent use of them! This is so true that it is essential to provide, as recommended in the brief, an amendment to the Highway Code to permit garages or dealers to take the necessary precautions.

214. It goes without saying that most of the gangs of racketeers are connected with garages or used automobile dealers. This kind of business obviously enables them to deal with a large number of vehicles as well as to handle used parts. It follows that this type of business should be under careful supervision :

> "The arrests made by the police forces in the province have brought to light the fact that the gangs of professional thieves, generally run certain kinds of businesses such as used cars or parts, an automobile cemetery, or a garage for repairing or restoring damaged vehicles. They can through their business contacts dispose of stolen vehicles either intact or in parts. The most elementary logic calls for a strict control of this kind of business as is to be found, amongst others, in the United States (Union Vehicle Code, Chapter 5) and in Ontario (Highway Traffic Act, Articles 31 and 32).
>
> It is also necessary that police agents, and not only government officers, as is provided in Article 79 of the Highway Code, may at any time and without a warrant, search any place where automobile vehicles are stored, including lots and buildings used for parking and car rentals and to examine such cars to see whether they are stolen vehicles. The granting of such powers to the police is of prime importance in the discovery of stolen vehicles and organized gangs. At present, in virtue of Article 429 of the Criminal Code, to secure such a warrant, the police are called upon to persuade a justice of the peace that there is sufficient reason to believe that one or more stolen vehicles will be found in a certain place, while such inspection should be permitted as a routine matter ...".

The brief also states in support of this request, that it sometimes takes months to gather the proof which is necessary today in order to secure a search warrant.

> "... In the case of the Brossard gang the police revealed that they had to carry on a day and night watch for many months, sometimes hidden in trees before they were able to gather sufficient proof ...".

c) THE DEFICIENCIES IN THE CANADIAN SYSTEM (215-216)

215. The Canadian Automobile Theft Bureau believes that it will not be enough to perfect provincial controls. In fact with the excellent highways connecting provinces and the gangs of racketeers so well organized in this

domain, it becomes possible for a stolen automobile to disappear over the border in the space of several hours if not less.

> "When a person in possession of a stolen vehicle and a registration certificate obtained legally, sells this vehicle in another province, in Nova Scotia for example, the purchaser could obtain from the Automobile Vehicle Bureau of that province, a new registration certificate."

In other words, the contacts are today so non-existent between provinces (except in the case of Quebec and Ontario) that it is quite possible for an individual to obtain a vehicle in one province and to take it into another province without the latter ever making any enquiry into the exact origin of his car. Whether the stolen vehicle has been bought in good faith or otherwise, the adopted province cannot render any service to the province of origin : it does not even take the trouble to transmit to the province of origin a copy of the new registration issued to the new resident.

> "It should be required that every certificate from another province received by a Motor Vehicle Bureau of a province be referred to the Provincial Police of the latter province for study. They in turn could, if necessary, for purpose of verification, contact the Motor Vehicle Bureau of the province which issued the certificate. Such a system is at present time in effect between Ontario and Quebec and... it has been responsible for uncovering and neutralizing the important Hector Meunier gang.
>
> An effective preventive system could also take the form of the mutual adoption by different provinces of an amendment to the Highway Code providing that any application for the registration of a vehicle previously registered in another province must be accompanied by a certificate issued by an officer of the Motor Vehicle Bureau of the latter province, attesting that the registration certificate in question has been legally issued to the applicant for a vehicle "X" bearing such and such identification number of the manufacturer and that the said registration number has not been reported as belonging to a stolen vehicle."

216. In other respects, as is noted in the same brief, the problem of identification and return of the recovered vehicle to its owner, becomes more and more complex. These difficulties are the normal corollary of the fact already described : the provinces, except in the case of Quebec and Ontario, scarcely take any precautions to protect each other against the dangers of fraud.

> "For the owner of a vehicle to be able to state that the serial number found on a stolen vehicle is his own, it is not enough for him to say that this number corresponds to that shown on his registration certificate. It is also necessary for him to have personal knowledge of this number... That he had with his own eyes previously verified the fact that the number on his motor block is the same as that indicated on his registration certificate. If not, it then becomes a matter of hearsay... Even though it is admitted that the judge cannot waive the rules of evidence, one cannot avoid thinking on the other hand, that, in this instance the rule of hearsay, for all practical purposes, makes proof of the identity of the vehicle impossible as it is illusory to imagine that it would be possible on every occasion to call into court the worker who stamped the serial number or the employee who recorded it. With 40,000 automobile thefts every year in Canada, the absurdity of the situation is quite evident. And what about the stolen European automobiles, the same individuals would have to cross the ocean..."

On this matter the Canadian Automobile Theft Bureau offers conclusive proof. With the legal technicalities being what they are, it is generally impossible for the average citizen to assume that he can identify his vehicle even if he is perfectly certain that it is his car that the police have recovered from a thief. In fact, subjective and arbitrary proof is not accepted, while objective proof, for reasons already mentioned, remains out of reach.

d) THE DETERRENTS AND THE SENTENCES (217)

217. It should be pointed out that the Canadian Automobile Theft Bureau while demanding a just punishment for the guilty, does not declare itself in favour of long prison sentences, nor even in favour of heavy minimum sentences. The organization was quite aware of the nature of the evidence given before the Commission by different police authorities and it would have been very easy for it to endorse the views already expressed.

> The two most important police authorities of the province, that is the Directors Robert and Gilbert, speaking before this Commission, expressed the opinion that the suppression of the minimum penalty of one year by the amendment to the Criminal Code in 1955, was responsible for the increase in criminality in this sector (automobile thefts)...
>
> *Nevertheless the abolition of this former Article 377 from the Criminal Code was necessary because its inflexibility with regard to the one year imprisonment for every individual found guilty of an automobile theft was almost cruel, particularly when it is realized that the great majority of individuals affected by this provision were young people of less than 20 years of age...*
>
> At the present time automobile theft is covered by two Articles of the Penal Code : Article 269 which deals purely and simply with theft and Article 281 which deals with the taking of a motor vehicle without the consent of the owner... There are rarely repeaters under Article 281... but there are many repeaters under Article 269... They then receive, according to our information, sentences running from 6 months to 2 years, taking into consideration the circumstances...
>
> Consequently, we would suggest the addition to the Penal Code of a supplementary paragraph to Article 281 which would provide that every repeater in the case of an automobile theft, is punisable by a minimum sentence of 6 months in prison."

We admit to having little sympathy for legislative texts which include a minimum and automatic sentence. In fact we have consistently preferred

that the courts themselves or polyvalent teams of specialists which the government might form following our recommendations, retain the greatest possible latitude with regard to the imposition of sentences and more particularly to orient the delinquent towards the most suitable treatment.

e) MEANS OF INTERVENTION BY THE PUBLIC AND THE MANUFACTURERS (218-221)

218. To carry on an effective battle in this sector of crime, it is obviously necessary to exercise an influence on the general public. Furthermore, it is necessary to appeal directly to the manufacturers so that they will make their products less accessible to delinquents.

Until now, a large percentage of stolen vehicles were not locked at the time of the theft. A large number of vehicles stolen even had the key in the ignition when the thief entered the car.

> "... The public must be made conscious of the fact that when they lock the doors of their vehicle, they reduce by 50 percent the possibiiity of it being stolen ... The best method of making the public conscious of this is through a publicity campaign. Such campaigns conducted in the United States under the coordination of the Minister of Justice and with the participation of the numerous organizations interested in the problem, were in every case definitely successful. In Canada the City of Vancouver, known for its somewhat high rate of automobile thefts, has conducted similar campaigns in the past; and so has Hamilton."

In the course of his public testimony, Director Gilbert mentioned extremely impressive figures :

— six out of ten stolen vehicles were not locked ;

— four out of ten vehicles stolen had the key in the ignition at that time.

219. The negligence of automobile owners does not relieve the manufacturers of their own responsibilities. In the course of recent years, most motor vehicles were actually supplied with security devices which the manufacturer subsequently eliminated. However, particularly following the campaign conducted by George Nader, the American-made vehicles were once again supplied, in large proportion, with security devices making the thefts much more difficult than previously.

> "It is often said that the negligence of manufacturers makes the task of automobile thieves much easier. It is up to the government authorities, and more particularly to the Minister of Industry and Commerce, acting together with other interested groups, to bring pressure to bear on the manufacturers to adopt certain preventive measures in the manufacture of their vehicles.

> Measures such as :
>
> a) an ignition system sealed in a metallic box ;
>
> b) better locks ;
>
> c) windows more resistant to entry ;
>
> d) anti-burglary system ; locked wheel, etc."

220. Following its analysis the Canadian Automobile Theft Bureau made the following recommendations to the Commission :

1 — *Legislative measures*

> The right to search without warrant,
> Compulsory licensing for all businesses,
> A register of all used parts or used automobiles,
> A register of vehicles destroyed,
> A notice of intention to discard,
> Compulsory return of plates,
> Compulsory serial numbers,
> Locking vehicles,
> The rule of hearsay and amendment to the Evidence Act,
> Master keys ; prohibition of the sale thereof,
> Minimum sentence in the case of a repeater.

2 — *Administrative measures*

> The electronic information Centre ;
> Programming the electronic computer of the Quebec office for the information relative to stolen and discarded vehicles, as well as for the V-1-N forms ;
> Constant updating of the information programmed into the computer.
>
> The V-1-N forms :
>
> Only automobile dealers should be authorized to secure the registration certificate on presentation of these forms ;
> The garages must be allowed to have dealings only with the licence bureau in their locality ;
> A fine of $100 should be imposed on authorized dealers in the case of loss or theft of the V-1-N forms ;
> All blank certificates should be good for a limited period only ;
> A much closer cooperation with the Motor Vehicle Bureaus of other provinces.

3 — *Publicity measures*

> A public campaign,
> Propaganda of the Minister of Transport.

4 — *Measures of pressure*

> Government intervention with the manufacturers to secure a better "mechanical protection" of automobile vehicles.

221. It seems clear in the light of this analysis that according to the Canadian Automobile Theft Bureau it is essential to facilitate police action by intervening in many domains which concern amendments and application of the Criminal Code as well as the production, the distribution, the sale and the registration of automobile vehicles, the information to the public, and the special campaigns organized by different Ministers.

Moreover, the brief of the Canadian Automobile Thetft Bureau shows that it is almost impossible :

1 — to act with sufficient severity with regard to organized gangs, because of the risk of overpenalizing "joy riders" who are mostly youths, in a manner disproportionate to the offence ;

2 — to achieve a reduction in the rate of automobile thefts without the collaboration of the public who up to the present have not taken the most elementary precautions.

III — FUTURE PERSPECTIVES

III — FUTURE PERSPECTIVES (222-234)

a) INCREASE IN MONTREAL (222)

222. To have a better understanding of the nature and extent of the problem, it is necessary to look at the Montreal situation. Here again the brief of the Canadian Automobile Theft Bureau is a privileged source :

> The increase reached its peak in 1963 with for the entire province, a total of 14,805 vehicles stolen (of which 8,668 were in Montreal alone), that is to say almost 3,000 more than Ontario which, has several hundreds of thousands more vehicles registered than Quebec. Nevertheless, beginning with 1963, due to, the reorganization and to the increase in manpower of the stolen automobile squads (notably in Montreal) as well as to the breaking up of gangs, this galloping plague was halted and the following years saw a remarkable reduction in the number of vehicles stolen. Thus in 1966, in the space of three years, in Montreal, this number was reducted by 2,300. It should be noted that the improvement in this sector did not appear to extend to other types of theft which continued to increase [1].

We therefore reproduce here the figures describing the Montreal situation. One can note (Table XXIV) the regular lowering of the rate of recovery from 1954 to 1965, at which date the Montreal police were able to achieve a striking improvement in the percentage of successes [2].

> Our provincial average of recovery, the lowest in Canada, is also on the road to improvement. Montreal notably saw in 1966 a spectacular increase of 12.31 percent which resulted in raising its average from 76.38 percent to 88.69 percent. However, one must take into account the geographic size of Quebec and the large number of its vehicles, because the average rate of recovery bears a relationship to the area of a province and to the number of registered vehicles. Prince Edward Island, for example, has an average recovery for 1965 of 100 percent [3].

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1 *Memorandum of the Canadian Automobile Theft Bureau,* p. 7.

2 Figures compiled by Captain Maurice Decarie of the Stolen Automobile Squad of the Police of Montreal is included in the brief of the Canadian Automobile Theft Bureau.

3 Bureau memorandum, p. 7.

TABLE XXIV

RECORD OF THE NUMBER OF AUTOMOBILES STOLEN AND THE RATE OF RECOVERY FOR THE MONTREAL REGION FROM JANUARY 1, 1953 TO DECEMBER 31, 1967

Year	Stolen	Recovered	Not Recovered	Recovered Average
1953	3066	3006	60	98.04 p/c
1954	2595	2554	41	98.42 p/c
1955	2787	2717	70	97.48 p/c
1956	3578	3472	106	97.03 p/c
1957	5368	5206	162	96.98 p/c
1958	5639	5344	295	94.76 p/c
1959	5493	5172	321	94.15 p/c
1960	5831	5268	563	90.34 p/c
1961	6393	5698	695	89.12 p/c
1962	7250	5975	1275	82.41 p/c
1963	8668	6910	1758	79.72 p/c
1964	8045	6250	1795	77.70 p/c
1965	6953	5311	1642	75.38 p/c
1966	6306	5593	713	88.69 p/c
1967	7461	6526	935	87.47 p/c

b) NECESSITY OF IMPROVING COMPARISONS (223-225)

223. It is also necessary to project the Montreal situation on the North American background. Undoubtedly automobile theft is much more a North American crime than a European one. While, Europe has also seen a considerable increase in its rate of automobile thefts, none of the European metropolitan centres rivals those of the large urban agglomerations of America.

> Auto theft offence includes stealing or driving a car away and abandoning it. It does not include taking for temporary use when the car is actually returned by the taker or unauthorized use by those having lawful access to the vehicle. In 1965 the UCR estimates a national total of 486,568 auto thefts. Based on an average value of $1,030, this totals about half a billion dollars. Roughly 64 percent of cars which are stolen are recovered within 48 hours, however, and about 88 percent eventually. The value of those never recovered in 1965 was more than $60 million. Total losses exceeded this figures, however, because some cars were damaged when recovered and because the owner lost the use of his car during the period it was away. Nearly two-thirds of auto thefts are at night and over one-half for unknown purposes, about 8 percent for stripping for parts, 5 percent for use in another crime or for escape and the remaining 12 percent for resale [1].

It can be seen that the American experts do not go as far as the brief from which we have quoted extensively. In fact, the number of crimes never solved in this domain are so great that it seems wise to be cautious. Obviously when a vehicle taken from its owner is found several hours later a few streets away from the residence of the latter, the temptation is very strong to consider the offence as "a simple borrowing". In Canada the tendency is to class these never fully cleared up offences, in the category of "borrowing without permission". In the United States, according to the report of the Katzenbach Commission, the analysts limit themselves to saying that "more than one half of the automobile thefts are committed for unknown motives".

224. One would like to compare Montreal to the large American agglomerations. This difficult to do as the basis of calculation most frequently utilized in Canada is that of "rate per 100,000 registrations", while the American yardstick is according to the "rate per 100,000 population".

Thus, the Table XXV gives the rate of automobile thefts by 100,000 population for most of the large urban agglomerations in the United States. It is seen that Boston is easily at the head of the list for 1965 with a rate of 1,956.7 vehicles stolen per 100,000 population. To establish a worthwhile comparison, it would be necessary to convert the Montreal figures by taking into consideration the population rather than the number of registrations. It would be possible, for example, by utilizing the figures of the Dominion Bureau of Statistics to arrive at the following figures: in 1964 the metropolitan region of Montreal had 1,894,432 citizens and it suffered 9,512 stolen cars, which would be the equivalent of a rate of 502 car thefts per 100,000 population. In 1965 the population of Montreal reached the level of 1,925,425 citizens and the number of automobile thefts was only 8,104 which lowered the rate to 429 automobile thefts per 100,000 population. In 1966 the population of the metropolitan region of Montreal reached 1,989,491 ; for the same year, the number of automobile thefts decreased to 7,425, which established a rate of 373 automobile thefts per 100,000 population.

[1] *Task Force Report : Crime and its Impact — An Assessment*, The President's Commission on Law Enforcement and Administration of Justice, Washington, D.C., 1967.

TABLE XXV

AUTOMOBILE THEFTS (RATE PER 100,000 POPULATION)

1	Boston	Massachusetts	1,956.7
2	Newark	New Jersey	1,127.5
3	Pittsburgh	Pennsylvania	1,071.2
4	San Francisco	California	984.4
5	Chicago	Illinois	821.2
6	Los Angeles	California	810.3
7	Jersey City	New Jersey	801.1
8	St. Louis	Missouri	790.8
9	Detroit	Michigan	772.0
10	Indianapolis	Indiana	705.5
11	Washington	Dictrict of Columbia	699.8
12	New Orleans	Louisiana	696.4
13	Long Beach	California	670.1
14	Sacramento	California	662.9
15	Honolulu	Hawaii	630.6
16	St. Paul	Minnesota	629.8
17	Denver	Colorado	592.7
18	Baltimore	Maryland	587.5
19	Oakland	California	585.9
20	Minneapolis	Minnesota	575.6
21	Cleveland	Ohio	573.0
22	Atlanta	Georgia	564.4
23	Kansas City	Missouri	548.3
24	Buffalo	New York	545.9
25	Louisville	Kentucky	538.1
26	Akron	Ohio	529.4
27	Oklahoma City	Oklahoma	498.4
28	Dallas	Texas	491.7
29	Phoenix	Arizona	465.9
30	Portland	Oregon	460.9
31	Omaha	Nebraska	459.1
32	New York	New York	442.9
33	Milwaukee	Wisconsin	436.1
34	San Jose	California	423.3
35	Dayton	Ohio	421.0
36	Tulsa	Oklahoma	399.7
37	Nashville	Tennessee	388.2
38	Philadelphia	Pennsylvania	386.2
39	Norfolk	Virginia	380.6
40	Albuquerque	New Mexico	377.5
41	Houston	Texas	376.4
42	Columbus	Ohio	366.4
43	Fort Worth	Texas	345.5
44	Seattle	Washington	337.0
45	Birmingham	Alabama	335.3
46	Toledo	Ohio	319.6
47	Tucson	Arizona	315.3

TABLE XXV (cont'd)

48	Tampa	Florida	308.4
49	El Paso	Texas	298.1
50	San Antonio	Texas	296.4
51	Miami	Florida	292.4
52	Wichita	Kansas	290.0
53	San Diego	California	277.3
54	Rochester	New York	251.9
55	Memphis	Tennessee	250.4
56	Cincinnati	Ohio	168.0

225. These various compilations show quite clearly the different ways in which the problem can be presented. The demonstration is, however, far from being conclusive : it would not be satisfactory unless it definitely used the demographic data involving the population of less than 18 or 20 years of age.

In fact, if automobile theft is considered as a crime of youth, it becomes necessary to bring this statement to its logical conclusion, and establish the increases and declines of criminality, taking into consideration the fact that a much larger percentage of the population is found in the young levels of society. Inversely, some apparent improvements can be completely counterbalanced or wiped out if it is found that the population of a given agglomeration shows a marked increase in the age level. For example, the improvement in Montreal would be less spectacular if it could be proved that mostly older couples live in the centre of the metropolis while couples who have children from 12 to 18 years prefer to live in the suburbs. There is no reason to believe that such is the situation. We are simply endeavouring to show that the statistics concerning the crime sector should be established in relationship to the juvenile population rather than to the overall population, or even on the basis of the automobile volume. Notwithstanding these distinctions it should not be forgotten that the police force of Montreal has been able, in the course of several years to improve the situation to such an extent that in the domain of automobile thefts, Quebec is on the way to approaching the national average. While our rate of thefts is becoming lower, that of the other provinces remains stable. While our rate of recovery improves, that of the other provinces remains stable or is deteriorating slightly.

c) RESEARCH ON THOSE (YOUTHS) RESPONSIBLE FOR AUTOMOBILE THEFTS (226-229)

226. Notwithstanding the noticeable improvement in the statistics as well as in the reality, it is nevertheless a fact that Quebec has had and still retains

a rate of automobile thefts markedly higher than that of the other provinces or of Canada taken as a whole. And yet, the demographic curves and the increase in the automobile volume do not place Quebec in a category by itself. It therefore becomes necessary to look elsewhere and possibly at the nature of our population itself for the reasons for this situation.

Let us return to an element which seems essential to us : in the opinion of everybody, automobile theft is a crime of youth, and it is not our intention to contradict this unanimity. However, here again it is wiser to use caution before coming to a conclusion.

The fundamental problem is that the clinicians and the statistics only speak of the thefts solved by the police. In the domain of automobile thefts, however, the great majority of the crimes (at least 70 percent in 1966) are not solved, as is shown by Table XXVI. It is therefore necessary to clear up a fundamental ambiguity : the rate of recovery and the number of crimes solved are not one and the same thing. Consequently, assuming that a large number of automobile thefts will never be solved, it becomes difficult to secure worthwhile statistics on the authors of the offences.

Generally speaking, the police forces seem inclined to conclude that a youngster was the author of the theft, when the stolen vehicle reappears several streets away from the residence of its owner. This inference seems legitimate but it certainly does not make it possible to determine the number of youths of less than 18 years of age who are involved in automobile thefts.

227. Given the present state of the statistics, the most that can be said is that, amongst the individuals *arrested* following crimes of this nature, the youths of less than 18 years represent a proportion amounting to 62 percent (American rate).

In the North American context it is quite normal that this kind of crime should be more widespread amongst youths than amongst adults, for the simple reason that a much larger proportion of adults have their own cars [1]. In fact at the point where a large number of areas have reached or even passed the co-efficient of one car per family, it is quite normal that the temptation to steal an auomobile should be found chiefly amongst those who don't have one.

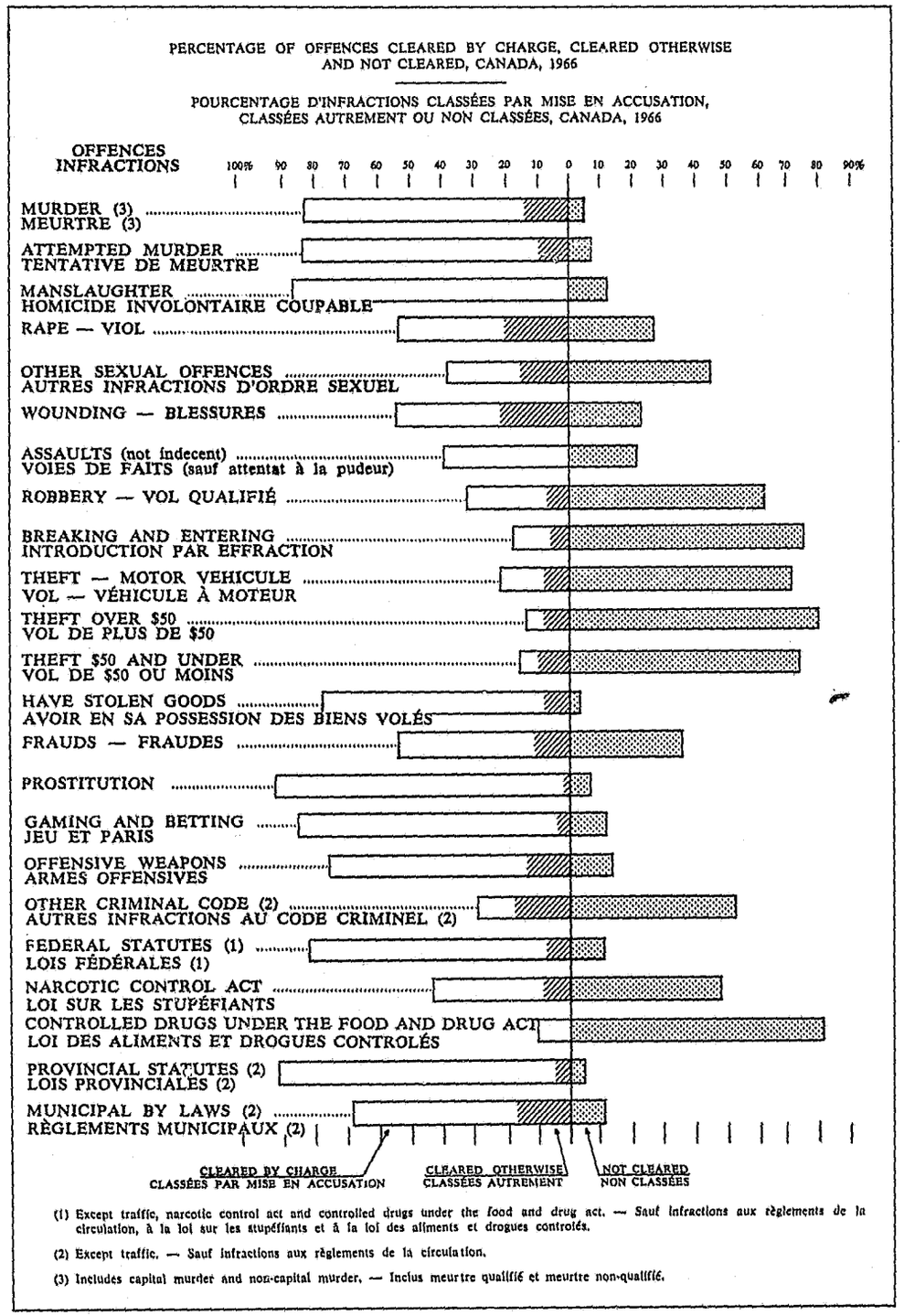
All in all one must admit that because of the high rate of recovery and also because of the current popularity of the automobile in North America, the theft of automobiles is principally a juvenile activity. Yet while more than 70 percent of the crimes remain unsolved, some caution is necessary for the good reason that, if young people traditionally show a

[1] It will have been understood that we are speaking here of thefts which are considered as "borrowings".

TABLE XXVI
CRIME STATISTICS (POLICE)

PERCENTAGE OF OFFENCES CLEARED BY CHARGE, CLEARED OTHERWISE AND NOT CLEARED, CANADA, 1966

POURCENTAGE D'INFRACTIONS CLASSÉES PAR MISE EN ACCUSATION, CLASSÉES AUTREMENT OU NON CLASSÉES, CANADA, 1966



(1) Except traffic, narcotic control act and controlled drugs under the food and drug act. — Sauf infractions aux règlements de la circulation, à la loi sur les stupéfiants et à la loi des aliments et drogues controlés.

(2) Except traffic. — Sauf infractions aux règlements de la circulation.

(3) Includes capital murder and non-capital murder. — Inclus meurtre qualifié et meurtre non-qualifié.

great deal of clumsiness which makes their capture much easier, we are then faced with the question : are those who are not caught all young people ?

228. Various studies, some European, some American, have made it possible to be a little more exact regarding the identity of automobile thieves. In England, Gibbons [1] has undertaken different studies, traces of which can be found again in the publications of the Council of Europe [2] :

> From the clinical point of view the automobile thief differs from the ordinary type of boy in the Borstal establishments in that these infractions most often indicate a state of neurosis ; it has in fact a symbolic significance and is unconsciously provoked by different motives, notably of a sexual nature. This statement is not at all surprising as the motive is necessarily the seeking of a thrill or an excitement. In the most simple cases, the theft generally assumes the nature of a "showing off" — the youngster of a good family, but who has been coddled, commits an infraction to show his virility.

A similar description is given by Sven Larsson, a specialist in group therapy working in the penitentiary institutions of Sweden, who is also quoted in the publications of the Council of Europe :

> It concerns a relatively restricted and relatively coherent group of youngsters. If one knows ten automobile thieves, one knows 50 or 60 others by name. The number of automobile thieves is absolutely out of proportion to that of the automobiles stolen. Each delinquent specializes in a particular make. The young automobile thief is not at all a mechanical expert. He rather limits himself to the kind of automobile which he has already learned to break into and was able to start, a technique which he has often acquired in a house of correction. So in general, the boy who steals an automobile is not at all interested in the motor and his knowledge of the car can be reduced to the ignition and the starter. It should also be stressed that automobile thefts are generally committed in a period of excitement in which the boy steals one automobile after the other in a short period of time before being caught. It is rare that he steals one occasionally, taking a lot of precautions. When they are in a mood to steal, these boys seem to live in a feverish atmosphere.
>
> It is still uncertain whether these automobile thefts are an expression of a general inability to adjust or whether they represent a particular psychological phenomenon. The automobile thieves themselves make a clear distinction between "rational" and "irrational" thefts. According to their interpretation, the rational automobile thefts are those which they commit to escape more easily from an institution or so as not to have to walk back to their home at night. This category also includes the automobile thefts needed to carry out another offence or to transport stolen merchandise.

1 T. C. N. GIBBENS, *Car Thieves,* in *British Journal of Delinquency,* vol. VIII, nº 4, avril 1958.

2 *La délinquance juvénile dans l'Europe d'après-guerre,* Conseil de l'Europe, Strasbourg, 1960, pp. 29-30.

> The irrational delinquents who steal automobiles for pleasure, are looked upon with astonishment by the others. The two groups cannot understand each other. Reminds one of the water drinker who can't understand why the alcoholic is unable to stop drinking.
>
> It is not possible to compile figures for the rational and irrational groups who nevertheless are undoubtedly numerically different. We know that many of the automobile thieves also commit other offences. However, it may well be that an analysis of the other offences will show that they are accessory to the automobile theft which was the first offence. In fact, automobile thefts are often the prelude to breaking into candy and cigarette vending machines etc...
>
> Even though girls only rarely participate actively in the theft of automobiles, they nevertheless play an important role in many cases. The irrational delinquents state quite freely : "If you have a car you will have a girl". At the same time, one is struck by the extreme awkwardness of these automobile thieves in their relationships with the girls. Many of them do not know how to dance even though they are of age to go to dances. This moreover indicates that they do not know how to behave with girls and that they are completely lacking in confidence in their own virility. Generally speaking, these delinquents show common characteristics. They are extremely nonchalant and are actively interested in nothing. They are much harder to reach than the frankly aggressive delinquents who at least have a relatively definite personality [1].

229. Within the framework defined by these studies it is possible to see a tendency towards "even younger" delinquents. In other words the malaise which the English and Swedish experts describe appears to become evident much earlier than in the past. Thus, it is seen that in 1963, 60 percent of the automobile thefts committed in the United States were by youngsters of less than 25 years. Today the same statement is made but with regard to youths of less than 18 years [2].

It is impossible at the present time to foresee where this tendency for ever younger delinquents will stop. The enquiries made in the District of Columbia indicate in fact, that an important part of thefts are committed by youngsters of *less than 15 years :*

> In recent years the incidence of auto theft in the city has risen sharply, although 1966 showed a decrease of 441 (8 percent) from 1965. An automobile is most likely to be stolen from a public street in a residential area in Precincts 2, 9, 10, 11 or 13 on Friday or Saturday night. The vehicle is most frequently a General Motors product, often unlocked, and often recovered within 72 hours

1 *Ibidem,* pp. 30-31.

2 Car theft is especially pronounced in countries with a large number of cars and also in those parts of developing countries where there is a heavy concentration of cars. In the United States, more than 60 percent of all persons convicted of auto theft in 1963 were under 25 years of age. The Italian contributor reports that in his country, car stealing is a common form of theft and is usually committed for "joy-riding" purposes rather than with any intention of selling the car, *The Young Adult Offender,* United Nations, New York, 1965, p. 12.

in a damaged condition in the same precinct where it was stolen. Two-thirds of the victims are Negro residents of the District of Columbia whose cars are taken from the vicinity of their homes or businesses. Three-fourths of the auto theft offenders are Negro males under 21 who reside in the District and who generally steal or abandon vehicles in their home precincts. In 1961-1965, 22 percent of all offenders were 15 and under [1].

d) RESEARCH REGARDING MANUFACTURERS RESPONSABILITIES (230-234)

230. This ever increasing precocious propensity to automobile thefts should not obscure the external conditions which appear to contribute to the increase in this type of crime. We move here from the thieves to the victims, from the young delinquents to the manufacturers and to the owners.

First of all it is necessary to put matters in context. In almost all the countries of the world, the number of automobile thefts have increased in proportion to the increasing volume of automobiles. This remains true until society reaches a point of saturation : at this point the stealing of an automobile ceases to be in most cases merely a loan, and becomes definitely an activity of an organized gang. (When this transition takes place, the figures frequently show a decline.)

> Many factors affect crime trends but they are not always easy to isolate. Murber is a seasonal offence. Rate are generally higher in the summer, except for December, which is often the highest month and almost always 5 to 20 percent above the yearly average. In December 1963, following the assassination of President Kennedy, murders were below the yearly average by 4 percent, one of the few years in the history of the UCR that this occurred. Since 1950 the pace of auto thefts has increased faster than but in the same direction as car registrations. During World War II, however, when there was rationing and a shortage of cars, rates for auto theft rose sharply. And in 1946 when cars came back in production and most other crimes were increasing, auto thefts fell off rapidly [2].

Consequently it would seem that the opulence of American society has up to a certain point, acted as a safety valve for this crime. On the other hand, the psychological aspect which we have mentioned, acts inversely with the result that automobile theft is possibly not expanding rapidly, but that it pertains to an ever-younger generation. If the statistics take into account that young people form an ever growing part of the overall population,

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1 *Report of the President's Commission on Crime in the District of Columbia,* Washington, D.C., 1966, p. 104.

2 *Task Force Report : Crime and its impact — An Assessment,* The President's Commission on Law Enforcement and Administration of Justice, Washington, D.C., 1967, p. 25.

it may be possible to say, keeping these proportions in mind, that this kind of crime is not increasing.

231. When we thus go from the perpetrators of thefts to the victim it is seen very quickly that the thieves show preferences for certain types of vehicles.

We have already noted (paragraph 227) that some statistics give the impression that General Motors products "enjoy" a preference by thieves. We know moreover, as a result of the study made by the Montreal municipal police force, that bank robbers steal, to help them in their flight, automobiles made by the same firm. This undoubtedly explains that General Motors has not always the same attitude as its competitors with regard to security against thefts. Thus they put off for one more year, what they should have put off even longer : the decision to stop the practice of engraving serial numbers on their motors.

> Paradoxically following the Canadian American agreement on automobiles in effect since Jaunary 18, 1965, the large automobile manufacturers have abandoned this practice of an engraved number on the motor. And this was so for the Fort and Chrysler models of 1966 and 1967 and for the General Motors models of 1967 only. The reasons given were of an economic nature. However, this change resulted in such abuses and created such difficulties for the squads responsible for the recovery, and the indentification of stolen vehicles both in Canada as well as the United States, and was so unanimously criticized, that the companies in question resumed this practice on their 1968 models [1].

In another respect, the same brief of the Canadian Automobile Theft Bureau mentioned that as of 1967 the General Motors Company intended adding on its models for the following year, new security devices :

> Thus a system of ignition sealed in a metallic box which would not allow any contact between the wires without breaking, would neutralize the most generally used theft technique. Better locks, more resistant windows, and an anti-theft system such as a locked wheel which can only be unlocked with the original key of the vehicle, would also be welcome. Finally it should be easy to build into the lock of the starter, a key ejecting system (by a spring) which would force out the key as soon as it returns to the neutral position, in other words, when the motor of the vehicle is stopped. The General Motor Company has already provided its 1968 model, but as an option, with a buzzer system which will go into operation as soon as the doors of a vehicle are opened while the contact key is in a neutral position in the ignition [2].

232. Let us make no mistake : the precautions (or the carelessness) of manufacturers do not explain everything.

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1 *Brief of the Canadian Automobile Theft Bureau,* p. 16, nos 23-24.

2 *Ibidem.*

1 — It is probable that some vehicles are more popular by reason of the advantages which they have for the bandit who may have to make "a quick get-away".

2 — A Ford in Quebec does not differ from an Ontario Ford, and Quebec nevertheless is ahead of Ontario with regard to the number of automobiles stolen.

3 — The most important cause of thefts is still the negligence of proprietors.

These distinctions do not eliminate one fact: certain types of cars seem, more than others, protected against theft. We therefore believe that the manufacturers have a responsibility in the prevention of theft. In addition we believe that the manufacturers can, furthermore, help in the fight against crime by making it possible to identify the vehicles in an easier manner. If we refer again to the brief submitted by the Canadian Automobile Theft Bureau, we see that the experts list five principal methods of identifying a stolen vehicle:

1 — the physical identification by the proprietor;

2 — the identification by licence plate;

3 — the identification by the identification number of the vehicle placed on a plaque riveted to the chassis;

4 — the identification by the motor serial number engraved on the latter;

5 — the identification by a hidden number.

In the opinion of the experts, the two last methods are, without being perfect, the most practical because in all the other cases, an alteration, a removal or substitution is possible (Canadian Automobile Theft Bureau, paragraphs 19 and 20). In view of these facts, it is much easier to understand the surprise of the experts when the automobile manufacturers decided to eliminate the number engraved on the motor during the years 1966 and 1967.

All in all it is obviously possible, as events have shown during the last two years, to manufacture automobiles which provide fewer opportunities for thieves. Furthermore it is equally possible as was the case until 1965, and as is now the case since 1968, to manufacture automobiles which are easier to identify.

233. The automobile manufacturers thus have their share of responsibility in the prevention of automobile theft and in the fight against this kind of crime. In the course of recent years, their attitude has changed from one

year to the other and even from one manufacturer to the other. Some, without anyone ever knowing why, decide at a certain moment to no longer number motors, which then makes a quick identification of vehicles extremely difficult. Two years later the identification is revived without anyone knowing the exact reason for this turn-about. (It might be suspected however, that the second decision is in part attributable to the wave of protests resulting from the decision taken in 1966.) In addition several amongst them who had adopted the custom of equipping their car, with an automatic wheel lock have subsequently eliminated this without anyone again knowing why. Finally, it would seem that the manufacturers have unduly delayed seeing to it that wires leading to the ignition are less accessible.

In many cases, it would only require the pressures from the Chambers of Commerce and various organizations of this kind for the manufacturers to quickly decide on better security measures.

In the same way energetic measures are called for to prevent the sale of master keys which are today utilized by organized gangs in a systematic manner. At the present time it is still possible to secure these master keys by correspondence, for a modest sum. The Canadian Automobile Theft Bureau reports that Texas already has in its statutes a provision which prohibits publicity regarding the sale of such keys and which provides that the possession of these keys without a valid reason, the proof of which rests with the accused, is considered an offence.

234. This short general survey of the situation shows both the remarkable progress in Quebec and also the delays which we have yet to overcome. We have also observed the continuing ambiguities in the statistics and the necessity to carry on research with regard to persons involved in this type of crime. Finally we have tried to emphasize the responsibility of the citizens themselves as well as the manufacturers of automobiles. It is now time to set forth specific recommendations.

FINDINGS AND RECOMMENDATIONS

FINDINGS AND RECOMMENDATIONS

1 – The number of automobile thefts in Quebec has followed a strange course :

– From 1946 to 1955, the number of thefts remained rather stable ;
– In 1956 and 1957 there was a considerable increase ;
– From 1957 to 1960, a new high ;
– 1961 marked the appearance of organized gangs, accompanied by a considerable increase.

2 – Since 1962, the number of automobile thefts has fluctuated :

1962	–	12,327	1965	–	12,769
1963	–	14,805	1966	–	11,644
1964	–	13,953	1967	–	13,232

3 – Different explanations have been offered for the ceilings and the fluctuations.

1 – Demographic changes ;
2 – The increase in parking lots ;
3 – The percentage increase in the juvenile population ;
4 – The repeal of the minimum sentence of one year for automobile thefts . . .

4 – Analysis shows that the number of stolen vehicles increases more rapidly than the population. The increase in the number of thefts follows, but even more rapidly the increase in the number of parking lots. However, if we were to take into consideration the increasing youthfulness of the population, the statistics for automobile thefts would be less impressive.

5 – Different sources seem to indicate that the rate of automobile thefts per 100,000 registrations, or for 100,000 population, increases slightly, but it is noted particularly that this type of crime is becoming the domain of ever younger groups.

6 – We do not believe that the repeal of the minimum sentence of one year in prison for automobile thefts, is an important factor in the increase in the number of thefts. In fact, the abolition has affected the entire country while the increase in the number of thefts has been noted principally in the metropolitan region of Montreal. Moreover, the efforts of the municipal police force of Montreal have succeeded in checking the increase in this form of crime, without the intervention of any amendment to the Criminal Code to re-establish the minimum sentence of one year in prison.

7 – According to available figures the thinking should be oriented in different directions, according to whether the vehicles are being "borrowed" by youngsters, or whether the vehicles are stolen by an organized ring.

8 – In the case of borrowed vehicles, the authors of the misdemeanors are generally youngsters who, according to specialists, find considerable difficulty in adapting to social life. Furthermore, the majority of these offences affect citizens who have not taken the elementary precaution of locking their vehicles, nor even of removing the key from the ignition. The solutions for this part of the problem would therefore include principally, measures for social readjustment and reintegration of the youngsters, as well as a publicity campaign to make citizens more conscious of the risk they run through their own negligence.

9 – With regard to the automobile thefts carried out by organized rings, other methods become necessary. The manufacturers and the police forces replace the citizens and the psychologists when it comes to dealing with this aspect of the problem. On the one hand the manufacturers must re-introduce and retain different methods of identifying the vehicles. On the other hand the government should revise the procedures in effect in the various registration bureaus so as to avoid the theft of licence forms. Moreover, the government must complete agreements with other Canadian provinces for the purpose of having a rapid exchange of information when the owner of a vehicle is transferred to another province. The legislator must also play his part by prohibiting as much as possible, the sale of master keys.

10 – The police forces should be more coordinated and they will be helped in their work by the enactment of more severe controls on automobile dealers and those who deal in second-hand cars and parts of automobiles.

11 – **RECOMMENDATION 1 :**

That pressure be exercised by the government and intermediary

bodies, to have the automobile manufacturers improve the security devices which would make the vehicles more difficult to break into.

12 – **RECOMMENDATION 2 :**

That the Minister of Transport utilize the correspondence which he has with automobilists to encourage them to be more careful with their vehicles. In the same way the police forces should make citizens aware of the figures with regard to the number of automobile thefts committed at the expense of negligent automobilists. That full use be made of the good will of the information media by supplying them with statistics with regard to the causes of and opportunities for automobile thefts.

13 – **RECOMMENDATION 3 :**

That the police forces periodically check to see whether automobile vehicles are carefully locked by their owners. That they give a written notice to those who show themselves to be negligent.

14 – **RECOMMENDATION 4 :**

That the coordination of the police forces include the liaison of all auto patrols to a centre and that this centre be in continuous communication with a computer, programmed with all the information on motor vehicles.

15 – **RECOMMENDATION 5 :**

That the police forces and the different registration bureaus, be required to transmit with the greatest possible speed, all the information required by the information centre of the Bureau of Motor Vehicles.

16 – **RECOMMENDATION 6 :**

That the Quebec Government require a provincial licence to enable anyone to carry on a business for the sale or repair of automobiles, new or used, for the sale of used parts, for the demolition or restoring of automobiles. The law should also cover automobile cemeteries.

17 – **RECOMMENDATION 7 :**

That the Minister of Transport issue a detailed register, for use by those who ask for permission to carry on the business of automobile dealer, or a dealer in used parts. The Minister should carry out a regular check of this register and take severe action against those who neglect to comply with the requirements for full details of all transactions.

18 — **RECOMMENDATION 8 :**

The demolition firms, and those who take automobiles apart, must be obliged to make an individual report to the Bureau of Motor Vehicles, for each vehicle destroyed, demolished or dismantled, and they should be required to give the name of the former proprietor of the vehicle, the description of the vehicle, and the reasons for taking it apart. Furthermore, with this report, they should be required to send, if it has not already been done, the licence plates of the vehicle, as well as the metal plaque containing the identification number of the vehicle.

19 — **RECOMMENDATION 9 :**

That the Minister of Transport require that all automobile dealers, as well as any person making a sale, point out to the buyer that the serial number of this vehicle is in conformity with the number inscribed on the registration certificate.

20 — **RECOMMENDATION 10 :**

That research be carried out for the purpose of a better determination of the identity of the authors of automobile thefts, keeping in mind, until the new order, that the theft of automobiles is in at least 70 percent of the cases, a crime of young people who find difficulties in adjusting.

QUEBEC, June 23, 1969.

President

Commissioner

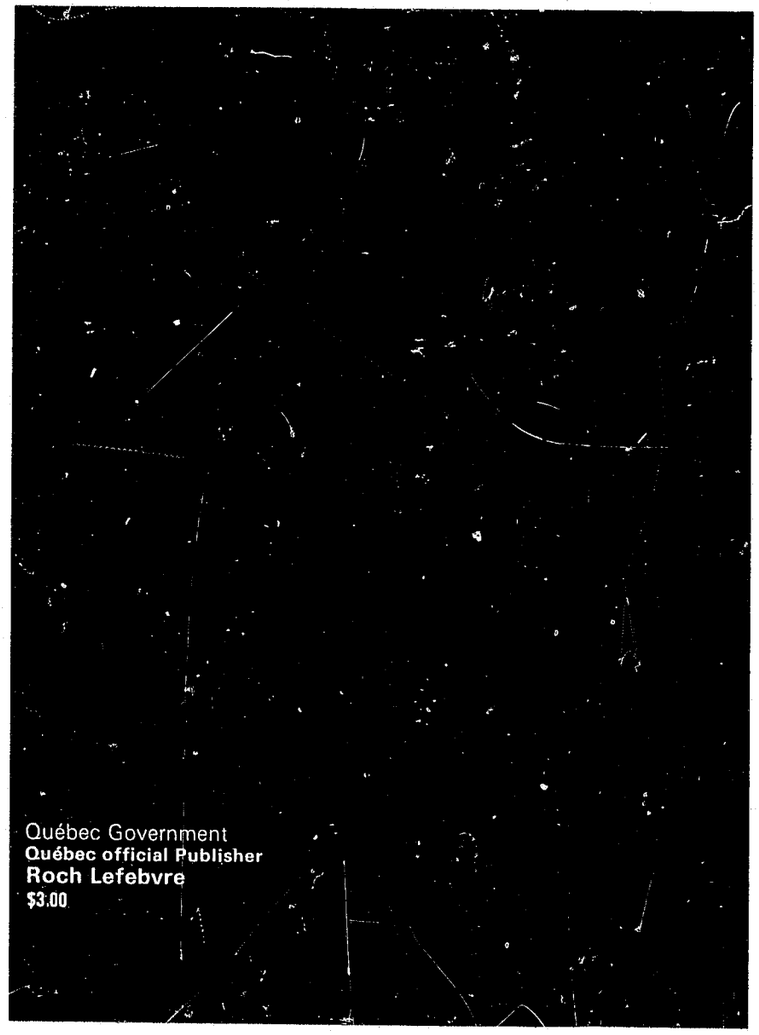
Commissioner

Secretary

APPENDICES

APPENDICES

All the appendices from 1 to 41 will be found in the French volume, a copy of which can be secured from the Quebec official Publisher.



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