8:30 a.m.

[Ms Graham in the chair]

THE CHAIRMAN: Good morning, everyone. I'd like to call this meeting of the Standing Committee on Private Bills to order.

Prior to dealing with any of the agenda items, I just wanted to go over the voting procedure that we will use in this committee. Generally speaking, the vote will be a voice vote unless there is a request for a recorded vote, and then in that event we'll have a show of hands. It was brought to my attention after our first organizational meeting that perhaps that procedure wasn't followed to form, so I just wanted to clarify that for members of the committee. Any questions in that regard?

It's also been brought to my attention by Mr. Reynolds that we all are supposed to vote. As well, if you feel that you have a pecuniary interest or some other conflict and don't feel that you should vote on a matter, then it would be in order for you to excuse yourself giving reasons in a general way for absenting yourself from the vote.

Having said that, we'll move on to the second item on the agenda, which is the approval of the agenda.

MRS. PAUL: I move.

THE CHAIRMAN: Okay. Mrs. Paul moved. Any discussion?

I believe we do have a couple of other items that will arise in Other Business. Mr. Reynolds, perhaps you'd like to address that.

MR. REYNOLDS: Thank you, Madam Chairman. The only issue that I can think of is that there's been a request for a rescheduling from Mr. Chipeur with respect to Bill Pr. 6 and Bill Pr. 7. There should be a letter circulated in the package, I believe, that Ms Marston has distributed with respect to that request. I believe it's a letter from Mr. Chipeur to you dated May 12.

THE CHAIRMAN: All right then. We'll add that item to number 5 on the agenda, Other Business.

Any other discussion? If not, all in favour of adopting the agenda, then, as amended?

HON. MEMBERS: Agreed.

THE CHAIRMAN: Opposed? Carried.

We'll move on, then, to approval of the committee minutes from May 6, 1997, and I would entertain a motion in that regard. I just wanted to make sure that you've all received the revised minutes, which were circulated this morning. Mrs. Tarchuk has moved the adoption of the minutes. Any other discussion?

Yes, Mrs. Sloan.

MRS. SLOAN: Madam Chairman, just for clarification may the record show that I was in attendance at that meeting?

THE CHAIRMAN: All right. Thank you.

Mr. Herard.

MR. HERARD: Thank you, Madam Chairman. I thought that part of the discussion with regards to the starting time went to finding out if in fact there were conflicts with respect to scheduling of airlines to get here by 8:30. Has that been done, or is that going to be done?

THE CHAIRMAN: Are you suggesting that the minutes are silent on that?

MR. HERARD: Yeah. There is a motion that was defeated, but discussion after that I believe should reflect that we were going to check and see how many petitioners were from Calgary and whether or not there was a problem with respect to petitioners getting here, having to come the night before or whatever. I don't think that was done.

THE CHAIRMAN: Mr. Herard, it was my recollection that perhaps that discussion took place after the close of the formal meeting. I do know that our administrative assistant has determined how many times the committee commenced at 8:30 over the last three years in comparison to commencing at 9 o'clock or at other times, but I don't think we've done an investigation as to how many petitioners are from Calgary versus other places.

MR. HERARD: Yeah, that's fine. Then maybe I'll wait until later and make that motion.

Thank you.

THE CHAIRMAN: All right. We have a motion, then, to approve the minutes as amended. If there's no further discussion, all in favour?

HON. MEMBERS: Agreed.

THE CHAIRMAN: Opposed? Motion is carried.

As you know, this morning we will be conducting hearings on Bill Pr. 1 and Bill Pr. 2. I would just like to confirm that all members received the final version of the Bills in each case and the materials pertaining to each of the applications which were circulated to you yesterday. Does everyone have that? Okay. As well, in your packages this morning there is further material relating to these matters.

All right then. We'll proceed with the hearing on Bill Pr. 1, and I'm going to ask counsel Ms Dean to bring in the petitioners at this time.

[John Muir, Cheryl James, Terry Stroich, and Gisele Simard were sworn in]

THE CHAIRMAN: Welcome, everyone, to this meeting of the Standing Committee on Private Bills. My name is Marlene Graham. I'm the chairman of the committee. I would like to introduce all members of the committee to you. I think I'll ask the members to stand and identify themselves to you, commencing with Mrs. Sloan, if you would.

MRS. SLOAN: Linda Sloan, MLA for Edmonton-Riverview.

MR. BONNER: Bill Bonner, MLA for Edmonton-Glengarry.

MR. MacDONALD: Hugh MacDonald, MLA for Edmonton-Gold Bar.

MRS. PAUL: Pamela Paul, Edmonton-Castle Downs.

MRS. SOETAERT: Colleen Soetaert, Spruce Grove-Sturgeon-St. Albert. Welcome.

MRS. FRITZ: Yvonne Fritz, Calgary-Cross.

MRS. BURGENER: Jocelyn Burgener, Calgary-Currie.

MR. COUTTS: Dave Coutts, Livingstone-Macleod.

MR. THURBER: Tom Thurber, Drayton Valley-Calmar.

MR. LANGEVIN: Paul Langevin, Lac La Biche-St. Paul.

MR. TANNAS: Don Tannas, Highwood.

8:40

MR. MARZ: Richard Marz, MLA for Olds-Didsbury-Three Hills.

MR. CARDINAL: Mike Cardinal, Athabasca-Wabasca.

MR. PHAM: Hung Pham, Calgary-Montrose.

MR. HERARD: Denis Herard, Calgary-Egmont.

MR. STRANG: Ivan Strang, West Yellowhead.

MRS. TARCHUK: Janis Tarchuk, Banff-Cochrane.

THE CHAIRMAN: Thank you.

As well, I'd like to introduce our table officers to you. Assisting us we have Parliamentary Counsel Ms Shannon Dean and our administrative assistant Ms Florence Marston.

As you may be aware, this committee is an all-party committee and obviously has members from both the government and from the opposition. The purpose of the hearing this morning is to allow the petitioner and petitioner's counsel to make representations to the committee as to why the Bill has been requested and why it should be recommended for adoption by the committee.

This Bill, Bill Pr. 1, has received first reading in the House. During the hearing petitioners or the petitioner's counsel and any witnesses may be questioned by Parliamentary Counsel and members of the committee. You've all been sworn in, and obviously that indicates that all evidence, all submissions that are made here are made under oath.

Subsequent to the conclusion of the hearing, presumably today, the committee will meet on a subsequent date. Right now that is proposed to be June 3, at which time we will consider the Bill and make one of three possible recommendations: either to proceed with the Bill as presented; to proceed with the Bill as amended, if that is the case; or thirdly, not to proceed. As with any Bill if the recommendation is to proceed with the Bill, then it will go to second reading and, obviously, if passed go to Committee of the Whole and to third reading and ultimately receive Royal Assent, at which time the petitioner will be advised as to the date that it passes or of course as to the status at any point during the process. Any questions about the procedure that we follow?

All right then. Proceeding to Bill Pr. 1, which is the TD Trust Company and Central Guaranty Trust Company Act, as I understand it, the purpose of this Bill is to allow TD Trust, who is the successor to Central Guaranty Trust, to assume conduct of all estate and trust files and become the trustee in place of Central Guaranty Trust.

In that regard, I would ask Ms James to proceed with the presentation on behalf of the petitioner.

MS JAMES: Thank you. Good morning, Madam Chairman and other members of the Assembly. My name is Cheryl James, and I am counsel with McCarthy Tetrault. With me today is Mr. John Muir, senior vice-president, TD Trust Company. At the time of the acquisition by TD Trust of Central Guaranty Trust in 1992 Mr. Muir was assistant vice-president at Central Guaranty Trust. Since that time, he has been responsible for the transfer of the business from Central Guaranty Trust to TD Trust, so he is very familiar with the background of the transaction at the time and the ongoing matters.

By way of background in 1991 the federal office of the Superintendent of Financial Institutions and the Canada Deposit Insurance Corporation, CDIC, determined that Central Guaranty Trust was no longer financially viable and commenced a search for one or more financial institutions to acquire the business of Central Guaranty Trust. The Toronto-Dominion Bank was selected to acquire the major part of the business.

On December 31, 1992, the Toronto-Dominion Bank and its subsidiaries acquired substantially all the assets of Central Guaranty Trust Company. TD Trust Company, a wholly owned subsidiary of the bank, acquired Central Guaranty Trust Company's fiduciary business. In Alberta this business consists primarily of personal estates and trusts of approximately 250 to 300 in number. In addition, there were several thousand Alberta wills in the company's wills bank. The acquisition of the personal estates and trust business is conditional upon TD Trust being appointed as successor trustee to Central Guaranty Trust Company.

Since December 31, 1992, TD Trust Company has been administering Central Guaranty Trust Company's estates and trusts under an agency agreement and power of attorney. TD Trust Company has advised me that during this time, it has not encountered any complaints in Alberta from the beneficiaries of these personal estates and trusts as a result of assuming the administration of these estates and trusts as agent for Central Guaranty Trust Company. Central Guaranty Trust Company itself in insolvent and is in the process of liquidation.

The transfer of a trusteeship under an estate or trust can be accomplished in the following ways: firstly, if the maker of the will is alive, they can be asked to consent. He or she can make a new will to reflect the change. However, the maker may not want to incur this expense if no other changes are required. In addition, our client may have wills in their possession where they no longer have current information and cannot locate the testator. There also are wills where Central Guaranty Trust is named as executor but has never been notified of their appointment. Significantly as well, the testator may be mentally incapable and no longer able to make a new will.

With respect to ongoing estates and trusts application can be made to court pursuant to section 16 of the Trustee Act of Alberta in each trust or estate for an order to substitute TD Trust Company in the place of Central Guaranty Trust Company as trustee. This can be extremely costly to the estate, which normally must bear these expenses. It also places a burden on our judicial system.

In summary, due to the number of estates and trusts involved, it is an expensive and time-consuming procedure. In addition, if you have an estate or trust with minors involved, the Public Trustee must review each of these files.

Finally, application can be made to the Legislature and Legislatures of the other provinces for special legislation to accomplish the transfer of the trusteeship from one trust company to another. This is an economical and efficient means of transferring the trusts and estates business from our client, Central Guaranty Trust Company, to TD Trust Company. The Legislature of Alberta and the other provinces have previously passed similar legislation in the following circumstances: the acquisition by Central Trust Company of the trust and agency business of Crown Trust in 1984, the transfer of certain business of Royal Trust Company to Royal Trust Corporation of Canada in 1978, and the transfer of certain business of Montreal Trust Company to Montreal Trust Company of Canada in 1982.

This application first came before this committee in September 1993 and March 1994. The application was withdrawn. At that time the Bill contained a provision which provided that Central Guaranty Trust Company was not liable for any debts or obligations arising

out of any act or omission of Central Guaranty Trust that occurred prior to January 1, 1993. That was part of the deal made with CDIC and OSFI at the time. The legislation before you today contains an additional provision which states that nothing in this Act changes or otherwise affects the law with respect to the rights, liabilities, or obligations of TD Trust Company as successor to Central Guaranty Trust Company.

What, then, are the obligations of a successor trustee? We have provided our opinion with respect to this matter to Parliamentary Counsel, and it is part of your materials available to you today, but let me just outline it for you. A successor trustee is not liable for the losses or damages of a previous trustee. However, the law does impose obligations on a successor trustee. The successor must act reasonably in trying to determine whether the predecessor trustee has properly carried out its functions. A successor trustee must determine whether the predecessor has properly carried out its functions, and if it discovers there has been a breach or loss, the successor must try to recover these losses to the extent practical. A successor trustee has the same duties as the original trustee and is liable for any losses it occasions as a result of any breach it commits. Therefore, the successor must familiarize itself with the terms of the trust and ensure that the terms are followed.

8:50

We are of the view that the proposed Bill does no more than codify the common law as it is developed by the courts. Why, then, are we seeking this provision? Firstly, TD Trust Company will have certainty regarding its rights and obligations as successor trustee. Secondly, beneficiaries will be able to ascertain the responsibilities and obligations of Central Guaranty Trust and TD Trust Company by reading the legislation, without having to incur the expense of retaining a lawyer. If a lawyer is retained, he or she will be able to provide advice to the client quickly and at reasonable cost. Thirdly, legislation, unlike judge-made law, is not likely to change, and this will give our client certainty as to its rights and obligations.

For the information of the committee the legislation has now passed in six provinces. It was passed first in the province of Nova Scotia, with language as in the original Bill proposed in 1993 and '94 in Alberta. It has passed as well in the provinces of Ontario, Newfoundland, Prince Edward Island, New Brunswick, and Saskatchewan, which has provisions similar to the Bill before you today.

The Bill has been reviewed by Alberta Treasury, financial institutions, and Alberta registries, and I understand they are in support of the proposed legislation. A client wishes to advise the committee that it's not aware of any unresolved claims arising out of Central Guaranty Trust in Alberta.

Notice of the proposed Bill was published in the *Alberta Gazette*, the *Edmonton Journal*, and the *Calgary Herald*, and we've been advised by Parliamentary Counsel that no objections were received by her.

In conclusion, the proposed Bill will benefit the estates and trusts administered by Central Guaranty Trust Company and the beneficiaries thereunder by providing a solution to the costly process of transferring trusteeship under the Trustee Act of Alberta. It will mean that many court proceedings can be avoided, thereby benefitting Alberta's judicial system.

Finally, I would like to note that Central Guaranty Trust Company is in the process of liquidation. It is important that you understand that the agency and power of attorney arrangement cannot continue indefinitely, yet many estates can endure for many, many years. Mr. Muir can bring you the background of the steps that were taken by our client to ensure beneficiaries of CGT were not prejudiced by the taking over of the business and, in fact, benefitted from the acquisition.

Thank you for your time, and we welcome your questions.

THE CHAIRMAN: Thank you, Ms James.

Perhaps before you entertain any questions, we'll hear representations from everyone this morning. Mr. Muir, did you wish to make a presentation or be available for questions?

MR. MUIR: Madam Chairman, I'd just like to deal with one point, and that is that TD has taken very seriously its responsibilities to the existing Central Guaranty Trust clients at December 31, 1992. In 1993 TD Trust took out insurance to cover any potential claims made by Central Guaranty Trust clients in respect of any liabilities which may have arisen for the period ending December 31, 1992. Since then, any such claims that have been made throughout the country have been dealt with and resolved to the client's satisfaction. So in fact there have been no situations in which clients have been prejudiced by the takeover of Central Guaranty Trust by TD Trust Company.

I'm pleased to say that we've had no major claims in Alberta, and those minor claims we have had have all been settled and the clients have been taken care of in full. And as my colleague has said, there are no outstanding claims at present at all.

Thank you very much, Madam Chairman.

THE CHAIRMAN: Thank you.

I'll now call upon the representatives of Alberta Treasury, rather than the Treasury Board as I think I referred to you earlier. Perhaps, Mr. Stroich, you'd like to proceed. Just for the benefit of members of the committee Mr. Stroich is director of financial institutions for Alberta Treasury, and Alberta Treasury is the department that administers the Loan and Trust Corporations Act under which both of these companies are administered.

MR. STROICH: Thank you, Madam Chairman. I'd just like to indicate that the purpose of our review of the legislation was to determine that the clients or the trust holders and beneficiaries were not placed in any kind of worse position with this transfer of the trust from Central Guaranty to TD Trust. That was the main purpose of our review. The trust companies, as already indicated, are registered federally. They're administered under the federal Trust and Loan Companies Act. However, we are responsible for the market conduct of these companies in Alberta, and part of that is to ensure that they treat their clients in the fiduciary business properly. That's just background information for yourselves.

THE CHAIRMAN: Thank you.

Ms Simard. Ms Simard is also from Alberta Treasury. I'm not exactly certain of your position.

MS SIMARD: I'm examiner at the financial institutions division of Alberta Treasury, and I'm here for support.

THE CHAIRMAN: All right. Very good. Did you wish to make a presentation?

MS SIMARD: No, I don't have a presentation.

THE CHAIRMAN: All right.

At this point, then, are there any questions from members of the committee to any of the parties here today?

Mr. Herard.

MR. HERARD: Thank you very much, Madam Chairman. As I read on page 3, section 4(1), "Rights of third parties" – and Ms James

already talked about this somewhat – nothing in this Act affects the rights of any person having any claim. Why is it necessary, then, to have section (2), which says that

> TD Trust Company is not liable for any debts, liabilities or obligations arising out of any act or omission on the part of Central Guaranty Trust Company that occurred before January 1, 1993.

Why is it necessary to have something that seems to be contradictory?

MS JAMES: What the first subsection is intended to do is clarify that if you have a claim against CGT, you still have the claim but to set out clearly that TD Trust Company is not responsible for that before the period, which is the common law. What it's intended to do is prevent people commencing an application and finding out at the end of the day you do not have a claim against the successor, and to clarify it very clearly in the Bill.

As I told you in the remarks, Mr. Herard, by taking over a trusteeship, a successor is not liable for the breach of the predecessor. It's analogous to buying a business. The buyer does not take over the obligations of the seller when they buy assets. If they bought shares, it would be another matter. In this case, because of the business situation of Central Guarantee Trust, which was insolvent, they did not buy the shares of the trust company. They actually bought the assets, the trust and agency business and the files, so the normal common law successor provision applies.

MR. HERARD: So at this point the affairs of Central Guarantee Trust are not totally resolved, and if a person did have a claim, you would have to make the claim against the process they're now going through in terms of their insolvency.

MS JAMES: They would bring the claim against CGT and the receivers Deloitte & Touche, who are managing the files, who have appointed under an agency agreement TD Trust Company to manage the business on their behalf.

MR. MUIR: In practice what would happen is that the claimant, who would normally be a beneficiary or somebody who is entitled under an estate or trust, would make the claim to TD Trust, and TD Trust, acting as Deloitte & Touche's agent, would deal with that claim. Now, as I indicated in my earlier remarks, TD has been very sensitive to the position of these potential claimants and has, in fact, itself paid for insurance to cover the situation where even though it is not technically liable, it will nevertheless meet any claim through the insurance policy. So in practice we have met any claim that has been put forward, although technically we would not be liable. And if we were appointed successor trustee by the court, which would be the alternative procedure to the one we're going through now in coming before you, then the court would make an order which would be similar in terms to the Act we're now presenting to you.

MR. HERARD: Okay. Is there a point in time where this obligation ceases, or does it carry on?

9:00

MR. MUIR: Our insurance protection lasts until 2002. However, we're now four and a half years into the ownership of the assets by TD Trust, and I think most of the claims that would have come forward have come forward by now.

MR. HERARD: Thank you very much.

THE CHAIRMAN: Mrs. Sloan.

MRS. SLOAN: Thank you, Madam Chairman. Two questions. I'm wondering if the presenters can share with us why the Act needs to be proclaimed now rather than at a time when all of the claims against CGT have been resolved?

MR. MUIR: The position is that estates and trusts may go on for a very long time indeed. We have approximately 1,600 wills that we are aware of and probably another few hundred that we're not aware of appointing Central Guaranty Trust in which the testator has not yet died. If the testator dies, let's say, 10 years from now, sets up a trust which may last 70 or 80 years from the date of their death, you'll be looking at coming forward a hundred years from now with this Bill. The situation is that Deloitte & Touche, the liquidator of Central Guaranty, wishes to wind up the affairs of the company. From TD's point of view we also wish to have the relationship with Central Guaranty Trust laid to rest so that our clients are satisfied that they are TD Trust clients and not still in the position where technically they're Central Guaranty Trust clients and where they see Central Guaranty Trust still being referred to on material relating to them.

MRS. SLOAN: I have a supplemental and then my second question, Madam Chairman.

THE CHAIRMAN: Go ahead.

MRS. SLOAN: For those wills that are in trust now but where the individual has not died, why would it not be prudent to advise them to transfer their will to another company rather than complicate the proceedings of this successorship?

MR. MUIR: Yes, that is certainly a situation which we would want to have, and in fact the number of wills appointing Central Guaranty Trust or its predecessor companies has decreased very considerably from 1992 until the present day as we've reviewed wills and the testator has changed the appointment. However, as Ms James referred to, there are a number of situations in which for one reason or another the testator is not able or has not wished to do that. First of all, there's some expense involved. Secondly, we have testators who are no longer capable. They have mental incapacity at this point and can't change their will.

We have situations in which we have actually lost contact with the client. We still have their will on file, but they have moved and haven't told us where. Although we don't know their whereabouts, their will is in all probability still valid. We've other situations in which Central Guaranty or its predecessor companies have been appointed perhaps as an alternative executor; that is, one spouse appoints the other, but if on the death of the second party there's nobody to administer the estate, they appoint a trust company. They don't always tell the trust company that that appointment is out there.

So there are a number of situations in which we are for one reason or another not able to deal with the testator and have them change their will. Where we have been able to work with them and change the will, then we've done that.

MRS. SLOAN: Okay. My final question. There's a $30 million indemnity that has been provided for claims, but my understanding is that the claims actually exceed that amount. I'm wondering if you can share with us the total value of the claims that have been filed against TD Trust.

MR. MUIR: That indemnity, I think, was for the whole of Central Guaranty Trust's business. Only a small portion of Central Guaranty Trust business came to TD Trust, just the fiduciary business. The estates and trusts and will business came to TD Trust.

MS JAMES: There is also the deposit business, where they operated analogous to a bank, where you'd have an account, and that is not fiduciary business.

MR. MUIR: Yes. TD Trust does not have anything to do with the retail side – the banking, mortgages, loans, that side of the business – and the indemnity was largely for protection for people who were depositors with Central Guaranty Trust, not with TD Trust. The total of claims against TD Trust is approximately $3 million that have been made and paid.

MRS. SLOAN: Against TD?

MR. MUIR: The portion of Central Guaranty Trust business that TD Trust took over.

MS JAMES: That indemnity survived only for two years from the closing, so it is also technically gone, for the information of the committee.

THE CHAIRMAN: Mr. Pham.

MR. PHAM: Thank you, Madam Chairman. I have a few questions today for the presenters. Ms James, you mentioned earlier that when TD Trust took over Central Guaranty Trust, you only took over the assets and not the business.

MS JAMES: No. They did not buy the shares of the company. They bought the actual business division, for want of another term.

MR. PHAM: Okay. You also mentioned that with the common law, TD Trust should not be responsible and should not be held liable for anything that CGT did before the takeover.

MS JAMES: Yes.

MR. PHAM: If that is the case, if the common law already stated that, then why do you need section 4(2)?

MS JAMES: We want to put it in to make it clear for any client of CGT so that they do not spend money researching the problem. It's very easy to find, to read the Bill, to show them and explain the provision to them rather than have them have a lawyer research the common law. As I said earlier, it gives our client TD Trust certainty as to their rights and obligations, because the common law can change. With a change in common law, it has retrospective effect. It from then forward changes the law.

Finally, it gives us consistency across the country in terms of treatment of the files, because many estates and trusts have property across the country. Through the management of the file and the ability to confirm that it's appropriate that TD Trust apply in that other province to the extent necessary – for example, where there's land – it is confirmed that they are the appropriate applicant. If the will's primary jurisdiction is here, it confirms that this jurisdiction recognizes that in the other provinces of Canada it is appropriate for them to bring an application for an appointment.

MR. PHAM: My last question is: if consistency is what you are looking for, then shouldn't you stick with the common law rather than having a private Bill in every province?

MS JAMES: The problem with the common law is it may change. We are not changing the common law; we are simply stating it. For the information of the committee, the fact that this provision was built in was reflected in the price that was paid on the transaction. Is that correct, Mr. Muir?

MR. MUIR: Yes.

MS JAMES: So we are not changing the law.

MR. PHAM: Ms James, my point was that if you are looking for consistency and because the common law applies across every province in this country, therefore you should not need to have one private Bill in every province, because by doing that, you are introducing inconsistency.

MS JAMES: We need the private Bill to effect the transfer in every province, because the transfer of the assets is a provincial matter. So we must go to every province. Why we put section 4(2) in was to clarify to the public that as successor trustee, TD Trust does have rights and responsibilities and that they have not been affected. They still have their obligations as successor trustee, but it clearly delineates their obligations with respect to prior to the acquisition of the business.

MR. MUIR: This is a somewhat different acquisition than most of the acquisitions of trust companies which have taken place over the last few years in that most acquisitions have been actually of the company itself and because the acquiring company has taken the shares and has taken everything associated with that company to itself. In this particular case TD Bank, when it bought Central Guaranty Trust, did not acquire the shares of the company and did not acquire certain of the liabilities and responsibilities of Central Guaranty Trust. That's unusual, and it's not the same position, for example, as Royal Bank acquiring Royal Trust, which it did fairly recently, in which it took the company itself. So this provision makes it clear that what is being acquired is the business of Central Guaranty Trust, not the company itself. Certainly that is quite a distinction.

9:10

MR. PHAM: Madam Chairman, I have more questions, but I think that I should yield to other members now. Then I will ask my questions later.

THE CHAIRMAN: Mr. Pham, I was just thinking that maybe I could assist you. The common law, as I understand it, is not necessarily a static thing. It is the decisions that judges make from time to time. So when you say that the common law is the same across the country, it is something that can change, depending on a judge's decision and interpretation of legislation. As I understand it, what the petitioner is seeking here is just to say: today the common law is this, and we want it stated in this Bill. Would that be correct, Ms James?

MS JAMES: Well, the Bill would go further in saying that this reflects the common law today, but the legislation will confirm that there is no liability. If the common law changes, this Bill will say there is no liability prior to the 1993 date.

After this one we have another application. This Bill is very different because of the financial situation of Central Guaranty Trust. The matter you're going to hear next deals with an internal reorganization of the trust company as opposed to an actual acquisition of assets. So it is very much a unique situation dealing with the insolvency of Central Guaranty Trust Company.

THE CHAIRMAN: Mrs. Burgener.

MRS. BURGENER: Yes. I just want to clarify some background. For those of you who are new to this committee, I had been asked back in 1993 to sponsor this original Bill and have been working on and off with the petitioners in order to clarify some of the problems that were developing as they went through it. I think that what has been spoken to is the fact that this is a very unique situation. The insolvency is one of the aspects, the fact that, as has been pointed out, the acquisition was not similar to taking over a whole business – that was part of it – and the fact that also there was the need to review legislation across the country. I guess my question to Treasury – and maybe this is third time lucky; I'm not sure how many times you have to deal with it. I know you've spoken to it, but in the parameters of safeguarding the responsibilities of this province, I want to have a clear statement that in its current form, that has been presented, and in the work that's been done over the last three years, there's a confidence level that Albertans are protected with this particular piece of legislation.

MR. STROICH: In my opinion, I think that the trust holders and beneficiaries are in no worse position had they been at Central Guaranty, had this deal not commenced, and had TD not bought Central Guaranty Trust. I think this Bill serves these citizens of Alberta, under the circumstances, in the best possible way.

MRS. BURGENER: Well, I appreciate your comments on that.

Is there anything that you would like to bring to our attention from the original 1993 legislation that was proposed that would assist our committee in determining that that assurance has come forward?

MR. STROICH: No. I don't think so. I think that the issue of 4(1) has already been discussed and brought to light to clarify the position of each of the trust holders with TD and with Central Guaranty. That's clarity, and I think that's benefited Albertans at this time.

MRS. BURGENER: Okay. My last comment, again on Treasury, is that I appreciate these Bills are stand-alone in the sense that they are developed and they respond to unique situations. However, we will continue to see, as the business world unfolds as it does, these types of mergers and acquisitions. I want to know whether or not this particular process and this unique situation will actually serve as some kind of benchmark for dealing with future acquisitions. In other words, while it is stand-alone and unique to this situation, one hopes we are building a body of law that reflects good practice. Will this be of assistance to Treasury in the light of future acquisitions as the financial world unfolds as it does?

MR. STROICH: I think it will. Hopefully, we won't have the situation where we have one company buying another company that's bankrupt and buying only the assets and not the full liabilities.

MRS. BURGENER: And nobody's buying Bre-X.

MR. STROICH: Yeah.

No, I think it's unlikely that this style of Bill, sections 4(1) and 4(2), will be used again in this manner. So hopefully we won't see too much of this kind of Bill. There will be probably the issue of the other Bill being presented this morning, with the business consolidations. That may be more of a model.

MRS. BURGENER: Okay. Thank you, Madam Chairman.

THE CHAIRMAN: All right.

Mr. Langevin.

MR. LANGEVIN: Yes. I understand by the document that six other provinces have adopted similar legislation?

MS JAMES: Yes, that's correct.

MR. LANGEVIN: Are you looking at all the rest of the Canadian provinces to go through with this?

MS JAMES: Yes, they are in various stages of progress. Hopefully, Manitoba and B.C. will be dealt with in their sessions this spring. Quebec: it's ongoing. The Territories are in process. The division of the Territories may be causing some delay in how it proceeds at this point in time. So the client is moving forward to implement similar legislation in the remaining three provinces and the two territories. From a business perspective I understand, John, there is not that much in the Territories anyway.

MR. MUIR: No, we currently have no estates and trusts active in either the Yukon or Northwest Territories. The only issue there is that we may have some wills which appoint Central Guaranty Trust or a predecessor company in the Territories and the Yukon.

MR. LANGEVIN: Okay. Thank you.

MR. PHAM: I have a few more questions because I am still not at ease with the idea that you have go through all the trouble for nothing. Assuming today that this Bill is not passed, what negative impact will it have on your business? What is the implied cost to your organization?

MS JAMES: The cost, quite frankly, will be borne by the beneficiaries of the estate. The impact will be primarily on them financially. In each estate and trust, if this is not filed, we will have to bring an application to the circuit court or the Court of Queen's Bench of Alberta. The filing fee currently for that application is $200 plus the lawyer's time for bringing the application for the court to substitute in every estate file or trust file Central Guaranty Trust as trustee. So the cost of that application probably will range, depending on the number of beneficiaries involved, whether there are minors, which would require the involvement of the office of the Public Trustee – probably a minimum of $800 to $1,000 in legal fees plus the court filing fees. Those costs are paid by the estate or trust.

So in terms of cost, yes, we can apply to court for the ongoing estates and find a mechanism. It will not deal with the ongoing wills where we have no knowledge of the client and can't go to the client to make a codicil or whether they're incapable. The benefit of this legislation is efficiency in the use of resources of both the estate and our government departments and our goals.

MR. PHAM: What is the cost for your organization if the Bill is passed but section 4(2) is taken out?

MS JAMES: Section 4(2) is there to benefit the client in the sense that they can very easily read and ascertain their rights. We do not believe the common law is changed, so in that sense we still have the same position at law that we are not liable for the breach of the predecessor, Central Guaranty Trust. So the cost really is incurred by those that want to get advice to find out what their situation would be and not so much by our organization, except we would be involved in defending claims perhaps where there is no merit and incurring the fees there.

9:20

MR. MUIR: Yes. I think the only cost to our organization would be in dealing with claims in which the beneficiaries of the trust did not

fully understand what their position was. We'd incur some administrative cost, but there would be no direct cost other than our time in dealing with those issues.

MR. PHAM: Would you have any objection if we recommend to the House that the Bill is passed but section 4(2) is taken out?

MS JAMES: I believe we clearly want 4(2) in the Bill for the clarity, the consistency across the other provinces, and it is very important to us.

Section 5, which states that nothing affects the liability of the successor trustee, was specifically placed in the Bill to clarify to the public that they are not losing as a result of TD taking over, that TD has all the responsibilities they would normally have as successor, so they cannot run this file improperly and not be responsible for their acts. Section 5 was added from the original Bill before you to clarify that the public is in the same position with their new trustee and how they have the obligations and the responsibilities.

MR. PHAM: Ms James, the reason I raise this point is that I understand section 5 does not preclude anybody from suing or going after Central Guaranty Trust for what they believe is rightly theirs, but if we pass the Bill the way it is, I believe TD Trust would be off the hook but the taxpayers of this province won't be. If somebody . . .

MS JAMES: I'm sorry. With 4(2), at common law there is no responsibility for the predecessor's breach anyway, so the taxpayer . . .

MR. PHAM: That is exactly my point. If it has no impact on your organization, then I cannot see any reason why you say it's so important that we have to have it in there.

MS JAMES: Our reasoning, sir, is that it will allow the public to cost-effectively find out the answer as to where the division of responsibility lies without having to retain the services of a lawyer. It's clear, so there is a very great benefit to having it there.

MR. MUIR: I think we would say that the cost to the taxpayer or to the members of the public who are affected by this will come if you don't put that provision in there, because we will possibly have to deal with a number of actions which ultimately prove to have no merit but which will have been commenced because people did not understand what their position was under common law. By its nature the very fabric of common law is that it isn't written down anywhere, and therefore people are not clear as to exactly what their position is.

MRS. SLOAN: Just a couple more points and questions. I think I would share the hon. member's concerns. From a general standpoint it appears what we're doing here is endorsing the precedent that a company can purchase the assets of another failing company and not their liabilities. In a general sense the endorsement of this Bill by the Legislature concerns me, because in my mind it would lead to that as a business precedent, that businesses can look to this as a means of getting off scot-free to some degree with respect to the liabilities.

Just another point in my observations of the exchanges made previously. While the Bill may offer some procedural expediency, in my analysis it does narrow the liability mechanisms that are open to individuals that have a claim against CG. So while there may be some procedural expediency, I think there is a detrimental impact on the claim area for individuals.

It's my understanding that clauses 4 and 5 in this Bill are in fact only mirrored in the Ontario bill and that the other provinces which you named – New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland – do not contain those clauses. Is that correct?

MS JAMES: No, that's incorrect. Do you have the copies of the Bills? They are not in the same order.

MS DEAN: The committee members don't have copies of all the other provinces' legislation. I have them here at the table. It is my understanding that in the six provinces where this legislation has passed, that provision or a provision similar to section 4(2) has in fact been included in that Bill. Could you please confirm that?

MS JAMES: Yes, that's correct. A similar provision is in each and every one of the Bills, and Parliamentary Counsel has copies of all those Bills if you wish to review them.

With respect to your concern that the trust company gets off scot-free and you're endorsing the business having that result, if Central Guaranty Trust Company had failed, they did not have sufficient assets to meet their claims. That is why CDIC actively sought out a purchaser to take over the business and take on the responsibility of running the trust company.

MR. MUIR: The alternative route which would be followed is that in each case a successor trustee, be it TD Trust or anybody else, would apply to the court for an order replacing Central Guaranty Trust with that successor trustee, and the court order would essentially mirror what is in this Bill and would contain no greater liability for the successor trustee than is included in this Bill. So by not accepting that position, basically you would be putting the successor trustee – in this case TD Trust, but any other successor trustee – in a worse position than if they had gone to court and sought an order replacing Central Guaranty Trust with another trustee.

MRS. SLOAN: If I could offer, though, I think there is a difference between another company taking the assets of another company that has failed and not assuming the liabilities. At least if there are people with claims, if they know those assets went to offsetting the liabilities, there's some degree of solace in that, but that didn't happen in this case. In fact, TD Trust took the assets and, it was proposed in your introductory remarks, benefited from those while the claims have remained outstanding. So I think it's a matter of the equation and how this happened. In fact claimants have not had the solace of knowing that the assets of TD Trust went to offsetting the liabilities. They were taken by TD.

MR. MUIR: With respect, Madam, could I answer that point? With regard to these assets that we are discussing here, these are trust assets which were transferred to the trusteeship of TD Trust from Central Guaranty Trust. The assets themselves were transferred in their entirety, and nothing was left behind in Central Guaranty Trust to be claimed against by creditors. In fact it's the case that in Canada no trust client of a trust company has ever lost anything by virtue of a failure of the trust company in respect of the assets held in trust being claimed by that trust company's creditors. Certainly that was not the case here. TD Trust took the trust assets in their entirety. There was no claim against them by other creditors of Central Guaranty Trust, nor will there ever be any claim against them by other creditors of Central Guaranty Trust. The only liability we are talking about here is liability for such things as maladministration by Central Guaranty Trust while it had the assets in its custody in which a beneficiary might make a claim against that trust company.

Let me give you an example of the kind of situation we have dealt

with. The Central Guaranty Trust Company ran a number of common investment funds, as all trust companies do, to invest their clients' money, and one of those funds, the mortgage fund, had some mortgages which failed. Now, that money has been replaced by TD Trust through its insurance into the fund. The beneficiaries concerned have been made whole in respect of those assets.

I think perhaps what is confusing here is that the assets of Central Guaranty Trust Company itself as a corporation are one thing; the assets of the trust accounts that we're talking about here are another thing entirely. The assets of the trust accounts have been taken by TD Trust and administered in just the same way as any successor would have done, and no trust client has suffered at all. There's no claim against those; the Central Guaranty Trust creditors are not involved in touching those assets at all. The accounts have come over whole, and there are no claims against them. So there's no diminution of the rights of the trust clients in any way by this takeover.

9:30

MRS. SLOAN: I wanted to just follow up from the Treasury. In some of the material that we received with respect to your analysis of the Bill, you actually referenced the Ontario Bill, citing those sections, but do not make the reference that they are incorporated in the other provinces. So I would ask from the Treasury that question. Secondly, I would like as well from the Treasury an answer or an opinion with respect to whether they endorse this practice, if they are in fact endorsing the practice of a Bill setting this precedent.

MS SIMARD: I have reviewed the other provinces' Bills, read them through. I didn't check them word for word, but they were very similarly addressed. That similar section is 4(1) and (2). Like I say, I didn't look at it word for word, but it was very similar in the other provinces, the ones that we received. I don't know whether we got copies of every province's Bill. I did look at Ontario's in particular. That was the one that I had checked very closely, and it's very similar to ours.

Your second part of the question?

MRS. SLOAN: Endorsement.

MR. STROICH: This is an unusual situation where TD Trust has purchased, in a sense, the assets from a bankrupt company, and on that basis I believe that I would endorse this Bill. From our point of view we do not believe that the holders of the trust are in any worse position than they were had Central Guaranty gone bankrupt and no one had purchased the trust business and it was left to just work out through the courts. So in this case we believe this is a proper conclusion to that matter.

MS JAMES: With Central Guaranty Trust there were a number of aspects to its business, but maybe a comment that as a lawyer we take for granted: when property is held in trust for another, that property is not subject to the trustee's claims. If I Cheryl James am holding Mr. Muir's assets in trust for John Muir and I go and become insolvent, my creditors cannot attack Mr. Muir's assets. So the trust property of the Central Guaranty Trust clients was transferred pursuant to the business and those assets were intact.

Now, as well as the trust business Central Guaranty Trust had other areas of business where there were other financial institutions dealing with their corporation, but the estates and trust business, that property was subject to the obligation that it was property of another and not subject to CGT's creditors.

THE CHAIRMAN: Thank you, Ms. James.

I'll just mention to members that if you want copies of the Bills that have been passed in other provinces, Parliamentary Counsel has all of them and will provide them to you upon request. I'd just point out to you we do have another hearing this morning, so those of you that wish to speak, I'm just going to ask you to keep your questions or comments brief.

Now, Mrs. Burgener, I believe you had something further, did you?

MRS. BURGENER: Thanks, Madam Chairman. Just briefly. I had a comment, because I seek some guidance here. I understand that this is a private Bill and the legislation that we are passing applies specifically to this situation. So I'm quite concerned with any thought that by endorsing how one company acquires another company, whether it takes on its assets or liabilities, we are suggesting that as a government or as the Private Bills Committee, we have a role to play in saying what companies should or should not venture into when they look at opportunities for expansion or deal with insolvency. I guess it's because of the comment that was made earlier that by supporting this particular petition, we are endorsing some form of intervention in the marketplace that says that if you buy a liability, you've got to buy an asset. I have to go firmly on record saying let the private sector determine what opportunities they pursue. So my question, then, is: have you had any complaints? You've been at this now since 1993. What's the track record?

MR. MUIR: We have had no complaints at all that I'm aware of in Alberta. In fact, the general reaction to the acquisition by TD Trust was that our clients were extremely thankful that a company with TD's record of stability and safety had acquired the assets of the trust company and that therefore they would be protected from the 1st of January 1993 onwards.

The only complaint I'm aware of is a lady in Nova Scotia who had been removed by the court as a trustee and objected to being replaced by any trustee, including TD Trust.

MRS. BURGENER: I just wanted to go on record as the sponsor of this Bill that since 1993 I, too, have had no complaints, and the couple of comments I had was: let's get on with it. So I just wanted that to go into the record as well.

THE CHAIRMAN: Thanks, Mrs. Burgener.

Mr. Cardinal.

MR. CARDINAL: Just briefly to the director of financial institutions, Alberta Treasury. I have a couple questions as to monitoring and how you review the trust companies. It seems in the last eight years there are a number of trust companies that we're tied in with. For some reason any time there are profits being made, we don't hear anything from the investors and the trust company, but as soon as there's a problem, then the taxpayer seems to end up holding the bag.

I just wonder: what is the standard policy set now by Treasury in relation to evaluating the assets and investments and transactions of trust companies in Alberta? It seems like if there's close monitoring, like a quarterly review of the assets, investments, and transactions, then we'd have a better handle on dealing with issues earlier on than waiting until the company goes down. What is set now? Do we do that, or do we wait until there's a problem before we step in and try and resolve the issue?

MR. STROICH: Madam Chairman, the current situation in the province of Alberta is that for Alberta incorporated companies the Alberta government through the Loan and Trust Corporations Act is responsible for their monitoring on a quarterly basis. We receive

reports on a quarterly basis of their activities and their financial situation. That tends to be after the fact of course, but we also monitor on the point of view of customer complaints, people phoning in with concerns about companies for treatment and things like that. That does give us some idea of what's happening in a company.

As you, I think, are well aware, there were amendments to the Loan and Trust Corporations Act passed last year which indicated that for those companies incorporated outside the province of Alberta or federally, we have to look to the incorporating jurisdictions for the solvency regulation, and that we do. We have an interprovincial sharing agreement with these provinces, and they provide us information occasionally about companies that are in trouble that have business in Alberta. That's the current regime for the loan and trust corporations.

MR. CARDINAL: Just another comment on the same. Are you satisfied that that protects Albertans enough, or do we need a further appraisal of the actual assets and investment?

MR. STROICH: That's a difficult situation in the loan and trust business because of their current record. As you're well aware, there have been a number of failures in the trust corporation business.

MR. CARDINAL: They always end up here.

MR. STROICH: That's true.

I think current legislation has been evolving over the past five and six and seven years to provide a much more stable environment, a much more regulated environment for some of these companies. But to say that we can prevent failure of another company again with a hundred percent assurance, I don't think it's possible. Many of the transactions that companies got into in the past, because of economic changes over three or four or five years down the road, can affect that company. It's very difficult to guarantee no failures, unless you want to have somebody in there examining every single transaction they do. Even then that transaction four years down the road may go bad. I don't think there's any guarantee.

9:40

THE CHAIRMAN: Mr. Herard.

MR. HERARD: Thank you, Madam Chairman. First of all, Mr. Muir has indicated that TD Trust has taken out insurance that will in fact be in force until 2002. That's essentially a decade from the time that this started. I just want to remind members that in this province we are probably – I would say we will be – proclaiming an Act later on this session, the limitations liability Act, that essentially sets out 10 years as being the length of time that a person can sue for any kinds of damages anyway. I find that TD's actions in this case, in keeping the insurance in force and having informed us that there are no significant actions on the books at this point, that there have been actions but of a minor nature – I think that what they've done is entirely prudent, and I don't think we're establishing a precedent here that would not be wise to establish by virtue of the fact that our own Limitations Act sets out approximately the same kind of period anyway. So I don't know that we've got a big problem here.

THE CHAIRMAN: Thanks, Mr. Herard.

Mrs. Sloan, you had something further, did you?

MRS. SLOAN: Yes, I did actually, Madam Chairman. It's just a question to you with respect to Standing Order 97: any person whose interest may be affected by a Bill has the ability to appear before the committee. I'm just wondering if there have been, with respect to this Bill, any mechanisms undertaken to notify any potential claimants of this proceeding and their right to have the ability to speak to this committee on the subject?

THE CHAIRMAN: Yes. The advertising completed by the petitioner was in compliance with the Standing Orders; that is, advertising in the *Alberta Gazette* as well as in two successive . . .

MS DEAN: . . . issues of a newspaper in Alberta. In fact, the petitioners have advertised in both the *Edmonton Journal* and the *Calgary Herald* regarding this proposed private Bill.

MRS. SLOAN: But my question specifically was: did the advertisement tell claimants that they have the right to also present before this committee during the debate of the Bill?

MS DEAN: The advertisement specifically invites members of the public to make inquiries with our office, and given that at the time of the advertising we did not know when the hearing was scheduled, we would provide that information to any members of the public that phone our office. We have not received any inquiries with respect to this private Bill.

THE CHAIRMAN: All right.

Just before we conclude, I do have one question I suppose to Ms James. I'm aware that CGT was the trustee for a number of gross royalty trust agreements in this province. A resolution of all of those trusts I know has been ongoing for a number of years. I'm just wondering what the status is as far as Central Guaranty in winding up these trusts. Or are there still some outstanding gross royalty trust matters that may impact on CGT?

MS JAMES: With respect to the application before this committee, it has no effect. That part of the business was not purchased by TD Trust, and it is not subject to this Bill. It's a specific exclusion in the Bill now that it does not apply to any royalty trust.

THE CHAIRMAN: Thank you for that.

MS JAMES: They only bought the personal and estates business.

THE CHAIRMAN: Because that was a problematic area for the company.

MS JAMES: Our firm is not involved in the litigation that you're speaking of, so I can't really tell you to the extent. There has been litigation – you are quite right – regarding the reforms of royalty trusts, but that's not part of this deal. This deal was very specific. It's clause 7(1)(d)(ii). It does not apply to any trust in "which Central Guaranty Trust Company acts as trustee for unit holders in respect of any oil or gas royalty trust fund."

THE CHAIRMAN: Very good. Thank you.

MS JAMES: You're welcome.

THE CHAIRMAN: All right then. Just for the committee's edification, we did receive comments from the Department of Municipal Affairs. However, their comments relate, really, to if the Bill were passed, how it would be implemented in terms of the land titles office and personal property registry. So I don't think it's necessary to go into those today. You can read those at your leisure.

We will be deliberating on this Bill, then, likely on June 3, and we

will inform the petitioner and petitioner's counsel of our decision in due course.

I thank you, Mr. Muir, for attending here today, and we'll now excuse you so we can proceed to our next hearing.

MR. MUIR: Thank you, Madam Chairman. Thank you, members.

MS JAMES: Thank you.

THE CHAIRMAN: I believe everyone else will be remaining. We'll just bring in the petitioner on hearing number two.

[Mr. MacDonald and Mr. Clark were sworn in]

THE CHAIRMAN: Prior to proceeding to our second hearing this morning, on Bill Pr. 2, The Bank of Nova Scotia Trust Company, Montreal Trust Company of Canada and Montreal Trust Company Act, let the record show that Parliamentary Counsel has sworn in Mr. Rory MacDonald, president and chief executive officer of the Bank of Nova Scotia Trust Company, as well as counsel Mr. Stephen Clark of McCarthy Tétrault, who is counsel for the petitioner this morning.

Due to the lateness of the hour, I think I will maybe abbreviate our proceedings. We are an all-party committee, as you're probably aware, and the purpose of the hearing, of course, is to hear presentations as to the rationale for the Bill. Members of the committee are free to ask questions on that point. After hearing the presentation and the evidence today, we will be deliberating as a committee on the merits of the Bill on June 3, at which time we will advise the petitioner and petitioner's counsel of our decision, which will be one of three options: either to recommend to the House the Bill as it stands; or secondly, the Bill with amendments; or thirdly, not to recommend the Bill at all.

So without anything further, I think I will call on Mr. Clark to make the presentation, then, on behalf of the petitioner.

9:50

MR. CLARK: Thank you very much. We've had the opportunity this morning of sitting in the sunny room next door and listening to the discussions on TD Trust. Recognizing the lateness of where you are as well, perhaps we can begin just by giving you a bit of the background, which is slightly different than TD's case. Perhaps the most important statement to make at the outset, again having heard, is that in this case it is a case of the Bank of Nova Scotia Trust Company acquiring the assets of Montreal Trust. Therefore, while the Bills are substantially the same in the case of TD and the Bank of Nova Scotia, the Bank of Nova Scotia Trust Company assumes all the liabilities of every kind and nature whatsoever that the predecessor, Montreal Trust, had. So that's probably the first and most important distinction to make.

The facts are slightly different in this case. In April of 1994 the Bank of Nova Scotia acquired the Montreal Trust Company, which was a federal trust company, and the Montreal Trust Company of Canada, also a federal trust company. What has been going on since then is a reorganization of the way in which the two Montreal Trusts fit into the Bank of Nova Scotia. In essence, the goal is to have all the deposit-taking functions, all the personal functions recognized within the Bank of Nova Scotia and have the personal trust in the Bank of Nova Scotia Trust Company. This would then leave Montreal Trust Company of Canada, which has a highly visible name in the corporate trust area, responsible for all corporate trust functions. So, again, the goal is to have Montreal Trust as corporate trustee, the Bank of Nova Scotia Trust Company as the personal trustee, and the Bank of Nova Scotia conduct all the personal banking and deposit-taking functions in the Scotiabank group.

Perhaps I can ask Cheryl James if she would talk specifically then, because many of the points are the same, on the technical side of the Bill. I don't know how you want to deal with those, similarly or not.

MS JAMES: Would you like me to go through the alternatives and the procedures for substituting the trustee again, or should I just follow the background for the record?

THE CHAIRMAN: Yes, if you could, just being as brief as you can.

MS JAMES: Okay. As I indicated previously, to accomplish the Scotiabank's objectives to bring the personal trust and agency business into the Scotiabank group, Scotia Trust needs to be substituted in the place of Montreal Trust Company or Montreal Trust Company of Canada in all of their personal estates and trusts. This can be accomplished with ongoing wills by having the maker of the will consent. As I indicated in our previous hearing, the problem is that the maker of the will may not be able to be located because the client and the company have lost track of each other, they may be incapable, or they may not wish to incur the expense if no other change is required.

In the case of ongoing files where the person is deceased and we have an estate or trust file, we can apply to court in each and every file for an application under section 16 of the Trustee Act to substitute Scotia Trust for Montreal Trust Company in each file. This procedure entails cost to the trust or the estate, which must normally bear these expenses, and will place a burden on our court system. Thirdly, as we discussed previously, we can request the Legislature of this province and every other province or territory to pass a law which substitutes Scotia Trust for Montreal Trust.

There is precedent for this. There have been three previous Bills in Alberta and across Canada where this matter has been considered by the Legislature before: for Central Trust Company; for Royal Trust Corporation of Canada to take over the business of Royal Trust Company; and for Montreal Trust Company of Canada for the purpose of taking over the business of Montreal Trust Company, which was a reorganization similar to this before you.

As you are aware, this legislation is being sought to facilitate Scotiabank's business reorganizations. When Scotiabank acquired Montreal Trust, the operations of Montreal Trust were acquired as an ongoing, viable business. The Bill specifically states that Scotia Trust, as substituted trustee, is liable for and responsible for all actions of its predecessor, Montreal Trust. So the public is in no different position than it would have otherwise been.

For the information of the committee, legislation has now been passed in similar form in New Brunswick, Nova Scotia, and Saskatchewan and is in process in the other provinces. The Bill has received first reading in Ontario and been reviewed and approved by the private Bills committee. It has received first reading in Prince Edward Island and is in the process of being introduced in the other provinces. Our client has determined that legislation is not required in the Northwest Territories or Yukon territory. Parliamentary Counsel has been provided with a summary chart of the status of the Bills in the other provinces, and it's in your materials.

The proposed Bill has been reviewed by Alberta Treasury and financial institutions. Mr. Stroich has noted that the transfer of the trust and agency business requires the approval of the Office of the Superintendent of Financial Institutions, OSFI. This approval will be applied for once Scotiabank is in a position to transfer the business – i.e., the private legislation has been passed in all provinces – and the approval of the Office of the Superintendent of Financial Institutions is required pursuant to the federal Loans and Trust Companies Act. Mr. Clark can answer any questions you have regarding this process.

The Bill has been reviewed by Alberta Treasury, financial institutions, and Alberta registries. The comments of Alberta registries, as the chair noted previously, relate mainly to the implementation of the Bill. We've advertised the proposed application in the *Alberta Gazette*, the *Calgary Herald*, and the *Edmonton Journal*. I have been advised by Parliamentary Counsel that no objections have been received in response to these advertisements.

To summarize, the Bill will represent an efficient and cost-effective method to effect the business reorganization of Scotia Trust within the Scotiabank group.

We thank you for your time and attention.

Just as a side comment to respond to your question, the oil and gas royalty trusts administered by Montreal Trust are not affected by this transaction as well.

THE CHAIRMAN: Any other presentations?

Mr. Stroich, Alberta Treasury supports the purpose and contents of this Bill?

MR. STROICH: Yes, we do, Madam Chairman.

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

MR. HERARD: Thank you, Madam Chairman. I understand that this Bill of course would not go into force until such time as the transaction has been completed. Does that essentially mean – and perhaps this is more for Parliamentary Counsel than for the applicants – that this Bill could receive Royal Assent and then wait for proclamation until such time as the transaction is completed?

MS DEAN: The way the Bill is drafted right now, the Bill would receive Royal Assent, but effectively the transfer will not have yet occurred. So the material parts of the Bill will not take effect until that transfer does occur, until that date is published in the *Alberta Gazette*. Is that clear?

MR. HERARD: Well, I guess I'm asking perhaps a question that I could save until we discuss this Bill further, but normally with Royal Assent the Bill still has to be proclaimed at some point.

MS DEAN: If there is a provision in the Bill that states that the Bill comes into force on proclamation, then that is the case. Otherwise, the Bill will come into force on Royal Assent.

MR. HERARD: So the Bill could be in force before the deal is done?

MS DEAN: Technically, yes.

MS JAMES: We have structured the Bill to provide that it will take effect on Royal Assent. The client, Scotia Trust, once the legislation has been passed across Canada and the OSFI approval has been obtained, will determine the effective date for the transactions to occur, and that notice will be given to the public by a publication in the *Gazette* and similar publications across Canada. We could have it come into effect on proclamation and ask the Lieutenant Governor to come in on a particular date, across Canada, to proclaim it, and hence the mechanism for the effective date, where once we are ready, we could publish the notice of the date and go forward.

10:00

MR. CLARK: Your question, I think, is a good one. It's one we faced when we first structured this Bill across the country. As Cheryl had started to say, in simple terms one of the difficulties we have is that when you're transferring a business like this, you do a rollover under the Income Tax Act, and Revenue Canada has to give a tax ruling to have it take effect. We also of course have the Superintendent of Financial Institutions that's deeply involved in terms of how the transaction takes place. There are two sides to a transaction such as this. The trouble we had was bringing them together.

The first side is the actual business side. You've heard a great deal about the business side in the first application this morning, where you purport to transfer as a business matter this business; i.e., the personal trust.

The second side of it. It's all very well for the businesspeople to presume that they're going to transfer the business. You can't do that until either you've been to court with respect to each and every estate or the Legislature of each province has passed a private Bill to do it, the law of each province.

So the question we had was: how do you bring the two of those together so that you've got, in effect, the transfer of the business side, the beneficial ownership if you like, and the legal side, the Legislature? How do you bring them together so they coincide at the same time and then match Revenue Canada's tax ruling so they've got a quote, unquote, transaction?

We saw really two ways of doing it. One was a patchwork across the country, which didn't suit Revenue Canada at all and didn't match the transaction. The other was to go to each province and say: put the Bill on the books, but then would please have the Lieutenant Governor come in when we ask you to? That wasn't palatable either. So really, to be very honest, what we ended up doing in discussion with Legislative Counsel was saying: we're open to another suggestion; we just don't know what it is. From a convenience point of view it makes the most sense to ask each Legislature would they please, appreciating that this is an unusual procedure, pass the Bill, have it in place ready to go. Then notice of when that happens is done through the appropriate notice procedure.

You're right in the sense that it's a very unusual provision, but we could not think of any alternative. So one by one, as we discussed with the provinces, we've said: if there's another way that makes sense, we're open to it. But we honestly didn't know what it was. We thought this was the fairest way to each Legislature and the most convenient way to say: here's the date when it happens; i.e., we publish notice.

I'm sorry for that long explanation, but that's how we got here.

MR. HERARD: Thank you very much. I appreciate that. Would you have a problem, though, if in fact the proclamation of this Bill were handled as they are normally handled, as an order in council, at such time as it becomes necessary to do so by virtue of the transaction being completed, thus giving the Legislature one additional check and balance, I suppose, as to what may have transpired between now and the date that happens? So if any problems came up, then the Treasurer, who would be the person asking for the order in council, would be aware of any problems that may have arisen during the intervening time. In other words, I'm asking: do you have a problem with putting in that extra step?

MR. CLARK: To be very honest, no, we don't. It's difficult for me as a member, so to speak, of the public to be presumptuous and say, but the only difficulty we would have is: how does one tell the minister and the cabinet to please do it on a particular day? As long as it was within reason – and we'll know actually several months ahead of the time when we're ready to implement. Where we are at the moment across the country is that, with any good fortune at all, we'll be through most of the provinces within the June sessions.

They'll all have received Royal Assent, and they'll all be ready to go. So there would be a period of probably at least six weeks that we would know. From my point of view it's easy to answer yes as long as, with respect, the cabinet would be prepared to say: fine; that meets our objective, and we can do that.

MR. HERARD: Well, in terms of the cabinet meeting, that goes on year-round. So that's not a problem. I guess what I'm saying is that because we can't foresee either any difficulties that could arise out of this transaction, it would give us one more check and balance to get advice from the Treasury Department saying, " Everything's A-okay. Proclaim it."

MR. CLARK: In theory, there would be no objection. We're looking for, to be honest, the balance of convenience for everybody; that is, what makes the most sense? If that would be perceived as an inconvenience to them – that's the reason we structured this way. In theory that would not be a problem.

MR. HERARD: Thank you very much.

THE CHAIRMAN: Well, if there are no other questions, we will conclude the evidence part of the hearing. I thank all of you for attending this morning and for your helpful submissions. We will be notifying the petitioner through the petitioner's counsel after June 3 as to the committee's recommendation.

Thank you very much, and I'll allow you to excuse yourselves at this time.

We'll return to the agenda: item number 5, Other Business. I mentioned at the outset that with Mr. Chipeur, who is counsel and one of the petitioners on Pr. 6, the Canadian Union College Amendment Act, and Pr. 7, Altasure Insurance Company Act, we have set up hearings on these two Bills for May 27, 1997, in this Legislature at 8:30. We've since learned from Mr. Chipeur that he will be out of the country attending a health care conference on that date. He's written me a letter, dated yesterday, wanting to meet the committee on an earlier date, asking us to reschedule. He will be here the previous Tuesday, on May 20, on two other Bills that he is counsel and petitioner on. So that is the situation.

All of the notices have gone out indicating that the hearing will be the 27th at 8:30. We have the Legislature booked for that day. He hasn't suggested when we could meet at any other time, but most of us have schedules such that it would be very difficult, I think, to find a time to fit him in. We have to decide whether or not we want to grant him an adjournment or not. Any comments?

MRS. BURGENER: Madam Chairman, I think it's appropriate. We last week made consideration to have the Bills considered in a timely fashion. The fact that he's not available, unfortunate as it is for himself and his client – we have an agenda to proceed with, and we have a schedule. I think he'll have to presume that we can meet again at another time. We've got an agenda to deal with, and I would not recommend that we grant an adjournment.

THE CHAIRMAN: Is that your motion?

MRS. BURGENER: That would be my motion.

THE CHAIRMAN: Any further discussion? All in favour?

HON. MEMBERS: Agreed.

THE CHAIRMAN: Opposed? Carried. We'll advise Mr. Chipeur, then, that the matter will proceed on the 27th.

Any other business?

MR. PHAM: Madam Chairman, I would like to make a motion that we have the starting time of the committee moved from 8:30 to 9:30 in the morning.

THE CHAIRMAN: Do you really think that's a good idea? We started at 8:30 this morning, and it's now 10 after 10.

MR. PHAM: Yeah. I think if we start at 9:30, everybody feels it is their obligation to move things along faster. [interjections] Madam Chairman, this is a nondebatable motion, so could we have a vote on this?

MRS. SOETAERT: I have to express some concern, as members here know that our caucus meeting starts at 10 and considering that we started at 8:30 and that it is already past that time. I realize that the Conservative caucus doesn't meet every day, but we do at 10. Considering the dynamics of our caucus, I'm hoping that the committee will consider that fact and leave it at 8:30, especially considering how today went.

THE CHAIRMAN: Thank you very much. Just for everyone's information, our administrative assistant went through the records, and for 1994 this committee met seven times at 8:30, twice at 9 o'clock, and once at 9:30. In 1995 it met six times at 8:30 and only three times at 9:30. In 1996 it was about 50-50: three times at 8:30, four times at 9 o'clock. So clearly, you know, the established starting time is 8:30.

10:10

MR. TANNAS: Madam Chairman, I was just going to observe that we've already had this debate in this committee in this term and voted on it. Do we need to keep bringing back the same issue?

THE CHAIRMAN: Well, it has been brought back.

MR. TANNAS: Yes. So let's vote. I move that we vote.

MR. HERARD: I would amend that motion, with respect to time, to 9 o'clock.

THE CHAIRMAN: Well, I've been advised by Parliamentary Counsel that unless there is a motion to rescind the vote from last week, it really isn't in order to have yet another motion on a matter we've already decided. So do we really want to go through this procedure?

MR. PHAM: I would like to make the motion that we rescind the vote from last week.

THE CHAIRMAN: Any discussion? We're using the voice vote. All in favour?

SOME HON. MEMBERS: Agreed.

THE CHAIRMAN: Opposed?

SOME HON. MEMBERS: No.

THE CHAIRMAN: It's defeated. So we'll be starting at 8:30 next week and each week thereafter until we're done.

If there's no other business, then I'll entertain a motion to adjourn. Mr. Thurber. All in favour?

HON. MEMBERS: Agreed.

THE CHAIRMAN: Opposed? We're adjourned.

[The committee adjourned at 10:14 a.m.]