[Chairman: Mr. Stiles] [8:30 a.m.]

MR. CHAIRMAN: I'll call the Private Bills Committee to order. We propose this morning to deal first with the two bills brought forward by the city of Edmonton. Those would be Bills Pr. 10 and Pr. 11. Mr. Clegg, if you would swear any witnesses. We'll have a brief delay. Someone has misplaced the Bible.

While we're waiting for Mr. Clegg to return, I'll just mention that the proceedings here are relatively informal. However, whoever you have here as witnesses will need to be sworn, and as soon as Mr. Clegg gets back with the Bible, we'll attend to that. You don't need to stand; if you are comfortable sitting, that's fine. We'll ask you to make any opening statement that you wish and, afterwards, if committee members have questions of your witnesses. When the questions are completed, if you have a closing statement you can make that.

MR. WALKER: Mr. Chairman, will we be dealing with both Bills at the same time or in order?

MR. CHAIRMAN: Is that your preference, or would you prefer to deal — I think we would prefer to deal with them one at a time, but if there's an overlap . . .

MR. WALKER: My preference would be one at a time, Mr. Chairman.

MR. CHAIRMAN: We'll deal with Pr. 10 first.

MR. WALKER: Fine.

MR. CHAIRMAN: That's the Edmonton Research and Development Park Authority Amendment Act.

[Mr. Buck Olsen and Dr. Harry Gunning were sworn in]

MR. CHAIRMAN: Mr. Walker, if you'd like to proceed.

MR. WALKER: Thank you. Mr. Chairman, hon. members, my name is Reagan Walker. I'm a member of the city solicitor's office in Edmonton. I have with me today Dr. Harry Gunning, the chairman of The Edmonton Research and Development Park Authority, and with him is Mr. Glenn Mitchell, the general manager of the Authority.

The Edmonton Research and Development Park Authority was incorporated by Chapter 93 of Statutes of Alberta 1980. Under section 6 of that Act, the composition of the Authority included one member of the council of the city of Edmonton, appointed by the city council. In 1982, the city of Edmonton council reviewed its aldermanic appointments to its various boards, authorities, and committees, and decided that it would be in the best interests of the city, and presumably the aldermen involved, given their work loads, et cetera, to make optional the appointment of an alderman to the board of The Edmonton Research and Development Park Authority.

I have here a certified copy of the council minutes of June 14, 1982, indicating that it desired that the appointment of the alderman be optional. A year later, on June 14, 1983, the council of the city of Edmonton specifically approved a resolution making the aldermanic appointment optional, and directed us to petition the provincial government for a change to the Edmonton Research and Development Park Authority Act. I also have a certified copy of the minutes of the council meeting of that date in this regard, which I have just given to the Parliamentary Counsel.

Bill Pr. 10, in front of you, is substantially the same as the city council resolution and is entirely satisfactory to the city. In case you have any questions as to how the authority itself feels about this Bill, I have asked Dr. Gunning to be here and to answer such questions.

Thank you very much.

MR. CHAIRMAN: Do any committee members wish to ask questions? The Member for Vermilion-Viking — I'm sorry. The hon. Member for Lac La Biche-McMurray.

MR. WEISS: Thank you very much, Mr. Chairman. I didn't know I had moved, but I welcome the opportunity.

My question is to Mr. Walker, and perhaps he wishes to redirect it to Dr. Gunning. When you don't have an elected official involved in the park, is there going to be any change in direction or any change of feeling? Had the member that was sitting from city council attended on a regular basis? How often would they meet, and had that presented a problem? Is one of the reasons you have decided not to have a member from city council attend because of the specific duties or the time constraints? Because of the amount of dollars involved and the importance of the park itself, I am wondering if it shouldn't have been continued. I wonder why they would really want to opt out.

DR. GUNNING: Mr. Chairman, Mr. Weiss, thank you very much. I would be very pleased to express our experience here. In the first place, at the present time we have two aldermen on the board of the Research and Development Park Authority. They have attended as often as they can, and we appreciate their attendance very much. Unfortunately, as you know from your experience in these matters, Mr. Weiss, they have many, many responsibilities and many, many boards. I think this change was merely to give them a little more flexibility with respect to attendance at boards. At the moment we are very well represented in that respect.

MRS. KOPER: I would like to ask a little bit about the funding mechanism for the Research and Development Park. Who's responsible for most of the funding?

MR. WALKER: Do you want to handle that, Mr. Mitchell?

MR. MITCHELL: I have not been sworn.

MR. WALKER: Mr. Chairman, I wonder if we could ask Mr. Clegg to swear Mr. Mitchell.

[Mr. Glenn Mitchell was sworn in]

MR. MITCHELL: Mr. Chairman, in response to the question, the funding of The Edmonton Research and Development Park Authority over the years has been largely civic, the city of Edmonton having purchased the land, having transferred it to the authority, and having been responsible for the development of the land, the operating budget, administration, and marketing of the Authority itself. The province of Alberta did participate in the form of a major interest-free loan for a period of time for the development of local improvements to the research park.

MRS. KOPER: If I may comment, it seems rather odd that the elected representatives have the financial investment, yet are not willing to take a regular part in this despite their heavy duties.

MR. WALKER: Mr. Chairman, if you will look at the Edmonton Research and Development Park Authority Act, the board is composed of the mayor, one commissioner appointed by city council, one — it used to be one member of council, which we are now asking to be made optional — and, in addition, five electors appointed by council, at least one of whom is to represent the tenants of the Research and Development Park Authority. In other words, every single member of the board is appointed by council. So there is considerable influence in that way.

MR. CHAIRMAN: Are there any other questions?

MR. OMAN: Mr. Chairman, if I understand it, they still may appoint a member from council if they so choose. This does not limit them from so doing; it just doesn't require that they do.

MR. WALKER: Yes, Mr. Chairman, that's correct.

MR. CHAIRMAN: If there are no other questions by committee members, do you have anything to say in closing?

MR. WALKER: No, Mr. Chairman. Thank you very much.

MR. CHAIRMAN: Thank you.

In that case we will move on to your second Bill, Pr. 11, the Edmonton Convention Centre Authority Amendment Act, 1984. Would you like to proceed on that one?

MR. WALKER: Thank you, Mr. Chairman. Hon. members, I have with me today Mr. Buck Olsen, a former alderman of the city of Edmonton and, at present, chairman of the Edmonton Convention Centre Authority. The Edmonton Convention Centre Authority was incorporated by Chapter 75 of Statutes of Alberta 1979. The membership of the authority was increased from five to seven by an amendment to the Act, in Statutes of Alberta 1983, Chapter 58. At present, section 5(b) of the Edmonton Convention Centre Authority Act requires approval from the city of Edmonton council before any leases of more than one year can be entered into.

On September 13, 1983, on the recommendation of its legislative committee, the city of Edmonton council approved a resolution authorizing an application to the Legislature for an amendment to the Edmonton Convention Centre Authority Act, allowing leases of up to five years' duration to be entered into without the city of Edmonton council approval. I have here a certified copy of the council minutes in which the amendment-type resolution was passed. This amendment is currently before you as Bill Pr. 11.

I have asked Mr. Olsen to answer your questions about how the authority feels about this amendment and perhaps express why it was necessary.

MR. SZWENDER: My first question would be simply to ask, why the extension from one year to five years? Is there a practical reason, given the flexibility of the real estate market right now? Maybe you could give me an explanation on that.

MR. OLSEN: Mr. Chairman, hon. member, in attempting to lease the retail space that we have in the building — as you are aware, there is a certain amount of retail space in there — we found that the proposed tenants were not interested in one-year leases. In other words, they were required to put a certain amount of payment up front to pay for the leasehold improvements in order that it could be properly occupied. If they were going to put that investment in, they wanted to ensure that they would have a five-year tenure in the area. One year simply wasn't enough.

MR. WEISS: Mr. Chairman, through you to Mr. Olsen, have you actually lost prospective tenants and clients when you spoke to them on this basis? I can't understand how anybody would ever want to enter into a one-year lease, having to put out leasehold improvements such as they are today. I certainly am sympathetic, and I want to make that known, with regard to your petition. But I would like to know if you have actually lost clients initially. Would this help for you people to go out and immediately gain some revenue for that convention centre?

MR. OLSEN: Mr. Chairman, hon. member, I think initially they wouldn't enter into a one-year lease; they had to go into a five. Every time we wanted to go beyond one, we had to go back and go through the council process again. Council was getting fed up with our continually coming back and arranging for one lease at a time. They said, this is nonsense; let's work on a five-year basis.

MR. ZIP: A further short question. Do you have provisions for options to renew under your lease agreements?

MR. OLSEN: Mr. Chairman, yes we do, sir.

MR. WALKER: Mr. Chairman, hon. members, we have considered that a lease with an option to renew constitutes a lease for more than one year under the Act, and requires council approval. In other words, it didn't alleviate the situation.

MR. ZIP: [Inaudible] the proposal for five years with an option to renew for a further five years. Do you have that provision now, or are you proposing to have it?

MR. OLSEN: Mr. Chairman, yes, I understand that is

the case.

MR. APPLEBY: Mr. Chairman, I was wondering what provisions there might be in the lease agreements for the lessee or the lessor to terminate the lease during that time, or are there any in the period of the lease?

MR. OLSEN: Mr. Chairman, hon. member, I would simply say that some leases have terminated, so I can assure you there is provision in there. I know certain tenants haven't been able to make a go of it in the building. We have arrived at satisfactory resolutions, I guess, of their having to leave.

MR. APPLEBY: Are there any penalties involved in a situation like that?

MR. OLSEN: Mr. Chairman, I'm sorry, I didn't hear.

MR. APPLEBY: I wonder if there are any penalties involved in termination of the lease before the allotted time.

MR. OLSEN: Mr. Chairman, hon. member, if I recall correctly, most of the leases have a requirement that they pay the first and last months' lease payment before they occupy the premises. I believe if they leave before the lease is up, they forgo those deposits.

MR. OMAN: Mr. Chairman, I'm not sure if this is the time to make the point, but it seems to me that this is basically a housekeeping issue. I wonder if perhaps our Law Clerk ought not to advise people who are submitting Bills not to put so much detail in the Bill. In other words, could it not be in their constitution that certain decisions shall be made at the behest of the board. It seems to me that some of our private Bills get far too detailed, and I don't see why people should have to come back here for a detail like this. That's their decision, really. That's just a comment.

MR. CHAIRMAN: Thank you.

MR. HARLE: Mr. Chairman, two points. There must have been a reason in the first place to bring the Bill forward with a proviso that if the lease was for longer than one year, council authority should be needed. I can understand some frustration perhaps in saying, well, in a new building we've got lots of leases to enter into and there'll be a number of leases all coming forward about the same time. Nevertheless, I'm sure there was a very good reason for having such a requirement in the first place. I'm wondering what that reason was, which might go towards explaining why there's now a request for a change.

My second question relates to the timing of that resolution of council. I have it in the back of my head there was an election at some stage. Is the present council of the same inclination?

MR. OLSEN: Mr. Chairman, perhaps I'll answer the first one, having to do with why the one year, because I was a member of the council at the time it was enacted. At the time, council wanted to be ensured that they had complete and sufficient control over the operations of the Authority. Authorities were rather new at the time, at least in the city of Edmonton. They just wanted to be ensured that they would have complete control over what was going on at the centre.

The second part of the question I'll leave to Mr. Walker.

MR. WALKER: Thank you, Mr. Chairman. Hon. members, the practical experience in dealing with these authorities since the original Bills were passed has caused us to reconsider some of the ways we've been drafting them. The Edmonton Convention Centre Authority Act was the first of five Authorities to be incorporated having to deal with the city. The Bills are a little more flexible now than they were five years ago. With regard to your second question, to my knowledge this matter has not been before the present city council, which was elected in late October 1983.

MR. HARLE: Mr. Chairman, would it be out of place to perhaps ask the present mayor to at least comment on the request for this Bill?

MR. CHAIRMAN: No, it's within the pleasure of the committee to ask Mr. Walker to return and bring the present mayor as a witness if he wishes to. Frankly, I don't follow the member's question in that regard, because if the present mayor were opposed, he certainly would be free to appear here and make that known. I'm sure he's aware of the Bill being brought forward. I don't see how the Bill can be brought forward without his being aware of it. I would say that his failure to appear today — and in fact if Mr. Walker is here with Mr. Olsen, I would say that's an indication that the present mayor is not opposed to this Bill going forward.

MR. OLSEN: Mr. Chairman, I might add that the mayor is a member of the Authority.

MR. CHAIRMAN: Perhaps, Mr. Olsen, you might shed some light on the mayor's position. Have you had any conversation with the mayor in this regard? To your knowledge, is he aware?

MR. OLSEN: Mr. Chairman, the mayor is aware of it, and to my knowledge, he has no problem with this change.

MR. CHAIRMAN: He hasn't made you aware of any concern that he has? Does that satisfy?

MR. CLEGG: Mr. Chairman, I'd just like to comment generally about the presentation of evidence and resolutions from the city. I think the committee should assume that if a resolution has been passed by a city and is allowed to stand by a successor council, that successor council must be deemed to approve of it if it has had ample opportunity to review all the resolutions which are outstanding, in the same way as the Legislative Assembly must be assumed to approve of existing legislation if it doesn't amend it. I don't think the committee needs to look behind a resolution merely because it comes from a previous administration or a previous council.

MR. SZWENDER: Mr. Chairman, I was wondering if I could get some information on whether the lease rates are strictly set under the convention Authority,

or does city council have any input as to the rates that are charged in the Convention Centre?

MR. OLSEN: Mr. Chairman, hon. member, the individual leases have to come to back to council for approval. The Authority makes the deal with the proposed tenant, but then they have to go to council for ratification.

MR. SZWENDER: A supplementary. I'm just a little concerned. In recent months, or actually since the convention centre was completed, the business community has shouldered much of the financial burden and is being asked to shoulder much of the operating deficit. Many of the downtown businessmen feel there is a conflict of interest between the Convention Centre, for which they are paying a good portion of the taxes, and yet the Convention Centre is competing with them for business, such as space, restaurants. I'm just wondering if that has been taken into consideration since city council does set the rates, and if they set them below what the market value is, whether that gives them an unfair advantage over surrounding businesses, such as the hotels.

MR. OLSEN: Mr. Chairman, hon. member, we in the Authority have determined that the rates we set will be equivalent to or higher, in most cases, than what is available outside the centre, whether it's for space, rooms to rent, meals, or whatever. I would say that in most cases our rates are higher than is charged in the general downtown area.

MR. SZWENDER: A further supplementary. If they're higher, that would mean a higher operating deficit. If they're higher, that means they're less desirable, which means that the space goes unused, which still leaves you with a high overhead. That means those businesses still have to carry a certain amount of that deficit. Would that not be correct?

MR. OLSEN: Mr. Chairman, hon. member, our experience has been that our space and our facilities are attractive enough that they are prepared to pay a small premium to use our facility.

MR. CHAIRMAN: Are there any other questions from committee members? Mr. Walker, do you care to make any closing comment?

MR. WALKER: No. Thank you very much, Mr. Chairman.

MR. CHAIRMAN: Thank you, Mr. Walker, Mr. Olsen.

The third Bill we have before us this morning is Bill Pr 1, the Central Trust Company and Crown Trust Company Act. Miss Linney or Mr. Leclerc, I'm not sure which one of you wishes to make the opening comments, but whichever one . . . Which one of you is to be sworn?

MR. LECLERC: I would be.

[Mr. Leclerc was sworn in]

MR. CHAIRMAN: Mr. Leclerc, if you'd like to proceed.

MR. LECLERC: Mr. Chairman, hon. members, Barbara Linney and I are members of the law firm Milner & Steer. We have, in collaboration with various other parties, prepared a petition to the Lieutenant Governor and to the Legislative Assembly, the object of which is to seek a private Bill that would provide for the transfer of the trusteeship and agency business of Crown Trust Company to Central Trust Company such that, in result, the rights and obligations of people who have had and have business relations with Crown Trust and Central Trust with respect to the trusteeship, an agency context, would have their rights and obligations clearly determined.

Our client, if you will, is the Registrar appointed under the Loan and Trust Corporations Act of Ontario. That person, the Registrar, by virtue of a piece of Ontario legislation called the Crown Trust Company Act, 1983, has the sole and exclusive authority and right to exercise the powers of Crown Trust. The Registrar also has the power to enter into agreements relating to the management and operation of Crown Trust, in whole or in part.

As indicated in the petition, Crown Trust, Central Trust, and the Canada Deposit Insurance Corporation, along with the Registrar, entered into an agency and operating agreement that took effect February 1983. Under that agreement, Central Trust was constituted the agent of Crown Trust with respect to various elements of the Crown Trust business — all of which lead us to this point: in Ontario, in the first instance, a model Bill was prepared to provide for the orderly dealing with the trusteeship and agency business of Crown Trust.

The model Bill was then submitted, if you will, in draft form to various representatives appointed by the Registrar, of whom we are one, in the various provinces and the Northwest Territories and Yukon Territory. The idea conceptually was to invite each representative to seek a private Bill, unless the procedures for private Bills did not apply in the particular jurisdiction, in which event another course, such as a government-sponsored Bill, would have been the one sought.

I can report that in point of time, we now have the Ontario legislation in place; it came into effect in December 1983. We can further assert that the Bill before you, Bill Pr 1, substantially reflects the Ontario model Bill provisions. In the other provinces, we are informed by the Registrar that first reading has been given in Nova Scotia, and as hon. members are aware, first reading has been given here in Alberta to Bill Pr 1. In the other jurisdictions, first reading is expected to take place imminently, with the exceptions of the provinces of Quebec and Newfoundland, which are lagging a bit behind as far as the timing is concerned. No difficulties, though, have been reported to us in respect of the principle and the substantive questions involved in the proposed legislation.

By way of additional background, we have of course prepared and submitted the materials that might consider applicable in the circumstances — the two petitions, the statutory declaration relating to publication, copies of the proposed legislation. For your information, and for purposes of facilitating any questions, dealing with questions you might have, I understand each committee member has received a brief summary we have prepared entitled Background

to the Proposed Central Trust Company and Crown Trust Company Act. I'm holding it up for identification so that you can readily refer to it if you've brought it with you. Additionally, we've provided, not to each committee member but to Mr. Clegg, a booklet amplifying the summary, including the various pertinent provisions; for example, extracts from the Ontario legislation antecedent to the main Bill, the Bill itself respecting Crown Trust Company, complimented by the agency and operating agreement to which I referred, and finally, the Bill that came into effect in December 1983. That package is in the hands of Mr. Clegg, and I don't propose to say any more on that particular subject.

Having said all of that, we think it is now appropriate to speak briefly on the Bill. I guess we as solicitors can readily say that the Bill speaks for itself and therefore there's nothing more to say. But having said that, I suppose I might point out that whereas one might expect a Bill to begin with its charging provision in the very first section, the more logical way to read this piece of legislation would be to begin at section 3 and to read it and section 4.

As I said in the introductory remarks, the object of this entire exercise is to accomplish a purpose that will facilitate dealing with the trusteeship and the agency business of Crown Trust. We are not in a larger environment of considering the deposit and other economic risk questions. We're really trying to accomplish a limited purpose; for example, to permit a person — let me just give you this one example; I don't propose to belabour. If a person had made a will and, in conversations with either a family member or some other person, decided: my goodness, I've appointed Crown Trust, do I have a problem? That would be a difficult question to answer unless there were clear legislation. At least, that is the conclusion we came to. We said, it is opportune to clarify matters so that the person who is in that position need not feel uncertain or have any difficulty looking ahead to when the time comes in having estate assets transferred into the name of a third-party purchaser. An equally good example, which is another dimension of the one I gave, is the case of a person who has made a will and the will is, let us say, in the hands of a family member who recognizes that the testator is no longer in a position to alter the will, because of age, infirmity, what have you. That question would justifiably arise, and from a housekeeping standpoint we think it opportune to resolve that kind of issue so that there is no disadvantage to the member of the public who at some point has determined to nominate Crown Trust as an executor or coexecutor. So it is in section 3 of the proposed legislation that we deal with the principle of the substituted fiduciary, such that Central Trust in effect steps into the shoes of Crown Trust.

Section 4 is the other pertinent charging provision. It contemplates that the trust property in the hands of Crown Trust will now vest with Central Trust. The balance of the provisions under the Act attempt to interlineate between the charging provisions and the various administrative functions that have to be performed. The registrar in the Land Titles Office, for instance, should not have to be concerned about whether a particularly long presentation made to him on behalf of an estate has been made in the proper way, whether documents that purport to be what they are, are indeed what they appear to be. The registrar should be in a position to act in a perfunctory matter and transfer title on the basis that the person seeking the transfer is the one legally entitled to make the demand.

In closing, Mr. Chairman, for your benefit and that of the hon. members, the first two provisions of the Act deal with the areas that this legislation does not attempt to cover. I suppose the example I gave of the Canada Deposit Insurance Corporation is the best one. Equally pertinent would be the assets that are owned by Crown Trust in a nonfiduciary capacity. We're not attempting to resolve the competing rights of the shareholders of Crown Trust. We're not attempting to deal with the balance sheet. We're dealing with off-balance sheet considerations, those matters that are particularly peculiar to the fiduciary obligations of a trust company.

Speaking of a trust company, Mr. Chairman, I should add, and this is the final remark, that we have displayed the proposed legislation not only to Mr. Clegg but to the Minister of Consumer and Corporate Affairs and the various officials at the trust company's branch. We do not report endorsement; that we think would be an unfortunate and inappropriate term, but we can say that having displayed it and met with the trust company's branch officials, we've encountered no objection whatsoever to the proposed legislation.

Those are the remarks I would like to make.

MR. CHAIRMAN: Thank you, Mr. Leclerc.

MR. CLARK: Mr. Chairman, for clarification, could we assume that Central Trust is taking over the management and the assets of Crown Trust for the management of Crown Trust?

MR. LECLERC: Precisely. That is the principle object of this legislation.

MR. CLARK: What about the obligations of Crown Trust? Would they also be taking them over in this Act?

MR. LECLERC: I guess I could distinguish between obligations of a financial nature that would relate to the balance sheet of Crown Trust — and those obligations are not the subject matter of this legislation. The obligations in question would be those that relate to the discharge of the fiduciary obligations. The broad question: is this trust company performing, has it performed in accordance with the laws governing trust companies generally? Has this trust company, Crown Trust for instance, done what it should have done in respect of this particular estate? Has it segregated accounts correctly, has it managed properly? Obligations in that area are indeed obligations assumed by Central Trust, though I should point out that the claim of an individual may be asserted in addition to Central Trust; a person might take his complaint to Crown Trust as well. Section 1 of the Act preserves that right.

MR. CLARK: My concern was with the financial obligations, but I kind of gathered from your remarks that Central Trust would not be taking over the

settled in some other manner, I understand.

MR. LECLERC: I suppose to put it in a simpler context, what has not taken place is an asset purchase. This is not an acquisition of Crown Trust by Central Trust. It is the Registrar saying, we have a problem, a difficult one, and one dimension of the problem is the administrative question as to how people will function having regard to the fact that Crown Trust no longer has a board of directors elected by its shareholders, and we must deal with that quite apart from any complaints we might have had with respect to the way in which the directors performed their management responsibilities. That task is not the task we are suggesting to be accomplished in this Bill. It is the fiduciary, administrative task.

MR. LYSONS: Mr. Chairman, my question is essentially the same as Mr. Clark's. In dealing with section 2 with the exclusions, I just want to be sure we aren't going to allow someone to wiggle off the hook through a complicated legal procedure. That would be something our departmental people would have to investigate very thoroughly.

MR. LECLERC: The exclusions are designed to address those areas that the legislation does not attempt to deal with, in our view. In this respect I suppose I could say we're wearing our hats as solicitors and not as, in my case, giving evidence on behalf of the Registrar. As a solicitor, I think it can fairly be said that we have come to the conclusion that nothing in the exclusions detracts from the proper purpose that the charging provisions in sections 3 and 4 are attempting to accomplish.

MR. HARLE: Mr. Chairman, just two questions. I'm not familiar with Central Trust. I assume that Central Trust already operates in the province of Alberta.

MR. LECLERC: Correct.

MR. HARLE: And has offices in this province. My second question is, do you have any figure as to how many trusts are affected by this in the province of Alberta? Have you any sort of numbers of trust situations that will be affected by this legislation?

MR. LECLERC: I guess I can say that it is not an insignificant number, such as five or 10. It is difficult to be precise on the point, for two reasons: one is that the number of trusts under administration would not be a publicly known figure; the second dimension is that there are quite a number of matters that are under contractual arrangements or prospectively will become within the domain of Central Trust once the person has gotten around to dying.

The information we have is that while Alberta does not represent numbers-wise anything approaching that which would apply in Ontario, the number is not insignificant. On a supplementary basis I would be prepared to seek, obtain, and provide to Mr. Clegg as precise a figure as we can, subject to whatever comments there might be qualifying the reliability of the figure.

MR. ALGER: Robert, I wonder if you could maybe explain to the committee just a little bit about trust companies. The very word "trust" indicates to a person on the street that here is a place I can go; I can work out my royalties, if I have some, and surface rights; figure out a will; I can leave it with them, and everything's going to be hunky-dory; there's no way it's ever going to go bad. Why did Crown Trust in particular go under, and how did Central Trust get to take it over? Is that too tough to ask?

MR. LECLERC: It certainly is a tough question. I suppose I could say I shouldn't answer it, but I find the question and the area so interesting that . . . [inaudible].

I guess that if a person comes to a trust company, in his mind he is providing funds to a person who will look after those funds, and his trust is placed in the institution. There are certain instances where this should proceed without incident. A good example is the case where the trust company is administering an estate — again, that being the reason we're before you today. We have not any knowledge that there are irregularities in the case of Crown Trust insofar as the management of funds of other people is concerned in that narrow estate context.

From my own experience — and I guess here I'm speaking as a securities lawyer, which is really what I do in life most of the time — where a trust company gets itself into difficulty is when the obligations taken on by the trust company find themselves out of balance with the rights that they have. The trust company takes depositors' money in, attempts to put the money out, and makes money on the spread. The spread will hopefully be in proper balance, such that being a trust company is a profitable business. However, as our experience over the last few years has indicated, the spread is not the only test involved. One may lend out money and if the security of repayment isn't there, it doesn't really matter what your spread is.

So the people who administer trust companies at a government level attempt to review and ascertain that too much money is not put into any particular investment and that the quality of investment made by the trust company is up to the standard set. Based upon all of that — and here I'm really referring to newspaper accounts, conversations, and other extraneous ways of obtaining information — I think the main problem with Crown Trust was that it found itself making very severe, onerous investments in circumstances where there was perhaps not the security or the value to assure not only the depositors but the shareholders of Crown Trust that money would be repaid on a timely basis. It really becomes a balance sheet phenomenon. Your assets just aren't there. They appear to be, but to an extent they're a phantom.

MR. ALGER: Thank you.

MR. CLARK: Following up the other question, I was wondering if in Central Trust's management of Crown Trust in the future, part of its mandate will be to look into the areas to see whether or not Crown Trust has made good investments and has been running these.

MR. LECLERC: The mandate of Central Trust would be restricted to dealing with the trusteeship and agency business. It would not be looking at your example of whether the quality of the investment is particularly good. The quality of the investment question would go to, let us say, the broad question whether the Canada deposit corporation would have to make good on a deposit certificate that hasn't been paid on a timely basis. That area is not one with which we are concerned. We're really just trying to look at the administrative and trusteeship questions, the fiduciary angle.

MR. LYSONS: Mr. Chairman, my question is: how big is Central Trust, and can it handle these added responsibilities overall? I've always been under the impression, when you talk to trust company officers, that one of the most expensive things they have to handle is these estates and the delays and handling before they get money rolling back in — cash flow, if you like. How strong is Central Trust? Are we just coming out of one kettle into another?

MR. LECLERC: If you would give me just a moment, while I consult.

Mr. Chairman, I would like Barbara Linney to respond to that question. When she has done so, I might add one additional remark.

MISS LINNEY: Mr. Chairman and hon. members, in considering the hon. member's question, I think it's important to fully appreciate what is meant by the concept "trust" or "trusteeship business", and perhaps this goes back to a question that was raised earlier. The previous hon. member raised the question of people who put their trust in a trust company. That is done really in two ways. One is the sense of the word in which the previous hon. member used it, in that people take their pay cheques or their royalty cheques or whatever they may happen to have, go down to the trust company as they might go to any other financial institution, and deposit those moneys in a savings or chequing account. While we all like to think of those moneys as our moneys, in fact those moneys become the property of the trust company or other financial institution involved. Those become the property of the trust company and become a debt that is owed by the trust company to the individual who has made the deposit. I think what we have to remember is that those moneys which are not our property but the property of the trust company are excluded from the operation of this Bill by virtue of section 2. The property that we're in fact dealing with is property which is placed with the trust company, formerly Crown Trust Company, as the legal owner but who will then own that property beneficially, as we lawyers say, for some other individual. For example, if someone makes a will in which they name Crown Trust Company the executor and trustee to hold the properties of their estate in trust, perhaps for their infant children and to make payments for the care of those children and eventually to turn the moneys over to the children when they reach the age of majority, these are types of moneys that are the subject of this legislation which we have proposed here today and which form the contents of this private Bill.

So it's in respect to these trust moneys — and when we speak of trust moneys in this latter sense, we use that term in the legal sense of the word — that we're saying that there is no allegation that Crown Trust has used those moneys improperly. Of course we know it is improper and in fact illegal for a trustee of trust moneys, in that sense of the word, to dip into those funds and make his own personal use of those moneys. Those moneys must be kept separate from his own moneys; in other words, separate from the ordinary deposits that are received by the trust company in the ordinary course of their daily business. They must be invested separately, recorded separately, treated for all purposes separately, and protected for the beneficiary of the trust, who will sometimes be the beneficiary of a will. Sometimes there are trusts that are created while the person donating the moneys is still alive. There are many types of ways in which this sort of trust can be created.

It's those moneys we're dealing with here today. It's those moneys with respect to which there has been no difficulty from Crown Trust or with Central Trust so far as we're aware, no allegations that those moneys have been touched in any way. In fact these moneys are not affected by the financial difficulties in which Crown Trust found itself recently.

Mr. Chairman, I hope that assists the hon. member in understanding this issue.

MR. LYSONS: That's a very good overview of a trust company, and I appreciate it very much. My question really was — Central Trust isn't well known, to me anyway. It still doesn't completely answer my question as to whether or not Central Trust is large enough to assume the complete assets of another trust company. I understand there's a great deal of work involved in handling these wills, trusts, and estates, and quite often there isn't the cash flow. That's really my question: is Central Trust solvent enough to handle it?

MR. LECLERC: Perhaps the most efficient way of responding to the hon. member's question — in this case, Mr. Clegg has as Appendix C in our extensive background materials the agency and operating agreement of February 1983. I should again refresh the committee members' recollection. In my opening remarks I referred to this February 1983 agreement. It is one involving Crown Trust, Central Trust, Canada Deposit Insurance Corporation, and the Registrar under the Loan and Trust Corporations Act of Ontario. This agreement contains, among other things, a provision, and it's in the recitals, that Central is both qualified and able to accept and carry out its responsibilities as hereby contemplated.
Further, the agreement provides for a representation by Central, among other things, that it has the financial capacity to meet its obligations under the agreement, that it is a trust company duly incorporated and in good standing under the laws of Canada, has all the requisite approvals, registrations, and licences — and so forth.

From a due diligence perspective, if you will, the position we have taken is that there has been an extensive and proper review effected at the level of the CDIC and the office of the Registrar acting under the Loan and Trust Corporations Act. The premise on which we have been operating is that, given that the amount of capital required in order to discharge the fiduciary obligations is relatively small

by comparison to the main investment activity in which a trust company is involved — really what it comes down to is working capital for the purpose of operating your branches to the extent that that is a working capital item segregated for the trusteeship area — the financial size, the capacity of a company purporting to act as Central Trust is, is not as relevant a question I don't think. It would be a terribly relevant question if we were dealing with an asset purchase, if Central were saying, we're buying this company and assuming its obligations. But as it is a fiduciary function in what I have always understood to be a terribly profitable area, the management of trusts and estates, we felt that it was a proper premise to assume that the due diligence activities carried out by the CDIC and the Registrar acting in Ontario, reflected in this agreement in both the recitals and the substantive provisions, would permit us to make that assumption that Central, which, keep in mind, must report to a further level of government, the Superintendent acting in the Trust Companies Act capacity — with the layering of the various responsibilities, the CDIC, the reporting to the Superintendent, the role of the Registrar in Ontario, the conclusion reached at all of those levels would be a proper conclusion and a proper premise for this committee to undertake, namely that the financial stability is sufficiently there to permit the proper administration of the trusteeship area of the Crown Trust business.

If it were appropriate, we could seek and obtain and leave with Mr. Clegg copies of all public documents deposited with the office of the Superintendent in Ottawa that would support the working capital capacity and the financial integrity of Central Trust.

MR. CLEGG: Mr. Chairman, for the benefit of the committee, maybe I can add a comment as one who has reviewed the documents submitted and from my understanding of the present situation between Crown Trust and Central Trust. The government of Ontario, by an order in council dated January 7, 1983, appointed the Registrar under the Loan and Trust Corporations Act of Ontario — in other words, a senior public official in the government of Ontario — to take possession and control of the assets of Crown Trust. Under that order, that Registrar, that public official in Ontario — which of course is the home province of Crown Trust and by far its biggest area of operation — has taken over the control of the assets of Crown, very much in the same way as a receiver would do of a corporation that was in financial trouble, was apparently insolvent or becoming insolvent in the general sense.

If I understand correctly, and Mr. Leclerc can correct me if I'm wrong, when that Registrar was appointed, he became receiver and became empowered to carry on the business of Crown Trust. He presumably then determined that the continuing trust obligations of Crown Trust, the carrying out of the estates and this kind of function which Mr. Leclerc had described to you, would be best carried on by another trust company rather than his trying to operate a trust company himself. Receivers often get into the problem that they are not equipped themselves to manage the business of the company of which they are receiver. In this particular case, an agreement has been reached to allow Central Trust to carry on all those obligations which were current and which may fall on the shoulders of Crown Trust but do not relate to the business affairs of Crown Trust. We're talking about the trust obligations of Crown Trust. The business affairs, the assets and obligations of Crown Trust as a company, are presently vested, as it were, in a functionary of the government of Ontario. They are responsible for determining the equities amongst the claimants.

Before anything else comes, I'd like to make sure that Mr. Leclerc agrees with those comments.

MR. LECLERC: I think those are all fair comments. I might add, since we are talking about the various levels at which the review has taken place, that the complete package of information, including the booklet that you have, Mr. Clegg, was made available to the trust companies branch here in Edmonton. The trust companies branch of course administers the registration of trust companies to carry on business in Alberta. At no point in time, during our dialogue with the trust companies branch officials, has there been the slightest suggestion going to the integrity or financial capacity of Central to carry out the obligations contemplated by the proposed legislation.

MR. CLEGG: Mr. Chairman, may I ask one more question of Mr. Leclerc, which may go to the question asked by the Member for Vermilion-Viking. Am I correct in assuming that Central Trust is using a substantial proportion of the staff of Crown Trust to carry on the work in the various provinces, and therefore the human resources asset has been taken from Crown Trust — the professional expertise in Crown Trust is being used to fulfill this agreement by Central Trust?

MR. LECLERC: Yes, that is correct.

MR. ZIP: Mr. Chairman, the question that arises in my mind is how soon will Crown Trust be able to resume its operations, back to events prior to the beginning of 1983? How permanent is this arrangement?

MR. LECLERC: If I knew the answer to that question, I think I'd be a prophet. I really don't know. I have heard that the inquiry as to the liquidity is ongoing, that we do not at present have final figures available. We do know that there are some severe financial problems brought about by the heavy concentration of investments in one or two areas. It is conceivable that Crown Trust will never function in the way in which it functioned prior to the making of the investments of the type I described, so I shouldn't think that people should properly operate on a premise that eventually Crown Trust will resume business as usual.

MR. LYSONS: Mr. Chairman, I guess my concern is that we're being asked to enact some enabling legislation here to smooth out the problems that Crown Trust had and to get everything operating. However, what's bothering me is that this may be the beginning of many. We have a number of trust companies that are going to be faced with some serious financial problems. If we're going to be changing the Act or initiating an action here that will

allow one trust company to amalgamate with another and pick up the pieces, so to speak, and yet it's not a complete amalgamation, or just the work in progress — I know that my terms probably aren't quite correct. This is just the first time we're looking at it, and we may be looking at it many, many times down the road. I wouldn't want to see us make an accommodation now that would be a precedent for something down the road and have this one not work out.

MR. LECLERC: I think your question is a fair one. Broadly speaking, it is a consideration that all levels of government must address insofar as the liquidity and economic capacity of an entity are concerned. What we're trying to accomplish in this piece of legislation, though, is of rather more limited scope. We're really saying, and the premise on which we operate is, how are we going to deal with the reality of the widow who says, what do I do with this estate? Crown Trust is the executor; Crown Trust isn't around any more. The widow engages a solicitor, who says, I don't know how we're going to transfer title. That is a very fundamental issue that we have to deal with.

We're not attempting to address the economic niceties. If I had to make an analogy, I suppose the best one I could make is an analogy to the Act entitled Montreal Trust Company of Canada Act, which was assented to in Alberta in May 1982. Where you have a corporate reorganization, which is what took place in that instance, you must deal with the realities of that reorganization and carry it administratively into effect.

We're really trying to help, not hinder. The benefits under the proposed legislation are not benefits to Central, except in the sense that it gets paid for the work it does. They're not benefits to Crown or to its shareholders. They're rather an attempt to deal with the reality that somebody is going to want Crown Trust to perform an act. Crown Trust doesn't have a board of directors elected by its shareholders. Somebody must step in and perform that role and it must be done, we submit, on a basis that treats, with a fair and even hand, people who live in all parts of this country. People in Alberta own assets in Alberta and elsewhere. We would like to think that the estate of the deceased would be able to have business conducted evenly throughout the country, without having to be concerned about the internal problems that persisted at the Crown Trust level.

It is, I must stress, an administrative piece of legislation. It is not one that goes to the economic burdens that Crown Trust has created for its investors or for the public generally.

MR. HARLE: Mr. Chairman, is Milner & Steer instructed by the Registrar in Ontario? Is this where the instructions are coming from?

MR. LECLERC: Yes.

MR. HARLE: I haven't followed the Cadillac Fairview thing and the ramifications of it from any more than a general interest point of view, I suppose. My understanding is that the owner or major shareholder of Crown in fact has several legal actions that are probably still ongoing at the present time and that the thrust of those legal actions is to recover Crown Trust, alleging, I suppose, that the province of Ontario was wrong in the action it took. If down the road those actions are successful and Crown Trust is declared by the courts to be still owned by the shareholders, this would be a significant loss of potential business for Crown. Is there anything in the agreement that has been entered into to reflect that possibility, or is this business virtually lost from Crown as a result of this legislation, notwithstanding your prognosis that maybe there's nothing left in Crown anyway? Nevertheless, is that an eventuality that is covered by that agreement?

MR. LECLERC: In answer to your question, the agreement provides in paragraph 11 that the appointment of Central is for a term of five years. Section 11 of the agreement is complemented by section 12, which deals with the ability of the Registrar to terminate the appointment in the event that Central does not do the job it has been appointed to do. Further, if the Canada Deposit Insurance Corporation gives notice, there would be the ability of CDIC to cause a termination under another section of the agreement that does not particularly pertain to the matter that we are discussing.

The position and the reality that Crown finds itself in is that, effectively, Central has taken over this area of its business. If the plaintiff or plaintiffs were successful in the actions to which you refer, it would probably be because, in substance, the plaintiff is right and the government of Ontario is wrong on the broad liquidity question. If the plaintiff succeeds, then perhaps the plaintiff would seek damages, and that would certainly be a remedy that would come first to the mind of the plaintiff. It would also move to attempt to recover the business that Crown Trust used to administer.

The competitive environment would still persist. The new business items or those items that had not come under direct administration because a testator is still alive, for instance, or where there is ability to substitute one executor and trustee for another under the terms of testamentary instrument — I think the competitive marketplace forces would be the only ones that would pertain. The agreement does not really contemplate termination, except in accordance with its terms. It does not say whereas, if on the other hand, the government was dead wrong from day one, the following will occur.

In answer to your question therefore, the agreement does not contemplate the specific eventuality you have addressed.

MR. CLEGG: Mr. Chairman, may I ask Mr. Leclerc — I was just looking at clause 12(d) on page 29 of the agreement. That says that the Registrar may terminate the appointment by notice if the Registrar loses possession and control of the assets of Crown for reasons beyond the control of the Registrar of the province. If there were a court judgment terminating the quasi-receivership position and saying that the Registrar no longer has the assets of Crown and they are returned to the shareholders of Crown, I think that then would allow the Registrar to terminate this agreement, which would effectively take Central Trust out of the agency position and put that business back to Crown.

MR. LECLERC: Mr. Clegg, I think that provision, whether in the agreement or not, would be the type of relief that a plaintiff would seek in any event. If the plaintiff succeeds, in addition to damages the plaintiff would look to all other remedies potentially available. One would be to have the court set aside the agreement.

MR. CLEGG: That would be something you would ask for in your final order.

MR. LECLERC: Oh, absolutely.

MR. CLEGG: But I think the power is probably there as well.

MR. LECLERC: Yes, the language is rather general and could be interpreted to contemplate that type of relief.

MR. APPLEBY: Mr. Chairman, two preliminary questions. Was Crown Trust originally headquartered in Ontario?

MR. LECLERC: Yes.

MR. APPLEBY: And Central Trust as well?

MR. LECLERC: Yes.

MR. APPLEBY: I am not too clear, then, why we have to have enabling legislation in all provinces if that is so.

MR. LECLERC: I could give you a number of examples. Let me suggest this as one: the fact that a person called the Registrar in Ontario makes a grand design as to how the Crown Trust affairs should be administered, it does not follow that his capacity goes beyond the borders of the province of Ontario. So from a constitutional perspective, I think it is incumbent on the Registrar to seek advice and counsel in all other jurisdictions, so that the attempt he makes dealing with people headquartered in his jurisdiction can have that which would amount to extraterritorial effect. Again, he is depending constitutionally on the collaboration and support of the various provincial and territorial authorities. That is the answer in law to the question.

Additionally, from an administrative standpoint, I think the registrar at Land Titles would find it a lot more to his liking if he were able simply to look at a document of transfer that recites: whereas Central Trust is whoever it appears to be pursuant to this piece of legislation, once in effect. Then he only has to look at that one recital and familiarize himself with one important fact, namely whether or not this piece of legislation is in effect. So he can act comfortably under the land titles system without the fear, for example, that an improper move on his part would require the government, in effect, to fund through the public purse the failure on his part to behave the way in which he should behave. As we all know, the government funds the registrar acting under land titles, pursuant to the assurance levy. So from a public-purse perspective, I think that is a dimension that is being well served as well.

MR. APPLEBY: Another question, Mr. Chairman, and this follows the question asked by Mr. Zip. What is the status of Crown Trust at the present time? Are they an entity in any manner? Are their principals still involved in some way?

MR. LECLERC: The board of directors of Crown Trust no longer functions. Crown Trust is still a legal entity, but it is an entity under administration. What happens down the road of course will be largely addressed in result by the way in which the courts, particularly in Ontario, deal with the pending litigation involving the principals of Crown Trust, the government of Ontario, the Registrar, and the CDIC. But it is still an existing legal entity.

MR. CHAIRMAN: The hon. Member for Highwood, if you have a brief question please.

MR. ALGER: No, I don't actually. I was going to ask if you remembered the time, because we have another meeting pretty quickly.

MR. CHAIRMAN: I am very much aware of the time, thank you.

MR. ALGER: I would like to ask several questions and keep this up for an hour or more. It's very interesting. But I'm sure Mr. Leclerc has done his best to describe it to us, and I think we as laymen almost understand it.

MR. CHAIRMAN: Thank you.

MR. CLEGG: Mr. Chairman, in response to some questions, Mr. Leclerc has offered to provide information to me about the number of trusts under administration and also to table a great deal more documentation with me. In order that he should not have to do all this without it being necessary, I would like to ask the chairman if he could ask the committee whether this is really felt to be necessary, in light of all the answers you have received in the 45 minutes following those requests.

MR. HARLE: Mr. Chairman, I'm not asking — I was just hoping that I could have some feel for the number of trusts that might be affected. I am quite satisfied with the answer I have received so far.

MR. CHAIRMAN: Thank you. With respect to the material that was offered, are any hon. members particularly concerned that we receive that material? Very well.

There being no further questions, Mr. Leclerc, is there any closing remark you wish to make?

MR. LECLERC: No, Mr. Chairman.

MR. CHAIRMAN: Thank you very much.

MR. LECLERC: Thank you.

MR. CHAIRMAN: The time has advanced to the point ... We have one further Bill to deal with, Bill Pr. 7. If any members have questions to ask of that particular Bill, we could deal with it in camera at a later time. On the other hand, if there aren't any questions we could deal with it now very, very quickly. It's a matter of substituting the word

"president" for "principal".

HON. MEMBERS: Agreed.

MR. CHAIRMAN: Agreed. Very well.
That deals with all the Bills that are before us this morning. I would entertain a motion to adjourn.

MR. HARLE: I so move.

MR. CHAIRMAN: Thank you. Adjourned.

[The meeting adjourned at 9:56 a.m.]