

[Ms Graham in the chair]

THE CHAIRMAN: Good morning, colleagues. Welcome to this meeting of the Private Bills Committee. It's nice to see so many of you out so early in the morning after a long weekend, ready to deal with our business.

You have the agenda before you. I would entertain a motion to adopt the agenda as circulated. You will note that we are not dealing with the minutes from the previous meeting. They will be available at our next meeting, May 29. It was not possible to have them ready today due to the *Hansard* not being available on a timely basis.

MR. LORD: I'll move the agenda.

THE CHAIRMAN: Jon Lord moves the agenda be adopted as circulated. All in favour, please say aye.

HON. MEMBERS: Aye.

THE CHAIRMAN: Any opposed, please say no. The agenda is adopted.

This morning we have the last two of our hearings, on Pr. 2, Burns Memorial Trust Act, and Pr. 3, The Bank of Nova Scotia Trust Company and National Trust Company Act. You will have received this morning three letters, three documents that relate to these two matters, and I'm going to ask Parliamentary Counsel to highlight the import of each of these documents.

MS DEAN: Thank you, Madam Chairman. Just briefly, the first document you should have in front of you is a memorandum from the Department of Justice. It's dated May 17. They've provided some comments in connection with the Trustee Act and the department's commencement of consultation with respect to forthcoming amendments. Again, I would draw the committee's attention to the second paragraph, which indicates that the department has just begun the consultation process. The other material in this memorandum confirms that Bill Pr. 2 outlines amendments similar in wording to those outlined in the Alberta Law Reform Institute report, which was highlighted in my Parliamentary Counsel report to you circulated late last week.

You will also find in front of you two additional pieces of correspondence. These are with respect to Bill Pr. 3, The Bank of Nova Scotia Trust Company and National Trust Company Act. The first piece of correspondence, dated May 18, is a memorandum to me from the Deputy Minister of Finance indicating that the department has no concerns with this bill proceeding. Mr. Terrance Stroh, who is the director of financial institutions with the department, will be in attendance for the hearing on Pr. 3.

Also, I would like to draw the committee's attention to a memorandum dated May 18 from Alberta Government Services. You will note they have a number of comments with respect to Pr. 3. In particular, I would like to draw the committee's attention to point 3, specifically the bottom paragraph, where there is a recommendation from the department that a minor or a small change to the bill be made. What they are suggesting is that the word "may" be changed to "shall" in the context of reference to a recital of instruments that will be registered at Land Titles. We can discuss that further either during the hearing or next week during the committee's deliberations. There will not be anybody in attendance from the Department of Government Services this morning.

If I can just revert back to Bill Pr. 2, you'll note from the name

tags before you that there is a representative from the Department of Justice who has some expertise with respect to the Alberta Law Reform Institute recommendations for change to the Trustee Act, and that's Mr. Rick Bowes. He will be in attendance in the event the committee has any questions.

Those are my comments, Madam Chairman.

THE CHAIRMAN: Thank you, Ms Dean.

Will there be any questions arising out of that or any other matter from committee members before we begin the hearings? All right. There being no questions, I will ask that the petitioners and all other parties interested in Pr. 2, Burns Memorial Trust Act, be brought into the Chamber.

This bill is sponsored by Mr. Jon Lord, who is present today.

MR. McCLELLAND: The member sponsoring the bill will sit with the petitioners? Is that the normal practice?

THE CHAIRMAN: The normal practice had not been such, but I see no problem with that.

MR. McCLELLAND: Well, in that it was done last time, I'm just wondering about it.

THE CHAIRMAN: I'm not aware of any hard and fast rule one way or another.

MR. McCLELLAND: Thank you, Madam Chairman.

THE CHAIRMAN: Well, I don't think it makes a difference.

[Mr. Armstrong, Mr. Bowes, Mr. Hatch, Mr. Junkin, Ms Burke, Anu Nijhawan and Mr. Tolley were sworn in]

THE CHAIRMAN: Ladies and gentlemen, please be seated. Welcome to this meeting of the Standing Committee on Private Bills. I am your chairman, Marlene Graham.

I am going to have all the members of the committee introduce themselves to you. This is an all-party committee of the Legislature. But before doing that, I would like to have all of you put on the record your names and the agency or group you represent. I'll start to my far right with Mr. Bowes. If you could just give your name and who you represent.

MR. BOWES: My name is Rick Bowes. I am with Alberta Justice.

MR. HATCH: I'm Don Hatch, and I represent The Salvation Army.

MR. JUNKIN: I'm Tom Junkin. I'm the vice-president for western Canada Royal Trust.

MR. ARMSTRONG: I'm John Armstrong, solicitor for Royal Trust, the applicant here today.

MS BURKE: I'm Pamela Burke. I'm the executive director of the Burns memorial fund.

MR. TOLLEY: I'm Paul Tolley. I represent the city of Calgary in this matter.

MS NIJHAWAN: I'm Anu Nijhawan. I'm with the law firm that represents the petitioner.

THE CHAIRMAN: Thank you very much.

We'll proceed, then, to introduce ourselves.

[Mr. Bonner, Mr. Goudreau, Mr. Jacobs, Ms Kryczka, Mr. Lord, Dr. Massey, Mr. McClelland, Mr. Ouellette, Mr. Pham, Mr. Rathgeber, Mr. Snelgrove, Mr. VanderBurg, Mr. Vandermeer, and Mr. Yankowsky introduced themselves]

8:47

THE CHAIRMAN: Assisting all of us here this morning we have Parliamentary Counsel, Ms Shannon Dean, and our administrative assistant, Ms Florence Marston.

Before calling on the petitioner, I will briefly outline the process we normally use in this committee. The purpose of this hearing is to allow the petitioner an opportunity to describe the contents of the bill and, of course, the purpose for which the bill is sought. After the submission of the petitioner is made, members of the committee and Parliamentary Counsel have an opportunity to ask questions of the petitioners and other persons who have an interest here today. If there are any other parties who may be affected by this bill, they are entitled to be heard on this matter. We are not aware of any parties that wish to be heard other than those that have been sworn in this morning. All submissions obviously are taken under oath, as you've all been sworn in this morning.

Subsequent to the hearing this morning, the committee will deliberate on the evidence that's been heard. That will take place next Tuesday, the 29th, at which time a decision will be made as to whether the bill proceed as presented or proceed with amendments or not proceed. At that point you will be notified as to the committee's decision, and I as the chairman of this committee will report back to the Legislature. Then the bill, assuming it is to proceed, will proceed through second reading, committee of the whole, third reading, and receive royal assent, which we hope would occur this session.

So unless there are any questions, I will call on Mr. Armstrong to make the presentation.

MR. ARMSTRONG: Madam Chairman and members of the Legislative council, I had been asked by the chair to provide a short overview of the reason for our presence here today. As your briefing notes will reflect and as the history of this House will show, the reason for our presence here today is to, for the third time, come before the House to seek legislative approval to a process to carry out the charitable intent of a great gentleman, that being the late Hon. Patrick Burns.

Patrick Burns died on 24 February, 1937. He left a not insubstantial estate which, in the course of his plan, was divided in a way disproportionately in favour of charitable purposes. Specifically, two-thirds of his estate passed into something called the Burns Memorial Trust. The other one-third remains under administration within his family group.

We came before the House in 1956 seeking an act to clarify the process by which the administration of the Burns Memorial Trust – that is, the charitable side – was to take place. That act had been preceded by a court order of 1953 whereby the arrangement settling parts of this estate within the charitable side and the family side was directed.

The 1956 bill, chapter 64 of 1956, was such that it was deemed expedient and in the best interests of the five charitable organizations to pay to them annually the annual income from the Burns Memorial Trust. That was done for the benefit of the five stated charities, the first being the Sisters of Charity of Providence

of the northwest; the second being the governing council of The Salvation Army; the third being the trustees for the poor, indigent and neglected children of the city of Calgary; the fourth being the trustees of the widows and orphans of the members of the police force of the city of Calgary; and the fifth being the trustees for the widows and orphans of the members of the fire brigade of the City of Calgary.

In 1981 we came before this House confirming some name changes within that particular group. We had a petition to amend the legislation, modernizing, I guess, at that time the administrative process that would allow this trust to be administered. We have now been 20 years into this process from that date, and my client, the Royal Trust Corporation of Canada, successor to Royal Trust Company, the initial trustee, has administered that trust, annually reporting through the courts of this province as to their administration and then meeting with some of the persons represented here today. The only group not present are the Sisters of Charity, who have consented to this bill. Sister Patricia Vartaranian sends her regrets at not being able to be present here today.

The trust administration is then reported through to Ms Burke, who is the executive director of the Burns memorial fund. The Burns memorial fund comprises, if I could call it, the last three named of the five I had given to you. She administers those funds for the benefit of those three recipients. Mr. Hatch is the solicitor for The Salvation Army, and they apply the income received from this trust for purposes the Army has chosen within the province of Alberta and specifically the city of Calgary. The Sisters of Charity of Providence of Calgary apply their portion, the one-fifth portion, for the support of the Lacombe centre in Calgary. Mr. Tolley acts as the counsel to Ms Burke and the city and the Burns memorial fund group and is here to support and to answer any inquiries the House committee may have in that regard.

Madam Chairman, that is an overview, in as encapsulated a way as I can, to give you an idea of what we do. The trust assets are comprised of cash assets, investments in debt securities – that is, bonds and other forms of corporate and governmental debt – shares in publicly traded companies in Canada and the United States, and two holdings which are residual to that of the late Senator Burns, being shares of P. Burns Resources Limited and P. Burns Coal Mines Limited, which hold passively assets which the Senator's estate comprised. The trust assets on a book value basis are in excess of \$47 million, and they are comprised of about 14 million and some dollars in shares, \$3 million or so in cash at any one time – this is simply a snapshot – and \$25 million to \$30 million in traded securities, in bonds. Bonds comprise the majority of the assets under administration.

8:57

It came to pass that after discussions and under advisement of investment counsel as well as the collective mind-set of the trustee and the beneficiaries, it was time for us to consider that legislation and investment strategies have changed considerably over the course of time. We are, like many private trusts and public trusts, subject to the strictures of the Trustee Act and what is called colloquially "the legal list"; that is, a restriction as to the quantum and type of investments which a trustee can invest short of any other enabling powers. This trust is subject to that, as it is to the legislation which this House has given to it.

We have had the benefit of some excellent work by the Alberta Law Reform Institute. Specifically, the ALRI report 80 is mentioned in your executive summary, and I daresay you will in time see that and debate that in greater detail as you go forward in

considering the possible changes to the Trustee Act of this province at another session. We were encouraged from the ALRI report to note that this House has had, as a precedent to the process we are proposing here today, to consider the investment powers of trustees. They have been before this House, and amendments to them have been made in a number of statutes. Those that I have available here for mention this morning are the Condominium Property Act, the irrigation act, and the health regulations which relate to the investment parameters given to the foundations under which hospital and health care moneys are invested in this province. So we were encouraged in doing that to look to the possibility that this House would approve our petition to have the management of the assets modernized from a trustee legal list, that restricted list, to something beyond that and closer to what is called prudent investor guidelines.

So clause 4 of the bill has thus indicated that we are seeking to have that power given, and we are here today to seek your approval at committee stage to bring it to the House as an improvement to our statute. I should say for the record that this will be proposed as a new statute, thus replacing the previous one as amended, and it embodies, as we could find it to be practicable and within the powers we would wish to have on a reasoned basis going forward, the Alberta Law Reform Institute recommendations, tailoring them in section 4 of the bill before you to bring into a modern form the powers and duties with respect to investment. That is an overview of that part of the bill.

In paragraphs 5 and 6 and 7 of the proposed bill we have embodied the ALRI recommendations, as we read them, on trustee liability, as to how responsible trustees go forward, in this case the Royal Trust Corporation of Canada, in employing reasonable skill and prudence in being responsible for governance of the funds under their administration. In clause 6 a further modernization: lifting a restriction that hitherto existed, whereby “delegation of investment authority” had been a restriction which is not as evidently practicable in today’s modern investment picture. So the delegation powers, again from ALRI, are in clause 6.

In 7, authorized mutual fund investments, a similar modernization to allow this on reflection to be a mechanism for a trust to be efficiently managed for greater return at an assessed broader risk.

The provisions of clause 8 are of interest particularly to the beneficiaries present here today. The previous legislation had used the words “net income” or “income after expenses” to effect the distribution on an annual basis of the annual income of the Burns memorial trust “after deducting . . . reasonable fees.” The use of the words and the definition of the term “annual income” is such that it is restricted to interest and dividends earned on that investment; then fees are deducted and the amount is then net paid down to the five charitable organizations. It was thought after much reflection, again with the benefit of the counsel of Mr. Tolley and Mr. Hatch and in consultation with our investment counsel, that the decision should be made to seek an amendment – and it’s expressed in clause 8 – to pay “an amount from income or capital . . . in accordance with . . . disbursement quotas” under the Income Tax Act, which would give to the beneficiaries the same distribution of funds as would be applicable to other private foundations in Canada. This is a private foundation, charitably registered under the Income Tax Act.

If I can wind up, in summary the combination in the petition before you here today is to modernize and broaden our investment parameters, allowing us to go into new and reasoned, risk-assessed investments and to then, having done that, distribute in accordance with tax legislation and charitable guidelines that amount which would be on what is called a total rate of return distribution for the benefit of the five charities on an ongoing basis. This charity is

perpetual, so as time goes by, it will be subject to the direction of and governance of this House and will then evolve in time, in our view, for the benefit of Senator Burns’ named and chosen charitable purposes.

Madam Chairman.

THE CHAIRMAN: Thank you, Mr. Armstrong, for that overview. I’m wondering if any of the representatives of the beneficiaries here this morning wish to be heard before we hear from the committee.

MR. HATCH: On behalf of The Salvation Army, we’re very supportive of this application in all its aspects.

THE CHAIRMAN: Thank you, Mr. Hatch. I take it that’s the same position that . . .

MR. TOLLEY: Yes, Madam Chairman. We are as well. From the city’s perspective we’re very supportive of this legislative initiative.

9:07

THE CHAIRMAN: Okay. Thank you, Mr. Tolley. Ms Burke, you concur in that?

Mr. Junkin, I presume you would have a similar position?

MR. JUNKIN: Yes. As the trustee we think that the modernization is necessary and that it’s in the best interest of the beneficiaries to do it.

THE CHAIRMAN: Absolutely.

All right. Mr. Bowes, I know you’re here on behalf of Alberta Justice. Would you like to speak to the issue, in particular the prudent investor guidelines?

MR. BOWES: Thank you, Madam Chairman. As representative of Alberta Justice I’m afraid that I’m unable to go beyond what is in the memorandum that was provided to you by Ms Dafeo. The department is looking at the recommendations of the Law Reform Institute very seriously and has just begun the consultation process. Since the department hasn’t taken a position on the actual recommendations of the Law Reform Institute, it doesn’t feel able to take a position on the actual bill that is before the committee.

THE CHAIRMAN: All right. I appreciate that. I do understand that you yourself are quite familiar with the Law Reform Institute report in this regard.

MR. BOWES: Yes, that is true. In fact I wrote it. So if members of the committee wanted to ask me questions about the report and the relationship to the bill apart from my role as a representative of the Department of Justice, I’d be quite happy to try to answer those as Rick Bowes rather than as a representative of the Department of Justice, if that’s satisfactory.

THE CHAIRMAN: Thank you. I’m sure we couldn’t have anyone better. Thank you for that.

Would there be any questions from members of the committee this morning?

MS KRYCZKA: I don’t really have a question, just a statement on that.

THE CHAIRMAN: Please proceed.

MS KRYCZKA: I just wanted to say at this time that I have been aware for many years of this trust fund and the high regard in which it is held and certainly the benefits to the community agencies over the years. I've also known Mr. Armstrong and Mr. Hatch for many years. I know that they are held in very high regard by colleagues in the legal community, and I commend them for the work that they are doing with this. I just wanted to make that positive statement today.

THE CHAIRMAN: Thank you very much. I would certainly concur with those comments.

Anyone else? Yes, Mr. Goudreau.

MR. GOUDREAU: Yes, just a concern or maybe a clarification. I certainly want to congratulate you for bringing this forward to modernize it and bring it up to the year 2001. Under clause 8 you had indicated that up until now you were looking at net income, which was interest and dividends, and now you're talking about including income or capital. Do you want to expand a little bit on that statement?

MR. ARMSTRONG: I'm sorry; I missed the last part of that.

MR. GOUDREAU: You were distributing the interest and dividends prior to now. That's my understanding. Now you're talking about distributing net income or capital. Is that what you said?

MR. ARMSTRONG: The most succinct and hopefully helpful answer to you is embodied in the words of the petition. The concept that we have introduced here is that under the current view of prudence in investor guidelines, trustees are looking to broaden their investment parameters into as many areas as they can to minimize risk and to maximize return, having regard on an overall basis to what the investment may yield. So, therefore, there's no distinction between income, dividends, and capital gains. That's really the lift off from the old imprint of interest and dividends, as Mr. Goudreau has identified. It encompasses this broader scope of investment. It lifts off from a legal tight list.

It, I can say, will challenge trustees in the future because they're no longer just looking into this narrow horizon. It should yield a greater rate of return within reasonable risks and assessments to the beneficiaries of trusts generally. By removing the distinction between income, dividends, and capital gains, it would allow and afford, as we assess it on this side of the committee chamber, to the beneficiary group a greater long-term rate of return. All parties over here are quite mindful of that. The trust has grown. What has happened is that we've had considerable growth by, I think, good investment and the good fortune of this country and the parameters within the area in which we work. We want to ensure that that continues and also that we have a strong distributed annual amount down to Ms Burke, Mr. Hatch's client, and the sisters in perpetuity.

Thank you.

MR. PHAM: I just have one comment. Colleagues, what they're asking for is very similar to the guidelines in the Alberta heritage savings trust fund that are working today, and, you know, those guidelines were brought in 1996-97, so everything they ask for is reasonable and makes a lot of sense.

THE CHAIRMAN: Mr. Pham, could you repeat that? I didn't hear all of your statement there.

MR. PHAM: The changes that they're asking for are very similar to

the guidelines that the Alberta heritage savings trust fund is working under.

THE CHAIRMAN: The Alberta heritage savings trust fund?

MR. PHAM: Yes, the Alberta heritage savings trust fund. So what they're asking for is reasonable and makes a lot of sense financially. I just want to say that to my colleagues.

THE CHAIRMAN: Are you speaking of the prudent investor guidelines specifically?

MR. PHAM: Yes, the prudent investor guidelines.

THE CHAIRMAN: Thank you for that.

MR. SNELGROVE: Originally it was set up for maybe the one-third beneficiary, roughly, and 60 percent charity. Does this affect that at all? Is there any connection?

MR. ARMSTRONG: No. We are disconnected from the date of the 1953 order, and we run our trust as a discrete fund, quite separate. The only connection is that the Burns Memorial Trust owns 66 and two-thirds percent of those two private companies, and the family owns the rest. Apart from that, we have no connection, and none of the investment parameters or changes affect private persons, just the charities here.

THE CHAIRMAN: Mr. Lord.

MR. LORD: I didn't know if there were further questions. I was going to just move a motion, if that's necessary.

THE CHAIRMAN: We will be deliberating on the evidence on this hearing next Tuesday, in fact on all of the matters, so if you were going to make a motion in regard to . . .

MR. LORD: Wait until then?

THE CHAIRMAN: If you could, that would be great.  
Ms Dean, do you have any comments or questions?

MS DEAN: The only comment I have for the committee's benefit is that Mr. Armstrong has provided proof of consent from all sides, named beneficiaries, to our office, so if any of the committee members wish to examine that, it is available.

THE CHAIRMAN: Okay. Thank you.

Before concluding the hearing, I have a couple of questions which I would appreciate some clarification on. Clause 8 in the bill provides for the application of the federal Income Tax Act to the disbursement of the income for this trust. I'm wondering if you can explain in fairly simple terms the change that this brings about compared to the status quo.

9:17

MR. ARMSTRONG: The parameters of the Income Tax Act are such that it is for charities of Canada to recognize that they must manage their affairs so that they do not restrict their distribution of income or amounts that they earn from their investments, and the stated policy intent of that is to ensure that there is, to describe it, a cash flow from charitable assets.

There is under the Income Tax Act the description of the words disbursement quota, and it is that amount which a charitable organization must spend at least equal to a certain formula. The formula that the wording of section 8 applies to is described as 4 and a half percent of the average value of any assets a foundation owned over the previous 24 months as an overview of the disbursement. So the way we have calculated this is first of all to recognize that we are a private foundation; secondly, that we can continue to work within those parameters; and when we impose the prudent investor overview of this, it then affords to us the ability to pay those funds out. We are under section 8 recognizing this, and by lifting out of the current legislation the word “income,” we are then bringing ourselves to this investment quota that the Income Tax Act sets.

THE CHAIRMAN: Just further to that, then, would this mean that more income is being distributed or potentially less in a more measured way?

MR. ARMSTRONG: I would appreciate, also, comments and backup from those who have been in the process. It is felt that we should be able to pay more money out to the charities over the course of time than we have previously. It all depends upon the investments that you have, of course, and market conditions and all, but on a long-term basis it should afford us, as my client is trustee, to pay more moneys out.

THE CHAIRMAN: Okay. I ask that only because in the executive summary it does state that section 2 of the existing act provides for all earned income, net of expenses, to be paid out. So that would seem to be, you know, requiring all of it to be paid out.

MR. ARMSTRONG: But what we're paying out now is interest and dividends, and what this new rule will allow us to do is to pay out on a total rate of return including the capital gains. So the whole difference is that additional third component mixed into the whole.

THE CHAIRMAN: I've got it now. I was missing that point. Thank you for that.

All right. Mr. Bowes, if I could just ask you to elaborate on the extent to which other provinces have adopted the prudent investor guidelines. Have any other provinces adopted these policies in their trustee acts or their equivalent legislation?

MR. BOWES: Yes. There's a body called the Uniform Law Conference of Canada. It's a sort of interprovincial body, and it adopted what it called the Uniform Trustee Investment Act. I think this was in 1996. Even before that several provinces had adopted prudent investor standards along these lines, not exactly with the same wording but along the same principles, and the ones that did so before included Manitoba – actually, now I think I'm not going to be able to get it straight as to who did it before, who after. I think at this point the only provinces that do not have prudent investor standards enacted are British Columbia, Alberta and, I believe, Quebec and possibly one of the Atlantic provinces. Ontario, Saskatchewan, Manitoba, Nova Scotia, Prince Edward Island, and I believe New Brunswick have all adopted prudent investor standards in their legislation.

MR. McCLELLAND: Madam Chairman.

THE CHAIRMAN: Yes, I'll call you in just a moment, Mr. McClelland.

I know Mr. Armstrong alluded to certain pieces of legislation that specifically adopt these prudent investor standards. Are there any

other pieces of legislation you're aware of? I'm aware of the Insurance Act, which is to be proclaimed September 1, that has adopted these guidelines. Are there others?

MR. BOWES: Just off the top of my head, I can think of the trust corporations act, which, in dealing with the assets – a trust corporation owns assets rather than trust assets that it's administering for beneficiaries. I believe it adopts the prudent investor standards along the same lines as the Insurance Act. There is, I believe, certain other legislation that adopts them, but apart from the ones that were referred to by Mr. Armstrong, I'm afraid I can't remember them off the top of my head.

THE CHAIRMAN: Okay. That's helpful. Thank you.  
Mr. McClelland?

MR. McCLELLAND: Yes. A point of clarification, please. If the fund is able to disburse capital gains, I'm assuming, then, that that's capital gains net of capital losses in a global consideration, so the fund would not be able to disburse a specific capital gain on a specific investment and ignore capital losses. Is that correct?

MR. ARMSTRONG: That is correct.

MR. McCLELLAND: Thank you.

THE CHAIRMAN: There are no other questions arising out of the last comments then? Mr. Armstrong, did you have any concluding remarks?

MR. ARMSTRONG: Only to say, Madam Chairman, that we feel we have to take this step to keep in touch with modern methods of asset management, that following Mr. Bowes' comment and the good work done in his previous group at the ALRI, this province with ever-increasing amounts of investable capital – and certainly in the charity sector we're seeing much more interest in this type of approach to responsible governance. I don't know how many other private bodies are subject to legislative overview, but you may well see this in another time. I just came upon my briefing notes here and the fact that at the last spring session the Calgary Foundation, which is the community foundation in Calgary, had through Ms Burgener's private bill at that time applied for and was granted overview prudence. That to us was a useful guideline, because that substantial charity has embraced a management style which in our field is considered responsible and good. So we are not discouraged by that and, in fact, encouraged over the course of reviewing that that we are in the right place at the right time.

I can only, finally, thank Mr. Jon Lord for his assistance in this and his comments to us in giving us an overview of how this process would work.

Madam Chairman, thank you very much.

9:27

THE CHAIRMAN: Thank you, Mr. Armstrong.

MR. BOWES: Madam Chairman, just to clarify a point I made in responding to your question earlier. I think I mentioned that New Brunswick was one that adopted the prudent investor. While I was looking in this lovely green report, I saw that at the time it was written New Brunswick was not listed as one of the ones that adopted. So it would be Nova Scotia, P.E.I., Ontario, Manitoba, and Saskatchewan as the ones that had adopted the prudent investor approach.

THE CHAIRMAN: I appreciate that clarification.

All right then. We will conclude this hearing on Bill Pr. 2, Burns Memorial Trust Act. I thank all of you for your attendance here this morning and your very well-organized and well-documented and well-presented submission. As I mentioned, we will be deliberating as a committee next Tuesday, and we will advise you very soon thereafter as to the committee's decision.

Thank you very much.

[Mr. Clark, Ms James, Mr. Jentsch, Ms Lockley, and Mr. Stroich were sworn in]

THE CHAIRMAN: We are now about to proceed with the hearing on Bill Pr. 3, The Bank of Nova Scotia Trust Company and National Trust Company Act, sponsored by Mr. McClelland. I would like to welcome you to this hearing before the Standing Committee on Private Bills, and I appreciate your patience this morning. I know you've had a bit of a wait here before getting on for the hearing, but we will proceed without further delay.

I am your chairman, Marlene Graham. I'm the Member for Calgary-Lougheed. I'm going to have all the members of this committee, which is an all-party committee, introduce themselves to you. Before doing that, I would like to have all the parties here this morning, including the petitioner, identify themselves for the record and who they are representing. We'll start with Mr. Stroich.

MR. STROICH: Yes. Terrance Stroich, the Director of Financial Institutions, Alberta Finance.

MR. CLARK: I'm Stephen Clark, a partner with McCarthy Tetrault, counsel for Bank of Nova Scotia Trust Company.

MR. JENTSCH: I'm Dieter Jentsch, present CEO of Scotiabank and managing director of private banking and trust for Scotiabank.

MS LOCKLEY: I'm Jane Lockley. I'm the vice-president of the prairie region for Scotiabank.

MS JAMES: I'm Cheryl James, counsel with McCarthy Tetrault in Calgary, counsel for the applicant.

THE CHAIRMAN: Thank you.

Mr. Jacobs, if we could start with you.

[Mr. Bonner, Mr. Jacobs, Ms Kryczka, Mr. Lord, Mr. Maskell, Dr. Massey, Mr. McClelland, Mr. Rathgeber, Mr. Snelgrove, Mr. VanderBurg, and Mr. Vandermeer introduced themselves]

THE CHAIRMAN: All right. Thank you.

Assisting the committee this morning are Parliamentary Counsel Ms Shannon Dean and our administrative assistant, Ms Florence Marston.

I expect that if you were in the anteroom, you would have heard the description I gave briefly of the process and procedure we use. If that is the case, I won't belabour that point. I know Ms James is well familiar with our procedure. So we can skip that part; can we? All right. We'll proceed posthaste then, and I'll call on Ms Cheryl James for the submission.

9:37

MS JAMES: Mr. Jentsch would like to address the committee initially, and I'll answer any questions that you have.

THE CHAIRMAN: Oh, very well.

Mr. Jentsch.

MR. JENTSCH: Thank you and good morning. Thank you for coming the day after a long weekend to hear a bunch of bankers and some lawyers. I thank you for giving us the opportunity, Madam Chairman and distinguished committee members, for hearing Bill Pr. 3, The Bank of Nova Scotia Trust Company and National Trust Company Act. We had our introductions. I'm based in Toronto, but Jane Lockley represents our interests in western Canada, based out of Calgary and covering all the prairie provinces.

Before we deal with the bill in particular that we have, I thought it would be interesting to go back a little bit in time – and I won't take too much time – but really go back to a little bit of history to put the bill in a little bit of context. That's when back in 1994 we purchased Montreal Trust Company and Montreal Trust of Canada, both federally incorporated trust companies. It's useful to look at that transaction and reflect on how it impacts the bill and the situation we have in front of us today.

At that time the Bank of Nova Scotia already had its own federal trust company subsidiary, the Bank of Nova Scotia Trust Company. After the acquisition of Montreal Trust, Scotiabank began reorganizing the business of Montreal Trust to make it a better fit within the Scotia group of companies. In essence, all of the retail deposit-taking functions and related deposit products were grouped within Scotiabank itself. All of the corporate trust business was to remain in Montreal Trust, and all the personal trust business was to be placed in Scotiabank. Now, this would result in Scotiabank conducting all of the Scotiabank group's personal trust business. An example of a personal trust mandate would be where Montreal Trust acted as an executor under a will.

In order to accomplish this goal, it was necessary to substitute Scotiabank for Montreal Trust in all personal estates. However, in the absence of a legislative bill the only practical way to substitute Scotiabank for Montreal Trust in all personal estates would be to make an application to the court for each and every estate, which would then issue an order for each such estate substituting Scotiabank for Montreal Trust. To do this for each and every one of the thousands of estates for which Montreal Trust was a trustee or an executor would not be practical and very expensive. In essence, the most efficient way and effective way would be to introduce the bill that we have today.

For this reason the route chosen in 1997 was to make application to the Legislature in each province for a private bill which by law would substitute Scotiabank for Montreal Trust. Through the private bill by law the substitution would occur. The Legislative Assembly of Alberta passed such legislation in June of 1997, as did the Legislature of each of the provinces of Canada.

In 1997 the Bank of Nova Scotia acquired the National Trust Company. What is now before you is a bill identical to that passed in the case of Montreal Trust in 1997, requesting a similar substitution of Scotiabank for National Trust. The bill provides a description of the personal trust business which is affected. It makes Scotiabank liable for all of the previous actions of National Trust, so there is no prejudice to anyone going forward and then substituting Scotiabank for National Trust as the successor trustee to National Trust Company in all personal trusts of National Trust.

That is the conclusion of my formal presentation. Thank you, Madam Chairman.

THE CHAIRMAN: Thank you very much.

All right. Ms James, were you going to add to that, or shall we call on the committee for questions?

MS JAMES: You can call on the committee. We have the comments from Mr. Stroich as well as Alberta Municipal Affairs, Government Services for the land titles, and there are some issues – I'm just setting a recital, but otherwise the comments are satisfactory, and we can work with them.

I think Mr. Stroich can give you the information as to his department's view, which is that they have no problems with the bill proceeding.

THE CHAIRMAN: You confirm that, Mr. Stroich?

MR. STROICH: I do.

THE CHAIRMAN: All right. Thank you.

MS JAMES: We're ready for questions.

THE CHAIRMAN: Any questions from members of the committee?  
Mr. Lord.

MR. LORD: Thank you, Madam Chairman. My first question and my first concern is: if this legislation is passed, does it in any way break down any fire walls that currently exist in terms of information flow regarding the accounts and the assets, et cetera? Is there any breakdown of currently existing fire walls?

MR. CLARK: The answer is no. Two comments. One, I think maybe your question is directed more particularly to access the individuals may have to their information. Two components to that. The first is that legally – and that's why the comment in the opening remarks – what happens is that Scotiatrust is liable for all of the actions taken by National Trust. That's an important aspect to ensure that there's continuity or continuance. There's no resulting that anybody can't look back in terms of the estate and have access to Scotiatrust going forward based on something National Trust did.

The second part is that from an administrative point of view, all of the personal estate business within the Scotiabank group is now administered within one entity, Scotiatrust. In fact, those people have access to all of the files, all of the accounts, all of the past records of everybody within the Scotiatrust group, which now includes the original Scotiatrust customers, Montreal Trust, and National Trust.

MR. LORD: To clarify then, at the moment this information is already available. There are no existing fire walls that would be removed?

MR. CLARK: No.

MR. LORD: My second question. Since the breakdown of the four pillars concept that was put in place about a century ago at least, with the concerns of conflict of interest in terms of asset management between trust companies, bank companies, insurance, et cetera, I'm concerned about how this trust would be treated in terms of other aspects of the bank gaining access to this information. Are there any changes that would occur that would allow, for example, a different branch of the bank to be marketing products to this group of trust clients? Are there any changes there that would occur as a result of this proposal?

MR. CLARK: No.

MR. LORD: Okay. Thank you, Madam Chairman.

THE CHAIRMAN: Any other questions? All right.

I'm just going to call on Ms Dean. I'm wondering if you could, then, for the benefit of the committee just highlight what is being suggested in terms of an amendment by the Government Services department relative to clause 7.

MS DEAN: Certainly, Madam Chairman. I may call upon either Ms James or Mr. Clark to assist me in this regard. What the Department of Government Services is recommending is what appears to be a fairly minor amendment to subsection (2) of section 7 of the bill. You will note that the bottom line of subsection (2) refers to an instrument that "may contain a recital referring to the vesting under this Act." I gather that Government Services would have more comfort if "may" were changed to "shall". I get the impression that this would relate to an instrument such as a transfer that would be registered at land titles and, simply, that it would require that a recital or a preamble outlining the history of this transfer, basically the nature of this legislation, be included in any document to effect a transfer involving National Trust Company assets. Can you elaborate on that, and can you confirm whether you have any objection or problem with the recommended amendment?

MS JAMES: We don't have any objection. There may be some transfers that would already be registered where it could be a problem. In practice that is what has been done. The wording of the recital has been established with the department, and then it's been used and transferred practically. So I don't think it's a problem at all from the point of view of practicality. So we can do the amendment if they would prefer.

THE CHAIRMAN: So you would consent to the amendment, agree to it? Okay; that's good.

If there aren't any further questions, then, from members of the committee, Ms Dean, do you have any further comments?

9:47

MS DEAN: I just have a couple of questions. Do you have any projected time line for the effective date with respect to the transfer?

MR. CLARK: There are two aspects to actually concluding the transaction. First off is the legislation which enables it, which is the subject matter of this Legislature. The second is the commercial transaction itself, to move the assets over. What we've had to do, just as was the case with Montreal Trust, is that we've sought legislation in each of the provinces. The difficulty we've got is British Columbia, and I don't really know what's going to happen in British Columbia in terms of timing.

So what we've done is we've grouped the assets of National Trust into eastern and western. What we will do is we'll convey the eastern assets July 31 of this year, and we will convey the western assets, being Alberta and British Columbia, as soon as we can get legislation into British Columbia's Legislature. The time line, from what we can understand, would be something like this fall, which would give us a projected date, based on the banks' year-ends, of something like January 31, 2002, which is what we're hoping to work to.

MS DEAN: Just another question. Can you confirm what your practice was in 1997 with respect to notifying? Was there any formal notification from the petitioner to the land titles office with respect to the effective date, or was the notice simply published in the *Alberta Gazette*?

MR. CLARK: In fact, the question you raise is one that occurs in

each province, because you're right. What happens in land titles in particular is almost that they take notice of the fact that all of those things which said National Trust on them before now say Scotiatrust. It was a very big deal for land titles, and the same happens in terms of mergers of trust companies which have occurred. For example, Alberta just saw a big one as well, which was TD Trust merging with Canada Trust. The same issue there. They ask for specific documentation to support that. They then give it a particular number, as I understand it, and thereafter all instruments can refer to that number, which records the event as having occurred.

The same will be true here. This bill, once it becomes law, will become something that's deposited in land titles. So it goes back to Cheryl's comment a moment ago, and that is that they will have to take notice of it. Practically speaking, they will get notice of it, and then they'll record it as a specific instrument in their system.

MS DEAN: I guess my point is directly . . .

MR. CLARK: Will we do it?

MS DEAN: . . . as to the effective date. I mean, certainly we will send over a copy of the bill when it receives royal assent, but there may be a time lag. It may be six months or eight months. It's just really a matter of communication from the trust company to land titles, and I'm just wondering if that occurs.

MR. CLARK: The trust company has undertaken to the land titles offices in each of the provinces to do that because it's critical to their day-to-day action, and they need to know literally the day of. So we have done that as a matter in terms of making sure that their systems work, yes.

MS DEAN: Thank you, Madam Chairman.

THE CHAIRMAN: Well, seeing no other questions, are there any concluding remarks that you wish to make?

MR. JENTSCH: I just want to thank the committee for according us the time, and I'd like to thank Mr. Ian McClelland for presenting the bill. Thank you.

THE CHAIRMAN: Likewise, we appreciate your presentation this morning, and I think it's been well set out for the committee. Of course, there is some precedent for this with the private bill that was passed in 1997 relative to the trust business of Montreal Trust, so we're certainly mindful of that.

As I mentioned earlier, the committee will deliberate as a whole next Tuesday, May 29, and make a decision on the evidence heard today. The committee can either recommend that the bill proceed as presented or with amendments or not at all, and then it will proceed through the House in the normal course, through second reading, Committee of the Whole, third reading, and to Royal Assent, assuming that it is the decision of the committee that it proceed. We will notify you at each stage.

Thank you very much.

MR. JENTSCH: Thank you.

THE CHAIRMAN: All right, everyone. That now concludes all of our hearings for this session, and unless there's any new business, I'll entertain a motion to adjourn. Our next and probably final meeting will be next Tuesday, May 29, at 9 a.m. in this Assembly.

Mr. Goudreau moves that we adjourn. All in favour, please say aye.

HON. MEMBERS: Aye.

THE CHAIRMAN: Any opposed, please say no. The meeting is adjourned.

[The committee adjourned at 9:53 a.m.]