

LEGISLATIVE ASSEMBLY OF ALBERTA

Standing Committee

on

Private Bills

(Partial transcript only)

Wednesday, May 13, 1981

8:30 a.m.

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Chairman: Mr. Knaak

8:30 a.m.

MR. CHAIRMAN: (Outlined procedure to be followed)

UNIDENTIFIED: . . . comment on that Bill, if it is the one I think it is? You're talking about Mr. Armstrong's Bill from Bennett Jones?

MEMBER: That's right.

UNIDENTIFIED: There was some confusion that (inaudible) McLaws & Company were sponsoring that Bill originally. It was not our Bill, and we've never had anything to do with the carriage of it; so whatever the problems are, I don't want it to be any further on my head. Just so the air's cleared.

CHAIRMAN: Thank you. (long pause)

MR. CHAIRMAN: It is not necessary for you to stand in the Chamber to give evidence. You'll notice when you're speaking that a green light turns on; it indicates that your mike is working and it is quite easy to hear you. So it is not necessary to stand up to make comments.

(LONG PAUSE)

MR. CHAIRMAN: Could we have people who will be giving evidence identify themselves, also perhaps the solicitor, to the extent the solicitor's giving evidence. Perhaps we could have the people sworn at this time. . . . That's the point: if the solicitor isn't giving evidence, he doesn't need to be sworn; but to the extent that he does, we'll swear him as well.

*(Mr. Brian Sawyer and Mr. Ross Alger were sworn in)*

MR. CHAIRMAN: I would call on the petitioners for Bill PR2, The Honourable Patrick Burns Settlements Amendment Act, 1981, to make their opening comments. Perhaps, Mr. Deyell, if you'll be doing that, you could introduce your group to the committee, then go ahead with your statement.

MR. DEYELL: Mr. Chairman, Members of the Committee: It's my pleasure and privilege this morning to appear before you and to introduce to you the members of our group: on my left, we have the gentleman who will be making the presentation on behalf of the trustees, Police Chief Brian Sawyer of Calgary; the group to my left, in the second row are members of the trustees from Calgary and senior city officials who will be available to give evidence, if required, this morning. Working from left to right, we have Brian Volstad, who is the deputy city treasurer, City of Calgary; beside him we have Mr. Del

Kvernshagen, who is the city solicitor; beside him, Mr. Sam Blakely, who is one of the trustees and head of the department of social services; Mr. Michael Loewen, assistant to Mr. Blakely in the department; Mr. Mike Dungee, who is the detective with the Calgary police service; at the far extreme, we have Capt. Ted Stuart of the Calgary fire brigade.

MR. CHAIRMAN: Perhaps you could proceed with the presentation at this time, Mr. Sawyer.

MR. SAWYER: Thank you, Mr. Chairman. Ladies and Gentlemen.

Two of the questions that constantly have been coming up since this issue began some time ago can be summarized by saying, really, what is the issue? What is this issue all about? And in an attempt to explain that, in the next few minutes I would like to give you just a little bit of historical background to try to place the whole thing in context.

The other question that comes up from time to time is: why can't you people settle all your problems down in Calgary? And the answer to that, I'm afraid, is that there are rather sharp differences of opinion between Mr. Alger and the trustees on the best way to handle this issue. I guess that's why we're here today.

First the background. Senator Patrick Burns died in 1937 and, as I think most of you know, he was a successful rancher and the owner of the Burns Meat Packing Company. Pursuant to the terms of his will, he directed that the Burns Memorial Trust be established and endowed with certain income-producing assets from his estate, so that there would be income in this memorial trust. He specifically stated in his will that the trust was to be established for the benefit of five groups: the Salvation Army; the Father Lacombe Home; the widows and orphans of the police force; widows and orphans of members of the fire brigade; and the Calgary Children's Shelter. And his will went on to state that if no such organizations as the children's shelter existed, the money should be used for the benefit of the poor, indigent, and neglected children. The will further stated that the Royal Trust should manage the assets of the trust.

Two years after his death, the executors of the estate went to court -- 1939 -- in order to get direction from the court concerning the Burns Memorial Trust, because there was a need to appoint trustees. And in his will, Senator Burns had referred to having civic authorities involved in the administration of the last three funds in that list. That's the first important point I'd like to make, that the will talked about "civic authorities". And because I'll be referring to those three components, I'd just like to simplify the description: we'll refer to them as the children's fund, the fire fund, and the police fund. Those are the three funds that are at the heart of our petition.

As a result of that approach to the court, the then judge directed that the trust funds for the police, the fire, and the children should be administered, as trustees, by: the incumbent mayor of the city of Calgary; the comptroller of the city of Calgary; the city solicitor of the city of Calgary; the city's superintendent of children, as he was then known; the chief constable; and the fire chief. Now that was an interpretation of the term "civic authorities", and that was deemed to be consistent with the will.

Subsequently, and again in accordance with the will, the number of trustees was increased by appointing a representative of the police association and of the firefighters association to the board of trustees.

In 1970, the scope of the Burns Memorial Trust for the poor, indigent, and neglected children -- that's the children's fund I was talking about -- was enlarged by a Private Bill of the Legislature. That Bill, The Burns Memorial Fund for Children Act, was passed to allow the trustees to spend funds for the benefit of any minors in need, and any minors worthy of assistance, and for service or facilities desirable for the benefit of children. Again, the purpose and scope and direction of that amendment was deemed to be in keeping with the original intent of the will.

In 1975, also by a Private Bill of the Legislature, the scope of the funds for the police and fire were enlarged to provide for scholarships or bursaries for post-secondary education for children of policemen or firemen.

Now we come to the 1980 Private Bill. As a result of changes which occurred last year, specifically the death of a Burns heir, the Burns Memorial Trust is now in a position where it will receive a significantly increased amount of income each year.

The 1970 Act I referred to a moment ago, broadened the scope of the children's fund to the point where it is believed that there is enough scope to allow the trustees to spend this additional income. However, the trustees of the fund of the police and fire believe that the restrictions that the will imposes on these funds are inhibiting, and will not allow the funds that are flowing now to these two trusts to be spent. And the trustees therefore believe that the scope of the trusts must be enlarged so that they can spend this additional income. And in order to do this, the trustees petitioned for the enactment of a Private Bill which will extend the areas where these funds can be spent to include two specific areas: one, payment for the benefit of children or adults resident in Calgary who are in need and worthy of assistance, or to provide any service or facility for them; and two, payments or donations to any charitable organizations or non-profit societies carrying on their charitable activities in whole or in part in Calgary. Quite simply, the intent of that amendment is to open up the police and the fire fund to the same kind of distribution that is already available to the children's fund.

The trustees of these funds believe that those proposed changes are in keeping with the intent of the will of the late Senator Burns when he made provision for the establishment of these funds, and for that reason the trustees ask your support of the proposed Bill.

We as trustees appreciate this opportunity to demonstrate for the record that the funds in these bequests are in capable hands. More importantly, it gives us an opportunity to gain your assistance to ensure that these funds are used more effectively to serve the purpose intended by Senator Burns in his will. Now we as trustees have probably been hesitant in bringing this matter before you, because of our appreciation of the long tradition that a will is essentially inviolate. But with your support and with your help we believe that amendments to the will, consistent with the original intent of the will, will enable these funds to be used for the purpose that, in our opinion, was clearly intended by the Senator.

If I could give you a brief examination of our experience with the children's fund, it might give you some idea of the potential of the funds involved.

In 1979, the trustees of the children's fund approved expenditures of almost \$60,000. In 1980, that figure had risen to over \$150,000. This year, to this date, the trustees have planned for expenditures of over \$600,000, and several major allocations are yet to be considered. It is anticipated that before the year is out, nearly \$1 million will be provided by the memorial fund for children, the children's fund for the benefit of Calgary children in need.

These funds will be used to help mentally disabled children; they'll be used to help the children of battered and homeless women; some of them will bring learning to disabled children; some will bring disabled children to the resources that they need, while others will provide recreational opportunities for poor and neglected children who don't have access to the things many other children take for granted.

The children's fund in Calgary is active this year. It's playing an increasingly active role, and effective role, in providing assistance to children in need. The trustees acknowledge that the full development of that fund, the children's fund, has been slower than perhaps desirable. Now they can't change the past, but they do have reason to be encouraged about the present and optimistic about the future. The fund is achieving the purpose set out in the Senator's will, largely as a result of amending legislation previously granted here in this House. It is similar amending legislation that we are seeking to initiate here today, so that police and fire funds can be used for the same general purpose. The trustees of the police and fire fund are anxious to develop these funds and these resources to their full potential.

In view of all that's been said, you might wonder why we're so intent on maintaining the management of these funds. Well, the answer is simple: each of us believes that Senator Burns had a purpose in appointing civic officials as trustees. Each of us believes that, because of our civic responsibilities, we are in a unique position to appreciate the needs of the poor and indigent of our city. Each of us believes that we can identify and directly assist the very kind of people that Senator Burns had in mind when he established the trusts.

We believe that your support for this amendment will give us the opportunity to fulfill more effectively the intention of Senator Burns. And I'd like to ask our counsel to address specifically the legal considerations that are involved in this petition. Mr. Deyell.

MR. DEYELL: Thank you, Chief Sawyer. Mr. Chairman, and members of the committee: the key issue that's involved in this petition, as has been indicated to you, is to simply provide an amendment to the statute which will expand its terms to permit the present trustees to provide additional financial assistance to more people in the city of Calgary in the future than what they've been able to do in the past. This particularly applies to what's been called the police fund and the firemen's fund.

We would ask this morning that you keep in mind as you consider the merits of the petition, that the authority is with you in this jurisdiction -- in fact the obligation is with you -- to consider this bequest because there have been a number of indications to us that there is some other form that this matter can be dealt with.

I need not remind you that in matters involving estates, it is of paramount importance that you adhere to amendments that retain the wishes and directions of the testator as close as possible. Some comments have been made to trustees and members of this group over the last few days that a concern will be expressed by the citizens of Alberta if wills are changed after the death of the testator, in a manner that goes against his original intentions. So there's a very basic issue here that you have to keep in mind. I stress to you that the importance of trying to stay as closely to the original desires and wishes of the late Senator Burns as possible. All we're asking for is a broadening of the terms of reference to be more helpful in this day and age, in this modern society.

Now again, as Chief Sawyer has said, let's keep in mind that the will specifically provided that arrangements be made with Calgary civic authorities -- those words were used by the Senator -- and that the funds be administered by the city, not by an outside trustee. Senator Burns was familiar with trusts. He appointed the Royal Trust Company to administer the capital trusts as set up in his will.

One of the areas that we're now asking to change to bring the Act into current provision, and to bring it to today's society, is that we're asking that the phrase 'widows', be changed to surviving spouses, inasmuch as there are now over 60 women who are members of the Calgary police force. We anticipate in the not too far distance future that there may be women members of the fire brigade, so we want to broaden that out in a context that's in keeping with today's situation.

The amendment further provides that the trustees will publish a financial statement in a Calgary paper each year. The amendments presented by our Bill will give the trustees the authority to carry out the late Senator's wishes.

Now another question has been asked; that is, the position of the members of the Burns family. A number of people got in touch with Mr. R. J. Burns, Q.C. in Calgary, who is a lawyer practising there and who has been one of the trustees of the estate for many years. He wrote a letter to the Clerk of the Legislative Assembly and copied a number of people, and I just discovered this morning in talking to the Legislative Counsel that the letter has not surfaced. So I would beg your indulgence this morning to read his letter because I think it's pertinent to what a lot of people would like to hear. We hadn't planned on presenting it because we assumed it was already on file.

The letter is dated May 8, 1981. It's addressed to the Clerk of the Legislative Assembly.

Re: Burns Memorial Trust. This trust was created by the will of the late Senator Patrick Burns, who passed away in 1937, has over the intervening years been the subject of several private Acts of the Legislature, and I am informed that petitions are being presented for the consideration of the Legislative Assembly during its current session, requesting: a) an Act to Amend the Burns Memorial Trust being S.A. 1956 . . .

I'm going to drop a bit of the technicalities, if I may, just to speed it up.

. . . to include the words 'the annual income of the Burns Memorial Trust'.

Now an aside. That's the one you people dealt with earlier, and I believe have adjourned it until the fall sitting.

b) An Act to Amend the Hon. Patrick Burns Settlements Act, et cetera, by amending Clauses 2 and 3 by extending the powers of the trustees of the trust for the widows and orphans of the members of the police force and fire brigade of the city of Calgary. To include payments for the benefit of any children or adult residents of Calgary, and any charitable works or activities in the city of Calgary.

c) An Act to transfer the last above mentioned trusts and the trust for the benefit of the poor, indigent, and neglected children

of the city of Calgary from the present trustees to the Calgary and District Foundation, and to similarly broaden the terms of these three trusts.

I am, and have been since 1948, one of four or five trustees of the estate of the late Patrick Burns, and am one of 36 presently surviving next of kin, who are directly or indirectly entitled to the 67% of his estate, which is not part of the Burns Memorial Trust. I've also been the solicitor for the trustees of the Burns estate for the past 30 years. For a period of approximately two years, terminating in February of this year, I was a director of the Calgary and District Foundation. Because of these relationships, I have been approached by some of the parties interested in securing the passage of these three Bills and by members of the media for my support or views. On all such occasions with one notable exception, I have endeavoured to make it very clear that any opinions expressed by me, represent my personal views only, and I'm neither authorized nor do I purport to speak on behalf of the trustees of the Burns estate, or the members of the family. That exception is the proposed amendment to the Burns Memorial Trust Act. The need for this was brought to the attention of the trustees. On this date, during this past year because the capital of the estate became distributable on July 8, 1980, and the trustees became concerned that under the present wording of the Act, any capital distributions made in the form of money would, under the present Act, flow through the five charitable beneficiaries of the Burns Memorial Trust. This is contrary to the terms of the will, and to the intention of the Act itself, which by its preamble, and the notes to the draft Bill which the Legislative Assembly considered in 1956, was clearly intended to relate only to the annual income of the trust. Accordingly, the trustees of the estate are firmly of the opinion that the capital of the Burns Memorial Trust should be held by the Royal Trust Corporation of Canada in perpetuity, with the annual income only being distributable on the five charitable beneficiaries; and that is the duty of the trustee of the Burns Memorial Trust to act accordingly, and to take whatever steps it considers necessary to do so. To the best of my knowledge, the views of the trustees of the estate, or the next of kin of the late Senator Burns, other than mine, have not been sought with respect to the other two proposed Bills. Within the past month I have been advised that members of the Legislative Assembly would be interested in knowing the views of the family when considering these other two Bills. At this late date I do not know how these could be obtained in time to be tabulated and conveyed to the members of the Legislature at their current session. As the next of kin are scattered over the length and breadth of this continent, from Edmonton to Florida and from Vancouver to Ontario, I doubt if any of them, other than the four who are trustees, have any knowledge whatsoever of the Burns Memorial Trust, other than it has been receiving 13.2% of the income of the estate, and is now in the process of receiving 33% of the capital. None of the trustees of the various charitable beneficiaries, the Burns Memorial Trust, and the Royal Trust Corporation of Canada, as trustee of that trust, account or report to the trustees of the Burns estate or to any members of the Burns family. To the best of my knowledge no one has

ever suggested they do so. I have on occasion been present when the trustees of the trust administered by the city of Calgary officials have presented their accounts for the approval of the court, simply because the city solicitor's office had asked me to arrange that their accounts be passed immediately, following the passage of accounts of the Burns estate. On every such occasion I have deliberately left the proceedings at the conclusion of the passage of the Burns estate accounts, and so have any of the trustees of the Burns estate, and members of the family present, so that no one could say that any of us were meddling in the affairs of these city administered trusts. This attitude of the trustees of the Burns estate and the members of the family is further confirmed by the fact that when they all met for the first time in history, on April 2 and 3 last, to review the affairs of the Burns estate, none of these trusts were mentioned. This is not a reflection upon the Burns Memorial Trust or its beneficiary trusts. It reflects the feeling of the family that the affairs of these trusts are matters for the concern of their beneficiaries, their trustees, and of the civic and provincial authorities involved. I am personally very pleased with the interest displayed in the city-administered trusts within the past two years by their trustees and others concerned with the quality of life in the city of Calgary. I am hopeful that this, and the consideration being given these trusts by the members of the Legislative Assembly will result in the funds available in these trusts, to be better utilized in the future.

Signed: Sincerely, R. J. Burns

(Indented text above not checked against text of actual letter)

MR. SAWYER: Mr. Chairman, in his letter, Mr. Burns talks about: it reflects the feeling of the family that the affairs of these trusts are matters for the concern of their beneficiaries. Now this really isn't a complex issue at all that we put before you. In his will, Senator Burns talked about widows, orphans, indigent children, the poor, the neglected. He talked about people. That in our opinion, is where he wanted his estate directed, and that's the direction that we're seeking to take these additional funds -- to the needy of the city of Calgary.

MR. CHAIRMAN: Thank you, Mr. Sawyer. Thank you, Mr. Deyell. I would call on Mr. Alger now to make his opening comments, and to give evidence.

MR. ALGER: Mr. Chairman, I wonder if we might distribute some material that we have right now. And perhaps we'll get the remaining part of it. I apologize for not having it all, but could we distribute these now?

I have been speaking from notes here, and we have made copies available for the members of the committee.

MR. CHAIRMAN: We'll distribute those at the end of the meeting. Is that material that we're distributing now relevant to the presentation, Mr. Alger? Is this material . . .

MR. ALGER: Yes it is indeed.



MR. CHAIRMAN: . . . or is it a summary of your comments that you'll be making.

MR. ALGER: Yes, it is material that I wish to introduce, sir, which I think puts my position more succinctly than I can ~~do~~ do it almost any other way.

MR. CHAIRMAN: Mr. Alger, I guess we haven't met Mr. Myers yet. Perhaps he could be introduced.

MR. ALGER: Mr. Rick Myers of the firm of Code Hunter from Calgary, and he is my solicitor here this morning. Shall I begin, sir?

Mr. Chairman, members of the Private Bills committee: essentially my Bill is a Bill designed to allow trust funds provided by the estate of the late Senator Patrick Burns to be put in a mandatory sense to current community use. The terms of the Senator's will, coupled with changing social and economic conditions, have acted to permit a build-up of moneys in each of three charitable funds of approximately \$1 million each -- \$3 million in all. This build-up of moneys will be compounded as the funds receive larger amounts of distribution income from the Burns Memorial Trust. It is my position that these funds are presently serving a very limited purpose, and that steps should be taken to free them from the constraints of the past for the current betterment of the community of the city of Calgary.

Secondly it is also my position, having served as a trustee of these three funds for three years in my capacity as Mayor of the city of Calgary, that the present trustees are too busy with their regular duties to give these funds the attention they deserve. Therefore, my Bill proposes that the administration of the three trust funds be transferred from the present trustees who consist, as Chief Sawyer has said, in all cases of: the mayor; the commissioner of finance, as he's known today; the city solicitor; and in certain cases, the fire chief, the police chief, the director of social services, and two representatives of the fire and police departments transfer the responsibility to a volunteer organization known as the Calgary and District Foundation.

Now members of the committee and Mr. Chairman, you may wonder why am I interested. What is my great interest in this matter? It is simply this: I was a trustee until my term of office ended abruptly on October 15, 1980. And in my capacity as trustee, I became aware of the detail of these three bequests. Now while these are public matters -- that is to say they are literally on record for anybody to search out and study -- they attract no publicity whatever. I doubt if there are a dozen people in the city of Calgary, or let's say 100 people, who have any real knowledge of what's going on in these three bequests. So that is the reason that I am interested. I believe that the trusts are not performing the function Senator Burns had in mind, and I will get into that.

I was attempting whilst in office -- and I think Chief Sawyer and the others will agree to this -- to do something about it; to broaden the terms of reference, and again to transfer the responsibility to outside people. Because, speaking as one who had to devote his time to it, I simply hadn't the time as the Mayor of the city of Calgary. So what I am doing here today, is just to continue that which I was embarked upon in my office in Calgary.

Chief Sawyer has given a relatively good history of these three trusts, and I don't intend to repeat him, excepting in part. I had hoped to have before you -- and before we're finished you will have -- my submission, the history. The Senator died and he left his will. He left bequests for five charities, only three of which concern us today.

I would make this point. This is what his will said. This is the probate of his will. In respect of each of the charities to which we are directing our attention this morning, he says: "and I further direct my trustees to make such arrangements as may be necessary and advisable with the civic authorities of the said city accordingly."

His trustees were his son, his nephew, R. B. Bennett and two other gentlemen whose names are in the will here. Those were his trustees, and he says: "I direct my trustees to make such arrangements as necessary and advisable with the civic authorities of the city of Calgary."

Now as we have heard, Mr. Justice Ewing in 1939 issued an order under which, as I understand it, we are still operating. It was he who pointed out who appointed the trustees. Now this was in 1939. The population of the city of Calgary then, to my recollection, was 80,000 people. There are some here today who can probably check it up. I haven't looked it up, but I recall it vividly. A relatively small city. Today we are 600,000 on our way to a million. I maintain that the times have changed a bit since that order. But in any event, let us be very clear about the distinction between the will, as it expresses the wishes of the testator, and the direction of the court in 1939, which said that the mayor, the city solicitor, and the commissioner of finance shall sit on all three of these. So that happens to be the next part of the history.

The chief has said that the powers of the children's fund were enlarged in 1970, and nobody is seeking to change those today as I understand it. I'm interested in the comments of the chief on the children's fund, because his Bill doesn't deal with the children's fund -- but mine does. I'm not suggesting that the powers of the children's fund be expanded, because they are plenty big enough. But despite those expanded powers of 1970, not much money was spent in 10 years. That's the purpose of those statements. And I'll come to those in a minute.

The fire and the police fund couldn't spend their money. In 10 years the fire fund -- that's in these statements -- spent \$10,000. Ten thousand in 10 years is the sum of the expenditures on the beneficiaries -- the widows and orphans. At the end of that period they had \$1 million in hand.

The police fund in 10 years spent \$17,000. They had a million dollars in hand. So one understands -- and incidentally then of course, we come to this part, the 1975 amendment, which enabled -- and I don't understand the logic, but I do not quarrel with it -- enable these funds which were left for widows and orphans, people without income presumably. We are now using those funds for the education of the children of members of the police force, past and present, and of course, all of them but those who are retired are on fairly good average incomes.

In any event that happened in 1975. Clearly it was introduced to enable these funds to be used. But in 10 years they only spent another \$66,000 -- I think it was -- in the last three years of that 10-year period.

Now then here's where we stand today. And when I say today, I'm talking about December 31, 1979. I am not possessed of the audited financial statements for the year ended December 31, 1980. The fire fund had \$1,000,088 (sic) in book value in its investment portfolio. The market value of \$1,011,000. A potential loss on sale -- if you were to wind it up on that date of \$76,000. The police fund had a million dollars and I'm not focussing on the losses. I want you to know that there was \$1,088,000 in book value in the fire fund; \$1,053,000 in the police fund; a million dollars even in the children's fund. So that these people, who started with nothing 25 years ago

when the income or distributions came from the estate, are now possessed of a million dollars each at the end of 1979.

I might just direct . . . May I have a copy Mr. Solicitor, of these statements. Let's look at these statements.

Now Statement 1(a) for instance, you've got that on your desk. That's the fire brigade. You will see if you look at the . . . I'm looking at Statement 1 lower right-hand corner. This is the equity. There was an equity in this particular fund at the beginning of the arbitrary period which I have selected merely because it was a nice round number of 10 years -- \$408,000 give or take a few. Now you see at the end of the period, the bottom of the first column headed 1979, the equity is \$1,150,000. That fund which was intended to benefit the widows and orphans of members of the fire brigade of the city of Calgary is now possessed of \$1,100,000.

Turn please now to Statement 1(a) right behind it. Here you have a statement entitled -- and incidentally prepared by the city of Calgary, the handwritten data is somebody working for me, but all those numbers are is the sum of the parts. In this period you see that we took in \$618,000 of investment income. This is the return on the portfolios. You see the loss on the sale of investments -- I direct your attention to that -- \$215,992 is the recorded accounting loss on investment transactions during this period; audit fee. Then you see benefits; it's hard to read, but it says: benefits paid to widows of members of the fire brigade -- that's the \$10,000 I referred to. Six hundred in 1979; 2,300; 990 et cetera, across the board. This fund has not spent any money on the original beneficiaries. If we're concerned about what Senator Burns had in mind, it cannot be done and for very good reasons.

Finally the scholarships is that last line which is very difficult to read. Scholarships paid to children of members of the fire brigade -- you can see they started in 1977; 1978 - 10,000; 1979 - 16,000; 29,000 in total. So the money is now beginning to be used for that purpose. Operating revenue - 354,000; distribution -- this is the amount of money coming from the estate, and in each of these three funds that number is identical -- 432,000; increase in the equity - 760; the beginning equity; and we end up with \$1 million at the end of the period.

Incidentally, ladies and gentlemen, I won't ask you to see the rest of those statements, but they are there for your perusal. Now as the chief has said, in 1980 the estate is determined -- that is to say, the estate instead of being held in trust for the beneficiaries, is to be distributed to the beneficiaries. Thirty-three per cent of the corpus forms the Burns Memorial Trust. It is a trust in perpetuity and the income from that trust, which is incidentally the 33% of the estate in very round numbers, is thought to be about \$17,500,000. In other words, the estate is roughly a \$55 million to \$60 million estate; 33% of it is going to the Burns Memorial Trust in perpetuity. If you assume that that earns 10% a year, 1,750,000 and divided by five; there being five of these trusts, each will receive \$350,000. The receipts in 1980 -- the last year prior to the determination of the estate -- were in the order of 100,000 to 110,000. So that fund which received 100,000 a year from the income of the estate will now received two and a half times as much more or less from the Burns Memorial Trust.

Now gentlemen I would, and ladies . . . forgive me ladies for getting you second, but perhaps that tells you something about me. Would you kindly look at the last statement -- Statement 4. Statement 4 is in that package of data which you have before you. Now this is a combined statement of income and expenses for the 10 years ended December 31. If you take those numbers that were hand-written and put them side by side, this is what you see. The

investment income, and I have restructured it. This is my work. The investment income 600,000 more or less from each fund. A total of 1,000,008 (sic). The contribution identical from the income of the estate 432,713 in each case. A total of very nearly 1,000,003 (sic). The total of these incoming moneys -- and I use the word income in the sense of coming in, not an accountant's definition of income -- but in any event coming in -- 3,000,000 - 100%. Now what has happened to that money? Six hundred thousand or 20% has been lost on the sales of investments. In my view that is an inordinate loss.

Let me make this point right now. I was a trustee for three years. I was partly responsible for that. I am very prepared to share my share of the responsibility for that kind of performance. In my view that is not a good performance. What was paid to widows and orphans? -- 3.91 per cent. Nobody can say that this estate is being frittered away on the heirs. Tuition fees - 3.15%; audit fees et cetera - 0.73%. You will note the absence of any charge for administration by the city of Calgary, just in passing. So 27% was somehow gotten rid of, and 72% is left. In other words, despite the losses, 72% of those incoming funds are left.

Now the note at the bottom. What if we had liquidated everything on the last day of the 10-year period. There was a potential loss -- and here are those numbers I alluded to earlier, the last line but one -- excess of recorded value over fair market value of securities in the portfolio at the end of '79 - \$76,000 loss; 107,088; 272,000; and finally . . . 272,000 is in total -- and if you add those percentages together, you can see that 29% of this money that came in the door, has been eroded away by the policies of the group.

Let me draw your attention to one other more current number. You might write this at the bottom of Statement 4 if you wish. If we were to look at 1980 -- and I am working from draft financial statements only, I haven't seen the audited financial statements -- but the number which corresponds with the 272,000 being the potential loss at the end of 1979, at the end of 1980 is \$479,981. Pretty close to a half million dollars. Does anybody care to hazard a guess what it would be today with interest rates at 20%? It would be in excess of half a million dollars.

What conclusions do I draw? I draw these conclusions. First of all -- and I'm about ready to wrap up, Mr. Chairman. Expenditures on the beneficiaries over the 10-year period ended December 31, 1980 are minimal, relative to the income received. This indicates in part the need for broadened powers in the fire and police funds. I'm reading from page 5, those of you who have got my submission.

Secondly, the losses suffered on the sale of investments indicate the difficulty of the present trustees in managing a relatively large portfolio. Over 20% of the 10-year receipts have been lost due to circumstance of investing solely in bonds. This is the crux. This portfolio has invested -- and I'm sure my *confreres* behind me will support me -- 100% in bonds apart from short-term moneys from time to time. The trustees did not act to diversify their portfolios, and rising interest rates continue to erode the capital which has been built up.

By way of passing, I was reading something in Dun's review the other day that of 15 or 3,000 -- I've forgotten which -- pension funds surveyed in the United States in 1970 when my 10-year period started, the amount of moneys invested in equities, the proportion was in the order of 70% of the portfolio, was in equities; common shares/preferred shares that kind of thing -- convertible debentures perhaps. In 19 . . . oh say seven or eight years later it got down to 50% and now it's going way back up. Almost all new money is

going into equities. This fund has never put a nickel into a common stock. And that's partly in my view of what's happening.

Again I take my share of responsibility. But we never really got around to talking about that.

Thirdly, as a former trustee I can testify to the numerous demands made on the time of the mayor and the trustees. The top officials of a city with a population of 600,000 simply have no time. I don't know that I need belabor that point with you gentlemen to deal with this kind of peripheral and laid on task by a Senator, at least a gentleman, yes a Senator at a time when the city was little more than a big town.

Finally, my conclusion at the top of page 6. I believe that the trustees failed to perform their mandate in passively -- passively passing over funds which were intended by Senator Burns to serve a useful purpose, but which, because of changing conditions, have been frustrated in their objective. I believe that steps must be taken to put the funds to current community use, and I believe that Senator Burns would concur were he here to advise us today. I would point out, members of this committee, that Mr. R. J. Burns, whose letter has been read, at my request when I was a member of the nominating committee of the Calgary and District Foundation, was happy to serve on that foundation. He met with me and others on occasion as a member of the Board of Directors of the Calgary and District Foundation. He supported -- I can tell you this verbally -- that he supported the kind of thing that I am promoting, as it were, that I am here today to tell you about. He resigned just in April of this year as a director of the Board of Directors of the Calgary and District Foundation because of these two Bills. He felt as executor of the estate he didn't want to be in conflict of interest position. I agree with him.

Let me read, Mr. Chairman, if I may, from an article of Tuesday, March 24 of the city of Calgary. Now this is an interview by Catherine Warden. It says - the headline: Transfer of fund says Senator's nephew.

A nephew of deceased Senator Patrick Burns feels control of the Senator's \$3.3 million in bequests should be transferred from city officials to the Calgary and District Foundation. "I'm not saying (city officials) aren't just as able", said Dick Burns, a lawyer and executor of the meat packing magnate's roughly \$70 million estate. "But the foundation, like the foundations in Winnipeg and Vancouver is set up for the simple purpose of getting capital funds, administering them, and distributing them for community and social purposes. It's their business, but not the business of the city."

That's the end of the quote. Then a paragraph.

Burns had been a director of the Calgary and District Foundation until this month, March 24, but resigned to avoid possible conflict of interest over the bequest fund controversy.

Two or three paragraphs talking about me and one or two others, and then -- and I don't think they're relevant, Mr. Chairman, and I'll make this available if anyone wishes to read it -- the conclusion.

Burns said the city managed funds: "aren't being utilized" because of the limited terms of the bequest. "I think it was the Senator's

basic intent that they be realized for the benefit of the community" said Burns.

So, Mr. Chairman, while we have his letter, we have this report, and you have my testimony that in those meetings that I attended, my efforts to transfer this unnecessary workload from the city trustees to the Calgary Foundation, Mr. Burns was present on two or three occasions, and he was totally supportive.

Now the Bill that's before you would appoint simply trade directors. Appoint the directors of the Calgary and District Foundation in replacement of these worthy gentlemen here. The reason is that the present trustees are just far too busy, and I testify to that from my time in that office. Incidentally I have another clipping. I'm fond of clippings. The headline:

Calgary too big for council to run - seminar decides.

There was a seminar -- a three day seminar -- and they said this city has got to change its system of running. It's too big for the present incumbents. Secondly, my Bill then in the case of the fire and police funds protect the rights of the present beneficiaries. I'm not suggesting for a moment that widows and orphans ought to be ignored. They have first priority. The tuition second priority, and then thirdly those other items that the trustees would do in their discretion.

Third point - direct the trustees to expend all or substantially all of the annual income of each fund for the purposes listed. In other words, don't hoard it. Don't be a miser. Get rid of it. Get it out there into the community. Then you don't have the problem of losses on the sale of investments, and you don't have the problem of inflation eroding away whatever value is in that money. Finally direct the trustees to report annually to the public at large, which has been covered in the other Bill.

With respect to the Calgary Foundation, gentlemen, you can read here but you can see what it's all about. My only connection with it -- some people had thought I had some interest in the foundation -- my interest is this: as mayor I was a member of the committee of nomination for the directors; secondly, I have provided a bequest in my will -- not a big one -- but a bequest for the foundation; and thirdly, I support its aims and objectives. I think the people who run it are competent. They are volunteers. They are experienced, and they want to do it. These foundations in Vancouver with \$70 million of capital -- make 300 I think it is, bequests annually. That's to say, grants to worthy community programs.

Mr. Chairman, I think because of the time I won't say anything else but this concluding thing. I don't think the record is one that would induce anybody to carry on with the trustees. At the end of the 10-year period, and thanks to -- if you'll forgive my presumption -- my needling -- they are now proposing that they should have the extra responsibility. For 10 years, and some of them have been on that, those trustees, for 10 years, absolutely nothing was done. I'm delighted to see that you've got two Bills because at least something will be done. But I put it to you this way: if we are so busy at City Hall today that we can't deal with the funds that have gone through the thing, what will they do when two and a half times as much money is received for distribution and grants are received from just about everybody in Calgary -- grant applications. Thank you, Mr. Chairman.

MR. CHAIRMAN: Thank you, Mr. Alger. Does Mr. Myers have any additional comments?

MR. MYERS: Just two legal points, the first being that with respect to the children's fund, if you refer to Appendix A, you will see that by the terms of the Senator's will, that was to be a non-accumulating trust fund. Despite the provision, these funds have been allowed to accumulate in the children's fund, and despite the broadened scope of those bequests, as per the legislation which has been enacted, I would think that this would point out to the members of this committee that the present trustees are not in a position to ensure that there's distribution as per the terms of the order or the will, or as per the terms of whatever legislation you may enact here.

The second point I will make is that with respect to the terms of the will, the trustees were not named as the civic authorities. The administration of the will was to be done in consultation with the civic authorities. I think it's a mis-statement to say that it was the Senator's wish that the present trustees act. It was pursuant to the order of Mr. Justice Ewing that those persons were named. It was just a scheme. I think that those matters should be taken into context.

MR. CHAIRMAN: Thank you. Now we're going to have a time problem. I think what we'll have to do is just take one or two questions, have a rebuttal statement for both parties, because I think that's necessary for the committee to get the full factual information. What we may have to do is ask the petitioners to come back at some subsequent time to answer further questions. But I would like the committee to hear the rebuttals of both petitioners now that the presentation is in. But we should take two or three questions, should any ambiguity have occurred that can be answered in the next few minutes. Mr. Pahl.

MR. PAHL: Thank you, Mr. Chairman. I'd direct this to either petitioner. That is whether there was any, in effect, historical research done as to charities existing within the city of Calgary at the time when Senator Burns made his will that were excluded. In other words, were they excluded for some particular reason?

The other question I would have for the petitioners, and particularly for Mr. Alger, is with respect to the performance of the Salvation Army and the Sisters of Charity of Providence of Calgary, and why his petition -- had he considered directing the unused proportion or those proportions to those other bodies who would, apparent by their lack of being referred to here, have done a good job meeting the purposes of Senator Burns' will.

MR. CHAIRMAN: Now in terms of the first question. Was the first question clear, Mr. Sawyer, Mr. Alger? We'll start on the first question and give each party an opportunity to answer that. I'll direct the second question to Mr. Alger.

MR. SAWYER: Well the question is clear. I am not aware of any research that was done at the time, except to repeat what Mr. Deyell said, and that is that the Senator was clearly familiar with trusts and with various options open to him. It seems to me that he rather precisely drew up the terms of his will, directing that the money be directed in certain specific areas. I conclude from that that he looked at other alternatives and decided that's where he wanted his money to go.

MR. DEYELL: Mr. Chairman, I might just add that in the will there are a number of other bequests to groups in Calgary, some of which would be considered charitable and some not. So there were a lot of other bequests which aren't the subject of this discussion, but they're in the will. He did give a lot of money to other entities, including the church, Navy League, Red Cross, and so forth.

MR. SAWYER: I was about to repeat what Mr. Deyell has said.

MR. PAHL: (inaudible) . . . is to determine what need the Senator was attempting to meet with respect to his bequests, and moving that need into the future. I think it has been answered.

MR. CHAIRMAN: In terms of the second question, Mr. Alger.

MR. ALGER: Perhaps, I've just had a thought as to what was intended. In 1939 or 1937 when Senator Patrick Burns was alive, apparently there were no annuities or pensions or other forms of support for widows of those killed in duty or otherwise. It was following a fire at his home, according to Mr. Burns, that's to say, Dick Burns, the lawyer with whom I have met from time to time, that the Senator decided that having had a fire put out, he asked the fireman what's going to happen if you die in this thing, and what does your widow get. The answer was, nothing. Now that I think is third testimony as to what he had in mind, and it has been said he did give money to the Roman Catholic College, Father Lacombe home et cetera.

MR. DEYELL: Mr. Chairman I have a problem. I had a discussion with Mr. Burns which is in conflict with what Mr. Alger is saying, and I'm wondering if I should be sworn, and make those comments.

MR. CHAIRMAN: I think we've got a problem for sure. I think you're entitled, Mr. Deyell, to do that. I think we should be sworn and say that. But I think I've got a real problem accepting evidence on behalf of the committee saying what somebody else said. I was going to make the comment to the committee once we go in camera anyway, that newspaper stories and heresay evidence is not really evidence to the committee, other than what it is. I haven't had any experience as a judge, nor as a barrister, but going back to the days when I was studying these subjects, it seems to me it's the kind of evidence that would not be accepted as evidence before a court. Now we're not a court, so I permitted the evidence to go in. But I also was going to raise the caution that -- and we as politicians know -- newspaper stories don't always reflect exactly the view.

MR. DEYELL: Mr. Chairman, that's just the problem. The evidence is in, and Mr. Burns indicated to me that he was misquoted and so that's my problem.

MR. CHAIRMAN: In fact, I would like you to be sworn, Mr. Deyell, and I would like you to make those comments.

I think subsequent to these comments, that we're going to have to ask the petitioners to wind up because without rebuttal you don't have the whole evidence, so I would like the rebuttal in. If there are more questions to be asked, we'll have to call the petitioners back.

*(Mr. Deyell was sworn in)*



MR. DEYELL: Mr. Chairman, very briefly obviously I discussed this whole matter with Mr. R. J. Burns because of the statements that were made to the press and the concern that people had as to his position, he indicated to me directly, and I've known Mr. Burns for 25 years, so we have a personal relationship as he has with Mr. Alger, and he indicated to me that he was substantially misquoted in the article in question. So I think it's difficult for it now to come out as evidence of his support. I do think that the last two or three sentences that Mr. Alger read at the end probably fairly summarize his position that he does want the funds utilized better by whatever purpose, and I think that really is substantiated in his letter.

MR. CHAIRMAN: Thank you. I appreciate those comments. I think that we can conclude that Mr. Burns did not want to appear here, and didn't really want to give evidence here. So I think it should be -- as far as the committee is concerned -- really we should not receive any statements from Mr. Burns other than the letter. By listening to the letter, we'll have copies of it, and that is a letter. We interpret that ourselves.

Now in terms of the rebuttal, I would ask that we confine ourselves to four minutes, and I would ask . . .

MR. PAHL: . . . second question correctly to Mr. Alger. I wonder if we'd have time to get that answer.

MR. ALGER: I of course confined my concern to those bequests -- the three out of five -- which fall within my purview as a former trustee of the mayor of Calgary. Now I can only say this: I know nothing about the Salvation Army excepting that any money that they get in Calgary or Edmonton, or elsewhere, is sent to their head office in Toronto, and then sent back to the extent it's needed. So it would be very hard to figure out what they have done. I have no knowledge of that whatever and certainly nothing of the Father Lacombe home which was the fifth charity.

MR. CHAIRMAN: I apologize for the rush. Thank you. But we're going to have to have Mr. Alger make a concluding comment now, confining himself to four minutes or less.

MR. ALGER: Mr. Chairman, my rebuttal will be very brief. My point is simply this: there are sterile funds that were intended to be used. The record of the past 10 years, and some of the incumbents, is quite clear. Nothing was done. Now I'm delighted to see that both of us are trying to do something, and I think that having regard to the demands -- and I'm sure the police chief will testify that he has a lot of things to do -- having regard to the demands of the city solicitor, and the commissioner of finance, and the mayor, that it is fitting and proper that another institution take over this responsibility. The beauty of it is, we have a fantastic organization, and you have their annual report. Of itself, it doesn't prove a great deal, excepting they're trying desperately to amass a capital fund that will enable them to do the kinds of things that are being done in Winnipeg and Vancouver. That is my submission, Mr. Chairman.

MR. CHAIRMAN: Thank you, Mr. Alger. Chief Sawyer.

MR. SAWYER: Mr. Chairman, ladies and gentlemen: there's much that Mr. Alger said that I would like to respond to, but under a time constraint it's difficult.

First, he's an accountant and I'm not. But I do know that the issue or the suggestion that there have been losses on the funds, is the kind of a -- if you'll pardon me -- simplistic statement that ought not to be made without a careful analysis being made of the ebb and flow of the funds. As a matter of fact we have now engaged an investment analyst to do just exactly that. Furthermore, the civic official who was responsible for managing the funds made the suggestion two years ago to the trustees, that the city's management of those investment funds be subjected to analysis, and the then trustees including Mr. Alger, decided that there was no need to do that, that that wasn't the role of the trustees, that the funds were being managed by presumably a competent body, and therefore the management of funds *per se* was not the business of the trustees. Just the same as the bulk, the corpus, the \$15 million referred to is being managed by Royal Trust, although that whole issue of how the funds are managed is being looked into by Wood Gundy on our behalf right now. Too busy? Yes, we are all busy people. I'm sure you are busy people as well, but you do find the time to do the things that you believe in, that you think are important. And we think that the direction of these funds is important, and we're prepared to make the necessary arrangements to find time to do what needs to be done.

The question or the suggestion that the build-up of the fund will be compounded because more revenue is due to start coming in, is simply not so. We have decided -- and that's the reason for the petition -- that we must spend the funds. We must do whatever is needed to spend the funds on an annual basis. And that's what we're committed to doing. And that's why the petition we put forward stipulates that if the funds can't be utilized specifically for projects that we identify, that we have authority to turn the money over to other charitable organizations who have needs which are identified and which are hopefully parallel to the wishes of the Senator. So we're trying to spend the money and get it out where it will do the most good.

MR. CHAIRMAN: Thank you, Mr. Sawyer. On reflection, I think there's a (inaudible) issue, and I think it's fair to say, controversial. We're going to have to put time aside. Perhaps you may be aware that the session will be over sometime at the end of May or early June. The Private Bills committee does not sit -- even if it did sit, the legislation couldn't get passed because it can only get passed by the House as a whole. So we're going to have to try and find sometime, perhaps in the evening, subject to the wishes of the committee over the next two/three weeks. I'll be contacting both petitioners, directly after advice from the committee, as to whether or not there will be time available. But I think it's clear to me and clear to members of the committee that we need more time to ask questions.

I wish to thank you both for appearing before the committee today. I apologize that we could not conclude the matter today, but I'm sure that you'll agree that it's important enough to get a full hearing at a different time. Thank you for coming.

I think in light of the time, and in light of the fact that another committee is waiting at the door, so to speak, it's appropriate to make a motion to adjourn. Thank you.

*Motion for adjournment by Mr. Pahl*

*The meeting adjourned at 9:55 a.m.*