

JL103

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C376

1974

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FILE

THE MANDATE AND RATIONALE OF

THE DEPARTMENT OF CONSUMER AND CORPORATE AFFAIRS

A HISTORICAL PERSPECTIVE

The Department of Consumer and Corporate Affairs was established in 1967 with a passage of the Departmental Act. It grew out of a recognition of the need for a federal department primarily concerned with the market system. As such, it brought together the ~~the~~ **legis-**lation directly concerned with the operation of the market. It also grew out of a recognition of the changing nature of the market and of the need for a department primarily focused on consumer problems and the consumer interest.

Section 6 of the Act gave the Minister of Consumer and Corporate Affairs a very broad jurisdiction to promote programs on behalf of the Canadian consumer.

The idea of a department focusing on the structure and operations of the market system was a new one in Canada. However, faith in the free market as a method of allocating goods and services is deeply rooted in this country. The various heads of federal jurisdiction under Section 91 of the British North America Act support the position that the Fathers of Confederation believed in the market economy as the economic system most compatible with representative democratic government. Hence, through the years, the Canadian government has supported the market system as a concept and it is within that context of political philosophy that the Department of Consumer and Corporate Affairs operates.

The Department in essence can be seen as the public interest department concerned primarily with the integrity and viability of the market as a means of allocating resources in our country.

B THE MARKET AS A PROCESS

The Department of Consumer and Corporate Affairs' primary concern with the market should not imply that the department believes in a static concept of the market. In fact, the department views the market as a constantly changing and dynamic process. For example, the phenomenal changes in technological and distributing techniques in recent years have worked to deprive the consumer of the personal and individual treatment he was once accustomed to. As a result the consumer's confidence in the system and his ability to protect himself was eroded. And, of course, the weakened condition of the consumer presented the opportunity for unscrupulous businessmen to take advantage of the situation. It is the changing balance of relationships

and the dynamic nature of the market which the Department seeks to monitor and regulate. It seeks to do so in all aspects of the market process.

The Department views the market as being a cyclical structure with four main points of intervention or interest. (see figure 1).

These four aspects of the market are:

1. The basic composition or structure of the market.
2. The production of goods and services.
3. The consumption or allocation of goods and services.
4. The performance of the market in terms of the profit or loss of business enterprises and the effectiveness of the process in an ongoing sense.

C THE GOALS OF THE DEPARTMENT

The goals of the Department are really an outgrowth of each of the four major components of the market as outlined above.

First, the Department seeks to facilitate and encourage the entrance of actors in the marketplace. For example, the Corporations law seeks to provide a regulatory framework within which business can operate. Intellectual Property also affects the composition of the market by encouraging technological innovation through the protection of abstract property rights. This goal relates primarily to the aspect of the market we call the basic composition of the market.

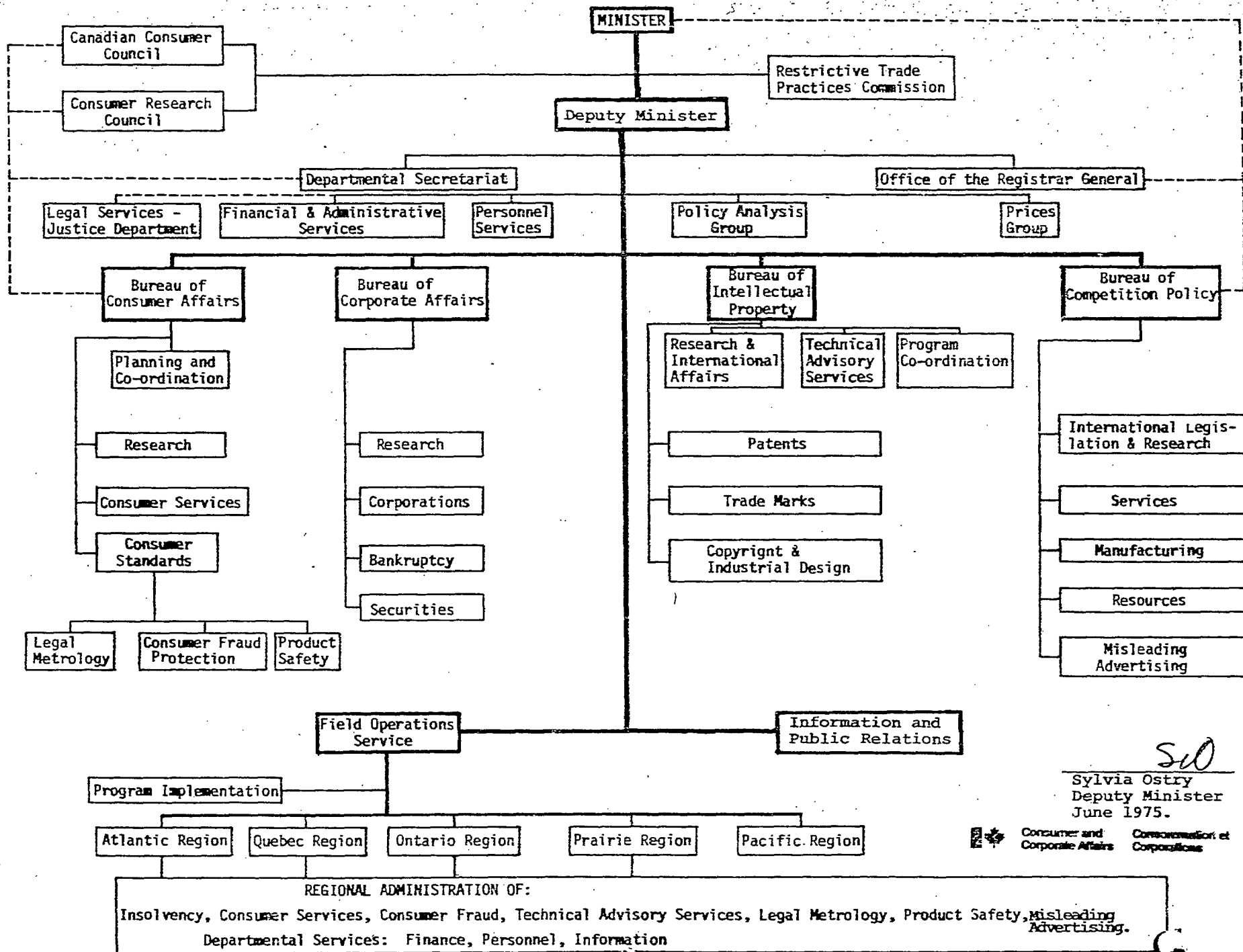
Second, the Department seeks to encourage the efficient and effective production and allocation of goods and services in the market. Its primary goal in this area is to ensure that the rules governing the actual operation of producing in the market work towards effectiveness and efficiency. For example, through Competition Policy the Department seeks to ensure that the structure of the market is competitive and free of monopolistic practices. It also seeks to regulate restrictive trade practices so that business may operate free from anti-competitive behaviour by their competitors. Intellectual Property also seeks to promote the efficient utilization of technological innovation by establishing and preserving basic property rights. The Consumer Affairs Bureau also seeks to promote efficient production by establishing common standards which all producers must meet in the production of goods and services.

The third goal of the Department is to ensure that the forum where goods and services are distributed for consumption by the ultimate consumer is conducive to rational decision-making by the consumer and results in the fair treatment of all consumers and businessmen. For example, the Consumer Affairs Bureau seeks through the regulation of commodity standards and the basic units of measurement in the market to establish a stable condition free from fraud and deception. The Consumer Affairs Bureau, through its educational and labelling programs also seeks to inform the consumer so he may make a rational selection. The Competition Policy Bureau of the Department seeks to control unfair consumer trade practices on a national basis to protect the consumer in cases where the balance of power in the market is uneven.

The fourth goal of the department stems from its belief in the market as a process and strives to ensure that the performance of the market is such that it is ongoing and regenerating. Hence, the Bankruptcy Law serves to instill confidence in the system by providing the means of allocating equitably the assets of insolvent business failures. The Department's interest in securities regulations and mutual funds stems from the realization that the raising of capital for new business enterprises must be carried on in an atmosphere of confidence and stability. Thus, the Department seeks to relate the performance of producers in the market to the means of raising capital to expand production.

Thus, the Department has four main goals which by and large relate to the four main characteristics of the market. Because the market functions as a process, the goals of the Department are inter-related. In seeking to meet its goals, the Department, through its Policy Analysis Group, takes an overall look at the interrelationships; hence, providing it with an understanding of the market in its totality and ensuring that the programs of the Department work to preserve integrity and viability of the market as the means of allocating resources in Canada.

DEPARTMENT OF CONSUMER AND CORPORATE AFFAIRS



S.O.
Sylvia Ostry
Deputy Minister
June 1975.



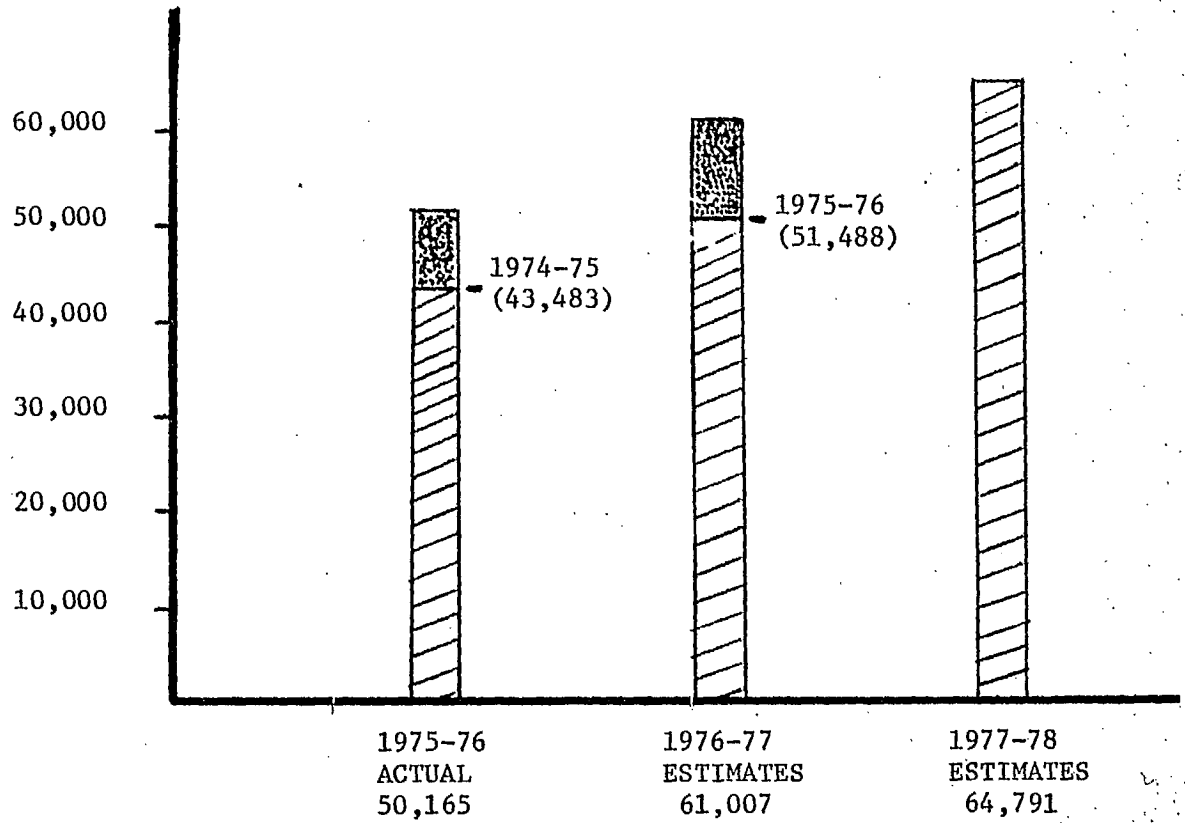
Consumer and
Corporate Affairs

Commission of
Corporations

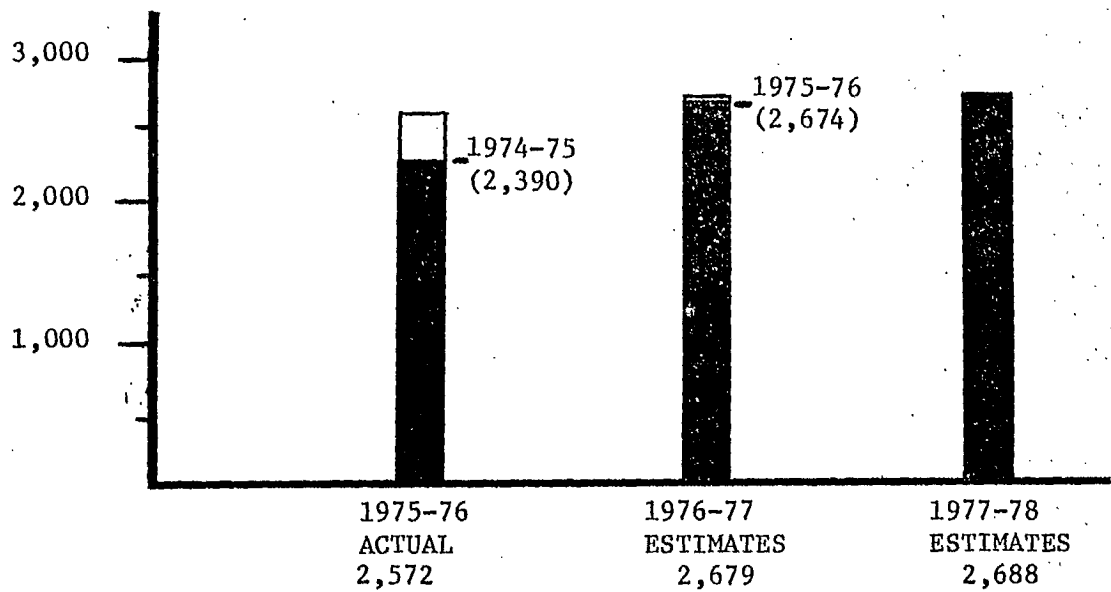
DEPARTMENTAL GROWTH

1975-76 TO 1977-78

\$000's



MAN YEARS



PROGRAM
EXPENDITURES

	ESTIMATES 1975-76		ACTUAL 1975-76		ESTIMATES 1976-77		ESTIMATES 1977-78	
	\$	%	\$	%	\$	%	\$	%
ADMINISTRATION	11,842	22.7	10,586	21.1	11,611	19.0	12,624	19.5
CONSUMER	20,953	40.1	20,496	40.9	25,535	41.9	26,795	41.4
CORPORATE	5,602	10.7	5,433	10.8	6,740	11.0	7,139	11.0
COMBINES	5,157	9.9	5,108	10.2	7,384	12.1	7,811	12.0
INTELLECTUAL PROPERTY	8,702	16.6	8,542	17.0	9,737	16.0	10,422	16.1
	=====	=====	=====	=====	=====	=====	=====	=====
	52,256	100.0	50,165	100.0	61,007	100.0	64,791	100.0
	=====	=====	=====	=====	=====	=====	=====	=====

PROGRAM
MAN-YEARS

	ESTIMATES 1975-76		ACTUAL 1975-76		ESTIMATES 1976-77		ESTIMATES 1977-78	
	MY	%	MY	%	MY	%	MY	%
ADMINISTRATION	466	17.4	458	17.8	447	16.7	451	16.8
CONSUMER	1,152	43.1	1,089	42.4	1,145	42.7	1,150	42.8
CORPORATE	331	12.4	317	12.3	329	12.3	329	12.2
COMBINES	236	8.8	227	8.8	280	10.5	280	10.4
INTELLECTUAL PROPERTY	489	18.3	481	18.7	478	17.8	478	17.8
	=====	=====	=====	=====	=====	=====	=====	=====
	2,674	100.0	2,572	100.0	2,679	100.0	2,688	100.0
	=====	=====	=====	=====	=====	=====	=====	=====

ALLOCATION OF DEPARTMENTAL RESOURCES
1975-76 TO 1977-78

	MAN YEARS				DOLLARS				% OF THE TOTAL DEPARTMENT			
	Estimates 1975-76	Actual 1975-76	Estimates 1976-77	Estimates 1977-78	Estimates 1975-76	Actual 1975-76	Estimates 1976-77	Estimates 1977-78	Estimates 1975-76	Actual 1975-76	Estimates 1976-77	Estimates 1977-78
Total Department	2674	2572	2679	2688	52256	50165	61007	64791				
<u>ADMINISTRATION PROGRAM</u>												
Minister	21	24	21		383	464	452		.7	.9	.7	
Deputy Minister	6	5	6		152	169	205		.3	.3	.3	
Secretariat	10	8	9		177	126	155		.3	.3	.3	
Policy Analysis	19	18	15		611	553	572		1.2	1.1	.9	
Information	38	37	38		1938	1938	2239		3.7	3.9	3.7	
Field Operations	71	70	70		1361	1248	1450		2.6	2.5	2.4	
Advisory & Support												
-Admin. Services	106	120*	117*		3114	2538*	3403*		6.0	5.1	4.1	
-Data Processing	28	27	28		930	966	1119		1.8	1.9	2.0	
-Financial Services	42	41	42		540	540	670		1.0	1.1	1.0	
-Audit	7	7	7		106	125	147		.2	.2	.2	
-Library	13	13	15		204	210	265		.4	.4	.4	
Bilingual Programs					464	-	-		.9	-	-	
Personnel	65	62	62		1155	1217	1446		2.2	2.4	2.4	
Registrar General	17	16	17		303	293	379		.6	.6	.6	
Management Consulting	23*	10	-		404*	199	-		.8	.4	-	
Total	466	458	447	451	11842	10586	11611	12624	22.7	21.1	19.0	19.5
<u>CONSUMER AFFAIRS</u>												
Prices Group	25	26	30		635	653	831		1.2	1.3	1.4	
Administration	9	7	9		201	205	213		.4	.4	.3	
Grants					.00	503	900		1.1	1.0	1.5	
Advisory Councils	3	2	2		243	181	154		.5	.4	.3	
Consumer Services	54	43	46		852	849	1351		1.6	1.7	2.2	
Consumer Help Offices	14		2		709				1.4			
Regulation	156	135	137		3213	2875	3796		6.1	5.7	6.2	
Research	30	20	27		670	524	893		1.3	1.1	1.5	
Operations	861	856	892		13830**	14706	17397		26.5	29.3	28.5	
Total	1152	1089	1145	1150	20953	20496	25535	26795	40.1	40.9	41.9	41.4
<u>CORPORATE AFFAIRS</u>												
Administration	6	6	6		137	166	166		.3	.3	.3	
Research	14	8	13		422	296	658		.8	.6	1.1	
Corporation	70	69	77		1050	1070	1363		2.0	2.1	2.2	
Bankruptcy - H.Q.	56	64	47		1145	1247	1069		2.2	2.5	1.8	
Small Debtor	100				1678							
Bankruptcy - Field	85	170	186		1170	2654	3484		5.4	5.3	5.7	
Total	331	317	329	329	5602	5433	6740	7139	10.7	10.8	11.1	11.0
<u>COMBINES</u>												
Executive & Admin.	48	36	47		1262	1447	1429		2.4	2.9	2.4	
Investigation & Research	176	180	218		3539**	3313	5570		6.7	6.6	9.1	
Restrictive Trade Practices Commission	12	11	15		356	348	385		.7	.7	.6	
Total	236	227	280	280	5157	5108	7384	7811	9.8	10.2	12.1	12.0
<u>INTELLECTUAL PROPERTY</u>												
Administration	17	20	17		166	281	449		.3	.6	.7	
Grants					100	117	-		.2	.2	-	
Research	12	10	13		445	227	419		.9	.5	.7	
Patents	368	358	357		6732**	6645	7293		12.9	13.2	12.0	
Copyright	19	18	18		239	214	269		.4	.4	.4	
Trade Marks	73	75	73		1020	1058	1307		2.0	2.1	2.1	
Total	489	481	478	478	8702	8542	9737	10422	16.7	17.0	15.9	16.1

* Includes Central Microfilm transferred from Management Consulting in 1975-76.

** Includes additional funding from T.B. to offset salary contract signed in 1975-76.

1977-78 figures reflect program expenditure targets communicated by T.B.
Main Estimates not completed at this time.

BIOGRAPHY

R.J. BERTRAND - ADM (COMPETITION POLICY)
DIRECTOR, INVESTIGATION & RESEARCH

Born and educated in Montreal, Mr. Bertrand was a Professor of Law at the University of Montreal.

He also attended Harvard University where he specialized in taxation and corporation law. Mr. Bertrand was a consultant with the Department of Finance from 1966 through 1968, and with Consumer and Corporate Affairs from 1968 to 1972 during the drafting of the Canada Business Corporations Bill.

Mr. Bertrand was Deputy Director of the Bureau of Competition Policy prior to his appointment to his present position.

Dr. Bond, at the age of 37, was appointed Assistant Deputy Minister, Intellectual Property, on September 1st, 1975.

For two and a half years prior to his new appointment Dr. Bond occupied the position of Director-General, Content and Analysis Branch, Census Field, in Statistics Canada.

His higher education was in the field of economics, having graduated from Dartmouth College, Hanover, New Hampshire, with the degree of B.A. (cum laude) in 1960. He received the degrees of M.A. and Ph.D. from Yale University, New Haven, Connecticut, in 1961 and 1965 respectively. He has occupied teaching positions at Yale University, the University of Western Ontario, and the University of British Columbia.

Dr. Bond's field of interest in economics is money and banking, international trade, consumer economics, social and census statistics, and intellectual property.

He has co-authored a number of articles in this field since 1967. His latest published work is Money and Banking, Theory Policy and Institutions, Harper and Row Publishers, Inc., 1975, co-authored with R.A. Shearer and H. O'Bannon.

Dr. Bond is no stranger to the Department of Consumer and Corporate Affairs, having served as Executive Director of the Canadian Consumer Council from January, 1972 to March, 1973.

January, 1976

Biography: Anthony E.H. (Tony) Campbell -
Departmental Secretary

Mr. Campbell was born in Valparaiso, Chile in 1944. He received his early schooling in Ottawa, San Salvador and Toronto. He studied economics and history at Queen's University (B.A. 1964) and completed two years towards an LL.B. at the University of Toronto.

While in University, Mr. Campbell entered the Royal Canadian Naval Reserve, receiving his commission in 1964.

In 1967, Mr. Campbell joined the Department of External Affairs. After serving in the External Aid Office and Commonwealth Division, he was posted to Guyana (1968) and Spain (1969). While at Madrid, he was also responsible for elements of Canada's relations with Morocco. In 1972 he returned to Ottawa to serve in the Bureau of Economic Affairs.

In 1974, Mr. Campbell was seconded to the Food Prices Review Board as Secretary. While remaining with the Food Board, he transferred from External Affairs to CCA in 1975.

Late in 1975, the Department seconded Mr. Campbell to carry out the functions of Secretary to the Anti-Inflation Board. He returned to CCA and assumed the position of Departmental Secretary in July of 1976.

He is married with four children.

September 27, 1976

BIOGRAPHY

GEOFFREY A. HISCOCKS - SENIOR FOOD POLICY ADVISOR

Dr. Hiscocks was born in Southern England in 1926 and attended Purley Grammar School. He received his B.Sc. (Agriculture) from Reading University in 1946. As a Ministry of Agriculture scholar he attended Oxford University for a post-graduate diploma followed by three years in the United States at the University of Illinois for his Ph.D.

For 2½ years after graduation, Dr. Hiscocks worked as a Farm Management Field Officer in Western England attached to the University of Bristol. In 1953, he joined the Economics Branch of the British Ministry of Agriculture, Fisheries and Food. He was the Chief Economist of the International Wheat Council from 1959-1965 dealing with world grain production, trade and consumption and problems of international commodities arrangements.

In 1965, he returned to North America joining the Economics Branch of the Canada Department of Agriculture. He became Director of Marketing and Trade Division in 1969 and the first Director of the Policy Advisory Group in 1971. He was selected to be a member of the National Defence College Senior Executive Course in 1973-74. From July 1975 until March 1976 he was the first Departmental Secretary in the Department of Agriculture. He has been closely associated with the development of many agricultural and food policies over the last eleven years. In September 1976 he was appointed Senior Food Policy Advisor in this Department. He is married and has three children.

BIOGRAPHY

JOHN L. HOWARD - ADM (CORPORATE AFFAIRS)

Mr. Howard was born in Drumheller, Alberta in 1931. He completed his University studies at UBC, McGill and Harvard.

He is a member of the Common Law Bar of British Columbia and the Civil Law Bar of Quebec.

Mr. Howard has since 1960 practised law in both Vancouver and Montreal, administered a federal government agency - The Board of trustees of the Maritime Transportation Unions, and also headed the Corporate Research Branch in the Department.

His legal experience has concerned mainly commercial law, including particularly corporation and securities law, taxation, and labour law.

Mr. Howard was appointed ADM, Corporate Affairs in 1972. He is responsible for the administration of corporation and bankruptcy laws as well as a policy advisory role with respect to corporation, securities markets, and insolvency laws.

Mr. Howard was appointed Acting Deputy Minister, Department of Consumer and Corporate Affairs, on January 1, 1975.

BIOGRAPHY

Michael McCabe - Assistant Deputy Minister,
Consumer Affairs

Born January 12, 1938, in Toronto, Ontario, Mr. McCabe received his elementary and high school education in Hamilton.

He graduated from the University of Toronto in 1959 with an honours B.A. in Philosophy and English.

Mr. McCabe spent a few years in private industry and worked with the Liberal party of Canada from 1961 to 1963.

From 1963 to 1968 he was Executive Assistant to the Honourable Mitchell Sharp, in the Departments of Trade and Commerce, Finance, and External Affairs.

In 1968 he accepted a position as President and Secretary with a venture capital firm and in 1970 was appointed the Director, Strategic Planning, Department of Secretary of State.

In 1971, he was appointed Director-General, Programme Development, Department of Secretary of State.

In 1974, he was appointed Chairman, Policy and Research Coordination, Central Mortgage and Housing Corporation.

Immediately prior to joining our Department, Mr. McCabe had been on secondment to the Anti-Inflation Board.

September 1976

BIOGRAPHY

DALE ORR - SENIOR POLICY ADVISOR

Dr. Orr was born in Trail, British Columbia in 1943. He graduated from high school in British Columbia then completed a B.A. in economics at the University of Washington in Seattle. Dr. Orr then attended Northwestern University, Evanston, Illinois where he completed his Ph.d in economics in 1969.

From 1969 until 1974 Dr. Orr was an assistant professor of economics at the University of British Columbia. He taught and completed research in microeconomics and industrial organization, and published articles in Canadian, American and British professional economics journals.

As a Senior Policy Analyst with the Treasury Board Secretariat he taught and directed the Quantitative Analysis Course from 1974 until April 1976. This course provided instruction in methods of economic research and policy analysis to working level economists of the federal government.

Since May 1976, Dr. Orr has been a Senior Policy Advisor to the Deputy Minister, providing advice on a broad range of topics, but particularly the Bank Act, trade policy, DM-10 documents and organized groups. Dr. Orr is married with two children.

September, 1976

Born

- Winnipeg, Manitoba.

Education

- University of Manitoba (two years pre-medicine and one year medicine)
- University of McGill, B.A. (Honours Economics), 1948; M.A., 1950
- Ph.D. from Cambridge University and McGill, 1954

Career

- taught labour and manpower economics at McGill, Carleton, Sir George Williams, and the University of Montreal in late 1950s and early 1960s.
- research into urban development, railway industry, unionism, statistics and unemployment in various capacities between 1941 and 1962.
- assistant director (research), Dominion Bureau of Statistics, Labour Division, 1964.
- Consultant on Manpower Studies: Economic Council, 1964-65.
- Department of Manpower and Immigration, 1966-69.
- director, Special Manpower Studies and Consultation, 1965-69.
- director, Economic Council of Canada, 1969-72 and Chief Statistician of Canada, Statistics Canada, 1972-75.
- author of numerous articles and books on labour, economics, statistics, employment, education.
- currently conducting research on the economic analysis of fertility.

Awards and Honours Include:

- Women of Distinction Award: Soroptomist Federation of the Americas.
- Honorary Doctor of Laws Degrees from University of New Brunswick, York University, McGill University, University of Western Ontario, McMaster University, University of British Columbia, Queen University, Brock University, Mount Allison University.
- Fellow, American Statistical Association.

January, 1976

BIOGRAPHY

JOHN S. RAYNER - DIRECTOR-GENERAL POLICY COORDINATION

Mr. Rayner was born in Halifax, Nova Scotia in 1939 and received his early education there. He attended Glebe Collegiate in Ottawa and then received his B.A.(Honours) at Bishop's University, Quebec in 1959. During 1960-62 he studied philosophy, political science and economics at Oxford University as a Rhodes Scholar and obtained his M.A.

In 1962, Mr. Rayner joined the Department of Finance working in International Economic Relations. Mr. Rayner was seconded from Finance to the Cabinet Secretariat of the Privy Council in 1967 to work in the Economic Policy Secretariat. He later transferred to the Privy Council Office as a member of the Priorities and Planning Secretariat. He was appointed as Acting Assistant Secretary to the Cabinet Committee on Priorities and Planning in 1971.

Mr. Rayner transferred to this Department in March 1973 as Special Adviser to the Deputy Minister. He was Departmental Secretary from July 1973 to July 1976 when he was appointed Director-General, Policy Coordination. He is married and has three children.

September 1976

BIOGRAPHY: John B. (Jack) Swayne
Director
Financial and Administrative Services

Mr. Swayne was appointed to his present position on May 1, 1975. A graduate of the Royal Roads Military College, Victoria, B.C., and the Canadian Army Staff College, Kingston, Ontario, Mr. Swayne held various positions in the Canadian Army (regular) prior to his appointment to the Department of Trade and Commerce in 1967.

In 1968, he came to the Department of Consumer and Corporate Affairs as Executive Assistant to the Assistant Deputy Minister, Consumer Affairs. Three years later he moved to the Treasury Board as a program analyst and in 1972, he joined Statistics Canada where he served as Assistant Director, Central Planning Staff, before becoming the Director of Planning Operations.

A native of Smiths Falls, Ontario, Mr. Swayne is married and has two children.

BIOGRAPHY

LAURENCE V. THORNTON - DIRECTOR, PERSONNEL SERVICES

Laurence V. Thornton, Director of the Personnel Branch, was born in Westmount, Quebec and attended primary and secondary schools in Montreal and was graduated from Queen's University, Kingston, in 1951 with a Bachelor of Arts (Hon. Eng.) degree.

During the 1935-1940 period, he was employed by the T. Eaton Company Limited, and by BEPCO (Canada), Limited. From 1941 to 1945, Mr. Thornton served in the Canadian Army R.C. Signals. Following the 1939-1945 War he studied at Queen's University on a teaching fellowship and lectured in English and drama. During the summers and following graduation he again served in the R.C. Signals with the Rank of Captain. Later he was an extension lecturer in English and Public Speaking at Carleton University, Ottawa and at Dalhousie University, Halifax.

Mr. Thornton joined the Public Service Commission of Canada in 1952 as a Personnel Selection Officer of the Commission, serving in Ottawa until 1955; as District Representative in Halifax until 1961 and as Regional Director in Edmonton until 1966.

From 1966 until his appointment as Director of the Personnel Branch of the Department of Consumer and Corporate Affairs in September, 1969, Mr. Thornton was Director of Personnel and Administration in the Department of Finance and in the Treasury Board.

Mr. Thornton is married and has four children.

BIOGRAPHY

NICHOLAS van DUYVENDYK - ADM (FIELD OPERATIONS
SERVICE)

Mr. van Duyvendyk was born and received his early education in Holland. He is a Chartered Accountant and a Registered Industrial Accountant and holds Holland degrees in Accounting and Economics.

From 1947-1954 Mr. van Duyvendyk was a Chief Accountant for the Royal Dutch Shell Co. in Indonesia. He emigrated to Canada in 1954 and was appointed as Canadian Division Accountant for the Richfield Oil Corporation in 1960. In 1966 Mr. van Duyvendyk became the General Auditor for Hudson's Bay Oil and Gas Co. in Calgary. Since 1958 he also acted as Financial Vice-President or Controller for various other companies.

In 1968 Mr. van Duyvendyk joined the Department of Supply and Services as Accounting Advisory Officer and remained there as a Senior Consultant until he joined the Department of Consumer and Corporate Affairs as Director, Financial and Administrative Services in 1970. He was appointed Assistant Deputy Minister (Field Operations Service) in January, 1975.

Mr. van Duyvendyk is married and has four children.

Rev. January 1975.

BIOGRAPHY

ANDRE VERRET - DIRECTOR, INFORMATION AND PUBLIC
RELATION

André Verret, Director, Information and Public Relations Service.

Mr. Verret was appointed to his present position effective February 16, 1976. He was born in Montreal in 1931, received his Bachelor of Commerce degree from St. George Williams University and an MBA from Harvard, and has worked extensively in the communications field.

From 1975 until his present appointment he worked as Senior Communications Consultant with Information Canada.

Between 1970 and 1974, he was an independent public relations consultant and managed fund raising campaigns for a number of non-profit institutions.

During 1968-69, he was Director of Financial Resources at the University of Ottawa. From 1957 to 1968, Mr. Verret was Vice-President (Operations), Fund Raising and Public Relations Counsel with Development Direction Inc., New York.

He spent from 1952 to 1957 with the RCAF.

Bilingual, Mr. Verret is active in PR and Fund Raising associations and is a visiting lecturer at Ottawa's Algonquin College. He is married and has one son.

September 17, 1976

6.1 Legislative & Publication Program Forecast - 30th Parliament

<u>Item</u>	<u>Timing</u>
<u>1st Session</u>	
<u>Legislation Completed</u>	
Bill C-2 Amendments to the Combines Investigation Act	Proclaimed in force January 1, 1976, (Service July 1, 1976).
Bill C-29 Canada Business Corporations Act (C.B.C.A.)	Proclaimed in force December 15, 1976.
<u>2nd Session</u>	
1. Borrowers' & Depositors' Protection Act (B.D.P.A.)	Bill ready; needs approval of Legislation and House Planning.
2. Combines Investigation Act -Phase II	Draft bill expected to be ready for Priorities and Planning approval in November.
3. Bill C-60 Bankruptcy	First reading May 1, 1976 Senate Committee studied and published report. Expect to be reintroduced in revised form - 2nd Session.
4. Not-for-Profit Corporations Act	Proposals published June 1974. Bill will require approval of Legislation & House Planning.
5. Revisions to the Canada Business Corporations Act	House keeping amendments will require approval of Legislation and House Planning.
6. New Trade Marks Act	Cabinet memo approved in November 1975. Bill expected Spring 1977.

7. New Patent Act

Proposals published
June 1976. Cabinet policy
memo expected January 1977.

3rd Session

New Industrial Design Act

Proposals to be published
Spring 1977. Bill
expected Autumn 1977.

Revision of the Copyright Act

Proposals to be published
Spring 1977. Bill
expected Autumn 1977.

4th Session

Federal Securities Act for Canada

Working Proposals with
draft Bill to be published
Spring 1977.

Canada Mutual Funds Act.

Proposals published
March 1974. Further
consideration deferred
until publication of
Federal Securities
proposals.

Federal-
Provincial

FEDERAL - PROVINCIAL RELATIONS

In the nine years since the establishment of CCA, the course of federal-provincial relations in the domains of consumer and corporate affairs has followed a rather erratic course. Increasingly, the relations between both levels have become marked by mistrust and aggravation, culminating, first, in a provincial move to meet annually without federal participation except on an observer basis and, eventually, in 1973, with the exclusion even of federal observers. In the most recent of such meetings, in Moncton, federal officials were invited to spend a half day discussing an ("unfriendly") agenda set by the provinces. Next year, we have been offered a full day and input to the agenda of the provincial officials meeting which will be held in October at Winnipeg.

In recent years, federal initiatives have resulted in ministerial level meetings (held most recently in December 1975 and February 1976) and meetings of officials on specific issues such as bankruptcy and the proposed consumer credit legislation. Generally, the higher the level of the meeting in recent years, the less satisfactory have been the results. Relations have been particularly tense over the proposed BDPA which has raised the animosity of several provinces, notably British Columbia.

At the same time, offence has not been a one-way street. A tendency has developed for provinces to protest heatedly about shortcomings in our consultation efforts but to fail entirely to consult us on their own initiatives; and to attempt to delay our legislative initiatives in areas where they wish to acquire political credit by beating us to "the punch".

At the recent meeting of senior officials in Moncton, there seemed to be general agreement that federal-provincial relations needed improvement. We were encouraged to initiate such an improvement and the Policy Committee is currently considering alternative strategies. Central to the introduction of an improved climate could be the use of the permanent committee of deputy ministers established by ministers at last February's meeting. The committee has not yet met and some provinces now question whether it in fact was actually constituted or simply proposed by ministers.

The immediate departmental objective is to straighten out this uncertainty and the overall state of tension in federal-provincial relations. The substantive objective for the next year or so is to attempt to rationalize the maze of federal and provincial programs which have emerged over the last ten years.

To ensure a greater degree of coordination of the Department's activities in this area, the Departmental Secretary has recently been assigned responsibility for federal-provincial relations.

Behind much of the federal-provincial difficulty lies a central, largely unresolved, issue in the consumer affairs field: the question of constitutional jurisdiction. Some rather old but still relevant constitutional considerations are contained in the attached material prepared by Mr. Pitfield when Deputy Minister of the Department.



MEMORANDUM

NOTE DE SERVICE

TO
A

MEMBERS OF THE EXECUTIVE COMMITTEE

FROM
DE

The Deputy Minister.

SECURITY - CLASSIFICATION - DE SÉCURITÉ
CONFIDENTIAL
OUR FILE - N/RÉFÉRENCE
YOUR FILE - V/RÉFÉRENCE
DATE June 7, 1974

SUBJECT
OBJET

FEDERAL-PROVINCIAL RELATIONS

We have defined our mandate. We have brought our present programs under control. We have made plans to improve our present programs and to introduce new ones.

In these circumstances, and during the respite that a pre-election period provides, we would be wise to consider carefully where we are going in more fundamental terms.

There are indications of duplication and overlap between what we provide and what other governments and certain organizations in the private sector aim to do. Recently, certain provincial governments have suggested we are overly aggressive by occupying fields of jurisdiction that belong to them. Before we go further in redesigning present programs or bringing out new ones, and certainly before we get into serious planning for the Federal-Provincial Conference this fall, we should reach a common understanding amongst ourselves of

- a) what is the federal jurisdiction that lies behind our department's mandate, and
- b) the direction in which the mandate should be developed as regards each bureau in the future.

What is the jurisdiction of the Federal Government in consumer and corporate affairs? The provincial answer seems to be that their jurisdiction is primarily based on property and civil rights, especially on contract, and that federal jurisdiction is what is specifically excluded from property and civil rights by the BNA Act -- mostly, in their view, the criminal law.

Personally, I find this interpretation not only simplistic in the extreme but clearly contrary to the BNA Act itself. That Act gives the provinces jurisdiction in:

local works and undertakings,
property and civil rights,
licensing to raise revenues for provincial, municipal
or local purposes,
incorporation of companies with provincial objects,
matters of a merely local or private nature in the
province.

It gives the Federal Government jurisdiction in:

regulation of trade and commerce,
criminal law,
census and statistics,
weights and measures,
bankruptcy,
interest,
bills of exchange,
currency and coinage,
legal tender,
patents,
copyrights,
works declared to be for the general advantage,
banks,
interprovincial communications and transportation.

Concurrent jurisdiction is provided in:

agriculture.

The courts have interpreted the BNA Act to give the Federal Government other powers in relation to:

broadcasting,
trade marks,
interprovincial trade,
international trade,
incorporation of federal companies,

and there are general Federal powers in relation to:

peace, order and good government,
the taxing power,
the spending power.

None of these powers taken by itself provides a rationale for the Federal Government's mandate in matters of consumer and corporate affairs. There is, moreover, no general doctrine that we can rely on entirely. I suggest that, at least for the time being, we are going to have to develop our own concept of federal jurisdiction basing ourselves on the principles of the BNA Act while having regard to modern circumstances, the evolution of the law in other federal states and the claims of the provinces.

It seems clear to me that in the interpretation of the BNA Act as regards consumer and corporate affairs, the most reliable dividing line between federal and provincial jurisdiction is the distinction between responsibility for the general economy, on the one hand, and responsibility for matters of a local and private nature in the province, on the other.

Federal responsibility for the general economy is secured not only by the general power (Section 91) but, as regards fiscal policy, by the general taxing power (Section 91(3)), and as regards monetary policy, by powers with respect to the public debt (Section 91(4)), currency and coinage (Section 91(14)), banking and the issue of paper money (Section 91(50)), savings banks (Section 91(16)), and legal tender (Section 91(20)). The provinces, by contrast, are permitted only direct taxes for provincial purposes (Section 92(2)), the borrowing of money on the credit of the province (Section 92(3)) and licensing to raise revenues for provincial, local or municipal purposes (Section 92(9)).

Federal responsibility for the general economy extends not only to the general macro-economy but to the general micro-economy as well, or what might be called the national market place. This is made clear not only by explicit provision of the federal power for the regulation of trade and commerce (Section 91(2)), but also by giving the federal authority exclusive power with respect to the major instruments⁽¹⁾ and institutions⁽²⁾ of the economy as they existed at the time the BNA Act was first enacted. To complete the design the provinces were explicitly forbidden from placing barriers to trade with one another (Section 121).

(1)

Instruments of the micro-economy specifically given to the federal authority under the BNA Act include legal tender, currency and coinage, weights and measures, bankruptcy, bills of exchange, patents, copyrights, and census and statistics. To these the courts have added federal companies, standards, trade marks and - at least so long as the finding in the Vapor Case stands - general standards of competitive behaviour.

(2)

Institutions of the micro-economy specifically given to the federal authority are agriculture, banks, interprovincial and international transportation and communications undertakings, and works declared to be for the general advantage of Canada. To these the courts have added aeronautics and broadcasting.

Within this framework the provinces retain exclusive authority over local works and undertakings (Section 92(10)), the incorporation of companies with provincial objects (Section 92(11)), property and civil rights in the province (Section 92(13)), and all matters of a merely local or private nature in the province (Section 92(16)).

The common rule of thumb for drawing the dividing line between federal and provincial authority for the micro-economy is to rely on a definition of matters of inter- and intra-provincial trade. This distinction is true but simplistic and therefore misleading. While at first glance it may appear to give effect to the principles of jurisdictional division underlying the BNA Act, it does not go far enough. While judicial interpretation of the BNA Act clearly gives the Federal authority responsibility over inter-provincial trade, it also goes a good way beyond that, providing the federal authority with power over instruments and institutions, even in an entirely intra-provincial context. What this amounts to is that the federal government is intended by the BNA Act to have responsibility for the structure and general operation of the economy, or, in other words, for the national system of trade and commerce.

The federal authority cannot, therefore, be adequately described by simply relying upon a definition of inter- and intra-provincial matters. Indeed, upon closer examination such a distinction will almost always be found to be illusory. It is very difficult to establish water-tight compartments by which to divide up the economy. For example, it has not been possible for the courts to rely on the locus of subject matter, producers, consumers and so forth, in interpreting the trade and commerce clause because inevitably there are overflows. This difficulty argues for the inevitability of a "purposes" test rather than a "subject matter" test and allows for the use of a balancing of interests technique such as has been developed in the United States.

The American courts have evolved three basic tests:

- (a) If state legislation places an undue burden on inter-state commerce, it is struck down.
- (b) The state's rights presentation is that state legislation which has a legitimate state purpose should not be struck down if it does not discriminate against extra-state interests.
- (c) Finally the prevailing test used by the courts seeks to balance the legitimate state and federal interests considering both the "burden" test and the "discriminatory" test.

Supposing we apply this interpretation of the federal government's mandate in the micro-economy to the role of this department, what then is the direction in which the programs of each bureau should be developed in the future?

The Bureau of Intellectual Property is a relatively straightforward case because it relies principally on explicit heads of exclusive federal authority. Indeed, following the ancillary doctrine, it might be supposed that the programs of the Bureau of Intellectual Property in the future could be justifiably extended towards the broader economic objectives of the federal government and might even be used to support other policy objectives, such as those in the realm of science policy and cultural policy.

The Bureau of Competition Policy is already well on the way to the broader interpretation of its programs in terms of federal economic objectives. Indeed, its break with a pure criminal power justification towards a civil process based on the trade and commerce power is at the cutting edge of the federal government's efforts to date to define its jurisdiction in the micro-economy. In the modern marketplace with all its size, complexity, and technological sophistication, the further extension of federal activity to a civil process for dealing with unfair trade practices seems inevitably necessary. Where is this to end and provincial responsibility for private contracts and local commerce to begin?

The Bureau of Corporate Affairs, in its work on mutual funds, securities exchange and corporate law (eventually to be extended to aspects of the behaviour of multi-national corporations) also appears to be proceeding slowly on the assumption that the federal government is intended by the B.N.A. Act to have responsibility for the structure and general operation of the national system of trade and commerce. Here, at least as regards securities and their corporations, the provinces are already firmly established - albeit perhaps as trespassers to a certain extent on what the courts would hold is federal jurisdiction. To what extent are the provinces to be forced out of areas they have occupied?

The Bureau of Consumer Affairs has so far established its mandate largely on specific heads of federal authority such as weights and measures, or on the criminal power. Presumably it will found itself increasingly in the future on a concept of federal responsibility for the structure and general operation of the national system of trade and commerce and perhaps also a wider interpretation of the specific heads following the ancillary doctrine. Some of the Bureau's activities, however, are founded on neither specific heads nor respon-

sibility for the national system of trade and commerce but rather on the spending power, as for example, the consumer help offices and consumer mediation, and we should ask ourselves how much further in this direction we should go in the face of provincial responsibility for private contracts and local commissions. Should we press the provinces to accept responsibility for consumer mediation in matters that are entirely intra-provincial and contractual in nature?

The spending power cuts both ways and it is entirely imaginable that the provinces should through their spending powers discharge responsibilities that might otherwise be federal. Assuming some restraint by the Bureau of Consumer Affairs in extending its consumer mediation to purely local matters, should not the Bureau of Corporate Affairs follow a similar line in encouraging the provinces to look after small debtors albeit within the framework of the new Bankruptcy Act?

The spending power is something that should be used with discretion, especially as the connection with federal powers and purposes becomes increasingly tenuous. What does this mean for the programs of the Information and Public Relations service?

The Policy Analysis Group and the Prices Group, in so far as their work is not directly related to federal powers, which will often be the case, will in most actions also be relying as well on the spending power. The Prices Group may become involved directly with constitutional problems with the introduction of a prices and incomes control plan. However, the justification for federal power in this area relies to a large extent on the general peace, order and good government power but is not inconsistent with the role outlined in this paper for federal authority with respect to the macro and micro economy. They can of course poach from the federal power over census and statistics and the ancillary doctrine with respect to federal jurisdiction generally, following which it can be said that whatever restrictions the Constitution puts upon federal authority to act, it says nothing that establishes parameters on what it can think about. Here too, however, it is a wise course to keep ourselves out of matters of a purely local and intra-provincial nature and should this not be a guideline that the Canadian Consumer Council, the Consumer Research Council and the Academic Panel might follow?

From all of this, the first question is whether or not the line of argument adduced in this memorandum is tenable, at least for the internal guidance of our administration and planning? If not, what alternatives would you suggest? The second question is, supposing that we follow this line of argument, what further consequences can be foreseen for our present and future programs?

Confidential

July 5, 1974.

SOME FURTHER NOTES ON FEDERAL-PROVINCIAL RELATIONS

M 9056-1

The mandate of the Department of Consumer and Corporate Affairs is the preservation and development of an efficient, effective and honest market system for the national economy in which the consumer, manager and investor are all fairly treated. The Department of Consumer and Corporate Affairs is, in short, a department of the micro-economy.

To fulfil this mandate we have been developing the data base, the legislative and administrative mechanisms, and the legal and economic skills necessary to the task. The department is a unique and increasingly potent instrument for informing, advising and carrying out government policy making. It offers means, many of which did not previously exist in the federal government, for achieving the government's economic and social goals.

The Department of Consumer and Corporate Affairs is a new instrument not only in the sense that it has only recently been created, but also in the sense that the federal government has not heretofore been very knowledgeable about the micro-economy - either in terms of the micro-economic effects of its various policies, or in terms of its ability to act directly upon the micro-economy to achieve desired ends of government policy.

Because the department is new, and because its subject matter is very little understood amongst Ministers, the importance and potential uses of the department and of micro-economic policy still have to be explained and sold to decision-makers. We must remember this fact and not expect these matters to be as self-evident to decision-makers as they are to us.

It is a fact, however, that many of the major questions of the next decade are going to be partly, and sometimes even wholly, questions of micro-economic policy. For example, the consequences of inflation; competition policy; multi-national enterprise; corporate bigness; technological development; pricing behaviour; trade practices, marketing boards; changes in the profit system; the evolution of securities markets; consumer's rights -- these are now, and are likely to be even more in the future, important questions of public policy.

The federal government, which has heretofore paid scant attention to these matters, is inevitably going to be drawn into them more and more in the next few years if only to preserve the national market system that is one of the essential elements of Confederation.

Beyond that, however, the federal government is eventually going to have to lead in opening the way to the new concepts, rules and structures of enterprise and management that are going to replace those which may no longer be appropriate. After years of slow evolution and comparative tranquility there is a revolution going on in the micro-economy. It can no longer be assumed as a given constant. New social norms and new technology are outmoding old ways of doing things and the federal government will have to at least participate in, and probably ultimately set the major parameters for the development of the new concepts, rules and structures of enterprise and management that the economy will require in the future. The areas of the micro-economy mentioned previously are likely to demand the most immediate attention of the federal government.

Finally, the federal government will be drawn into micro-economic matters because the people and the special interests will make micro-economic issues into national issues; and, because over and beyond that, the federal government will find that it has to be aware of the micro-economic consequences of what it does, if not, indeed, use micro-economic tools in the course of achieving its social and economic goals.

Legal interpretation in the past one hundred years, during which the features of the micro-economy were largely constant and changes were of little national consequence, muddled responsibility for the micro-economy and the jurisdiction over micro-economic instruments under the Constitution. Insensitivity of the federal government to the importance of the micro-economy and ignorance of the composition and the workings of the micro-economic structure in Canada compounded the problem by allowing provincial occupation of jurisdiction that should be federal. Even in very recent times, the distaste of federal politicians for the difficult task of setting rules in the areas of combines and trade practices, and

the low priority attached by federal politicians to the revision of fundamental laws governing capital markets, insolvent persons, and the establishment and conduct of corporations have left the door open to the provinces to occupy federal jurisdiction - often in the terms of the very laws that the federal government had prepared and whose enactment it was considering.

The provinces have increasingly followed behind incompleting federal initiatives, picking up and enacting pieces that appealed to them without serious regard for an overall national system until now there is in Canada a patchwork of laws governing the micro-economy. that, while vaguely uniform, is upon examination different in detail and in application. Emboldened by their success at doing this without the federal government insisting upon even gestures of consultation, the provinces now increasingly refuse to consult altogether.

There also appears to be a situation developing where one or two of the provincial governments have taken a strong leadership role in an effort to achieve a uniform provincial position from which to negotiate. In fact, in the past year the strength of interprovincial ties seems to have increased considerably to the point where it may actually displace important functions of the central government and challenge the concept of federalism.

Sooner or later the federal government is going to have to assert its jurisdiction. So far have matters already disintegrated, that sooner or later this assertion is going to have to be made in the courts.

This necessarily means that the federal government must have a view of its jurisdiction under the Constitution and this, in turn, requires that the Department of Consumer and Corporate Affairs and the Department of Justice develop policy (that is: objectives and a strategy for achieving those objectives) with respect to the definition of the federal government's jurisdiction under the Constitution with respect to the micro-economy.

Heretofore, neither the Department of Justice in its interpretation of the Constitution and in its view of its role in the federal government, nor the political environment in which the courts found themselves in relation to constitutional issues, favour the development of such a policy. But in the last few years there have been big changes in these respects.

Starting with its interpretation of the federal government's authority in matters of prices and incomes control, and stretching through its assistance in the development of laws in matters of incorporation and in competition policy, the Department of Justice has shown increasing awareness of the importance of the federal government's micro-economic jurisdiction and a willingness to positively assist the Department of Consumer and Corporate Affairs in the gradual identification of a comprehensive and coherent constitutional policy with regard to the micro-economy.

As regards the courts, the recent judgment of the Federal Court in the Vapor case has shown a similar grasp of the situation and a willingness to explore it. Meanwhile, the political environment in Canada seems to have settled down to the point where the Courts can reassume their role as constitutional arbiters so that there is now some hope of their participation in the elaboration of a comprehensive and coherent constitutional policy with respect to the micro-economy that would be consistent with the requirements of the present and the foreseeable future.

As with the importance and the potential uses of micro-economic policy and of the Department of Consumer and Corporate Affairs, so also in the definition of the federal government's jurisdiction under the Constitution it is going to be necessary to explain and sell these matters to decision-makers. First, however, it is incumbent upon officials of this department to order their thoughts and prepare their case.