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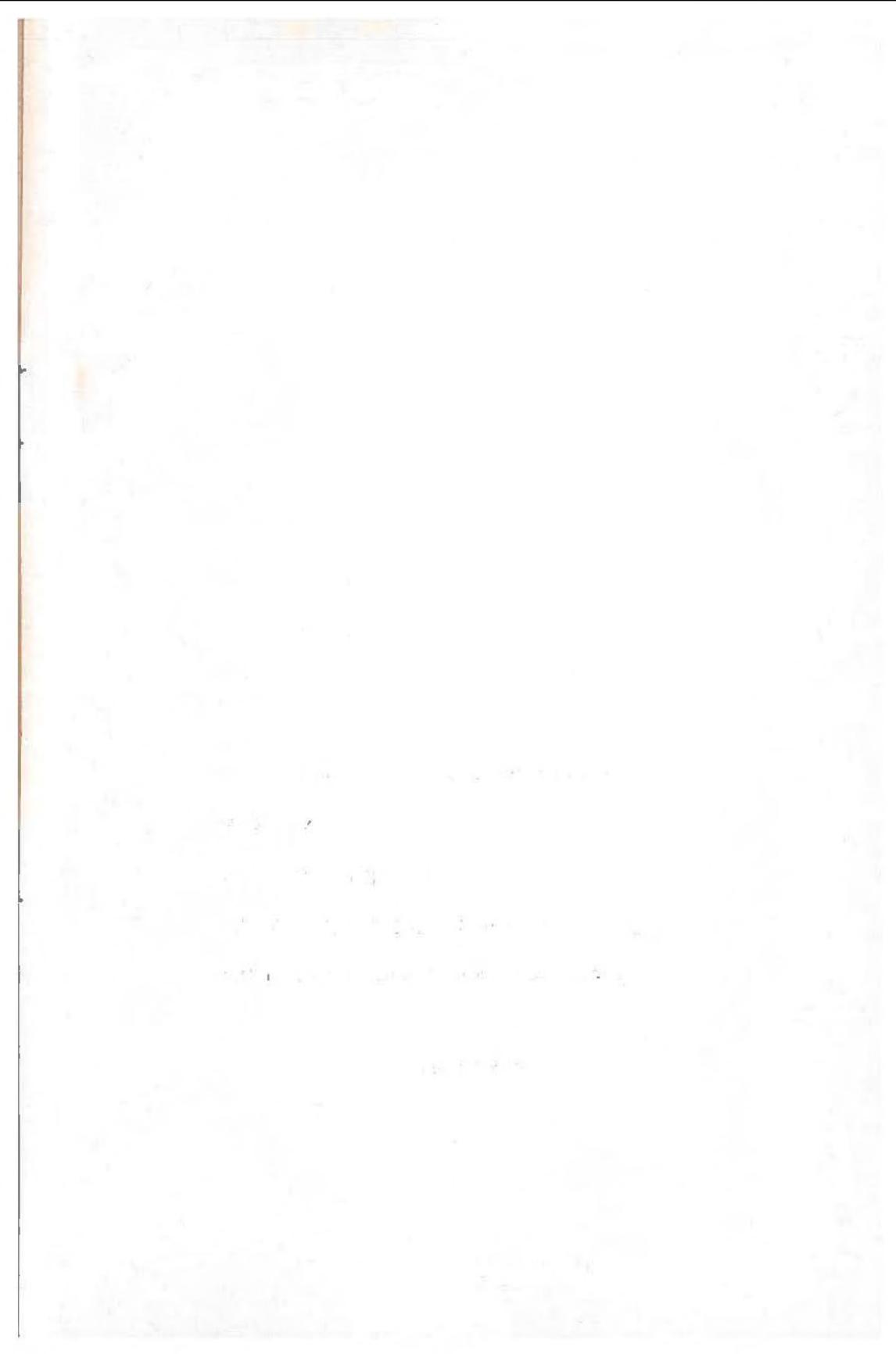
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**FIRST
ANNUAL
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CANADA
CANADIAN CONSUMER COUNCIL
1969

**OTTAWA, CANADA
DECEMBER 31, 1969**



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University of Western Ontario
London, Ontario

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Montréal, Québec

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Saskatoon, Saskatchewan

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Association Coopérative Féminine
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Lévis, Québec

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Winnipeg, Manitoba

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Calgary, Alberta

Mr. G.C. Clarke
Standard Brands Limited
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Mr. François Cleyn
Cleyn & Tinker Limited
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Employees' Union
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Canadian Federation of Agriculture
Ottawa, Ontario

M. André Laurin
Confédération des Syndicats
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United Maritime Fishermen
Halifax, Nova Scotia

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Richmond, B.C.

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Mme. Antonio Paradis
Cercles des Fermières
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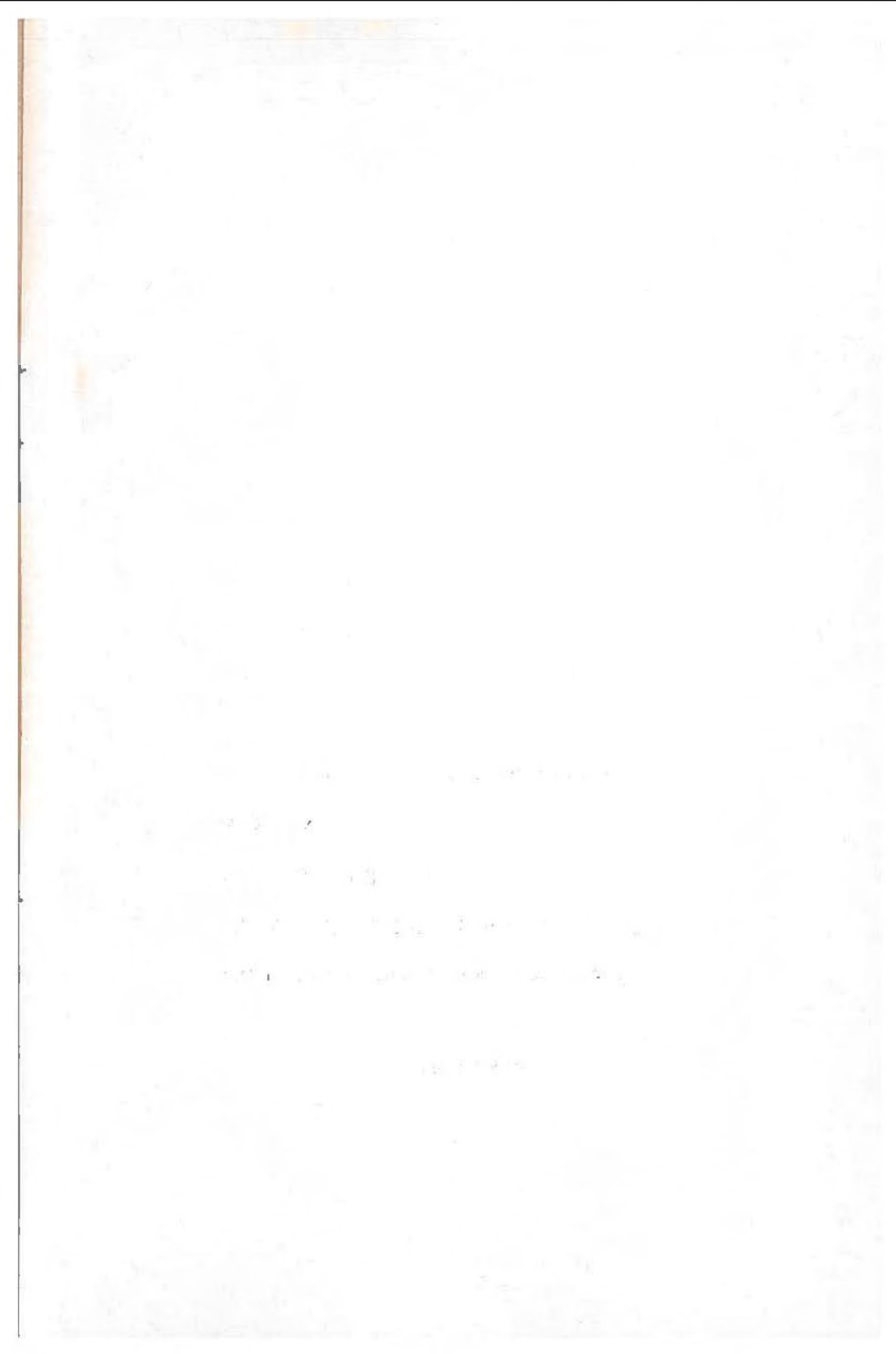
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Miss Anna Templeton
Department of Education
Government of Newfoundland and
Labrador
St. John's, Newfoundland

Mr. L.E. Weinstein
Loblaws Groceries Co. Ltd.
Toronto, Ontario

Professor Jacob S. Ziegel
McGill University
Montréal, Québec



LETTER OF TRANSMITTAL

Canadian Consumer Council
Ottawa, Ontario
December 31, 1969

The Honourable Ron Basford
Minister, Department of Consumer and Corporate Affairs

Dear Mr. Basford:

I hereby transmit to you the First Report of the Canadian Consumer Council, covering the period from the Council's appointment on November 1, 1968 to December 31, 1969. It is anticipated that reports will be on a calendar year basis.

The first 14 months of the Council's existence have been active ones for all concerned. We have met five times as a full Council, and a number of other meetings have been held of committees and groups from within the Council. Despite a considerable amount of time and effort on the part of many members, our tangible output during this period was not great. A large number of studies and projects were commenced, however, and I am hopeful that we are entering a more productive period.

The Council you appointed in November, 1968 consisted of 24 members, chosen because they represented a diverse group of Canadians from every part of the country. Some had long been active in the field of consumer affairs, and brought considerable expertise to the Council's deliberations. Others had relatively little prior direct involvement in the consumer movement, but possessed a background in related fields that promised to be of assistance to our discussions. All were volunteers, donating their efforts to a cause which they considered to be worthwhile. A more heterogeneous group of Canadians would be difficult to find; the challenge of helping such a group to work constructively together led me to welcome your invitation to serve as its Chairman.

My personal objectives, as Chairman, for the first 14 months of Council activities were rather modest but, I think, realistic in view of the factors which I have mentioned. They were:

1. To attempt to break down the barriers to communication that existed within the Council, and to help make it a productive working group.
2. To develop working procedures and methods for the efficient disposition of Council business.
3. To build a supporting staff which could carry out the research and administration which the Council members themselves manifestly

could not do, and which would provide continuity of effort for future years.

Budgetary and other considerations dictated that such a permanent staff be small. I was determined that under such circumstances, it would consist of the best possible individuals that could be found.

In general, these objectives have been met. A committee of Council worked intensively with me in seeking an Executive Director, interviewing a large number of candidates before engaging the services of Mr. Gordon Anderson of Winnipeg. Mr. Anderson began his duties in July, 1969, and has since established a small but efficient staff in Ottawa; we enter 1970 in a sound position in this regard. We do not anticipate further hirings during the next year if we adhere to current plans and programs.

Less progress was made with my first objective. I underestimated the divisions within the Council, divisions which initially inhibited our ability to discuss contentious issues in a constructive manner. Later meetings were considerably more productive; and some signs are evident that we as a Council might well have begun to function as we all had originally hoped.

At our last meeting in 1969, Council approved for publication the report which you have received on Consumer Credit, and which is appended. I must express my particular appreciation for the work of Professor Jacob Ziegel and his committee on this document. It represents to me the kind of effort to which the talents of such a Council are well suited, and indicates the potential strength of a diverse group like ours.

In its deliberations, the Council has evolved certain procedures and policies that will guide its future efforts. With limited time to commit, and with lengthy intervals between meetings, we have concerned ourselves primarily with broad policy issues, and not with some of the more immediate problems of day to day. I personally feel that the same considerations will lead us to concentrate on working to a large degree through and with already-existing organizations in the field, co-ordinating and encouraging efforts which they are better equipped in both time and budget to carry out.

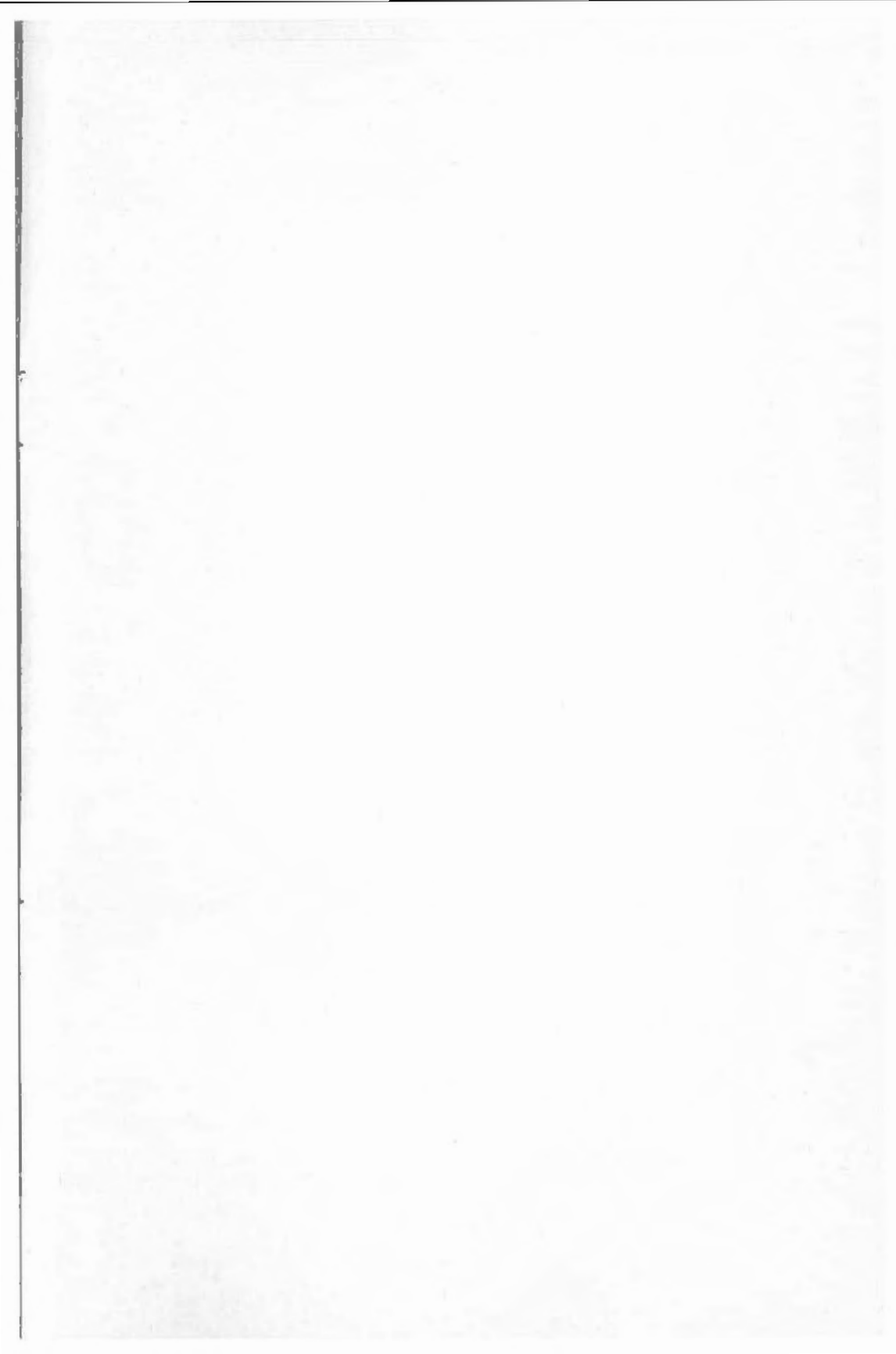
Throughout the past 14 months my colleagues and I have had numerous occasions to call on you and your colleagues in the Department for help. We have sincerely appreciated the generous response to these requests.

Finally, I must express my personal thanks to fellow members of Council for bearing with us through the birth pangs of this new organiza-

tion. Their time and judgement has been given willingly in the recognition that, despite differences of view regarding means, we all share the same objectives. This is as it should be in a democratic society.

Respectfully,

Dr. David S.R. Leighton
Chairman



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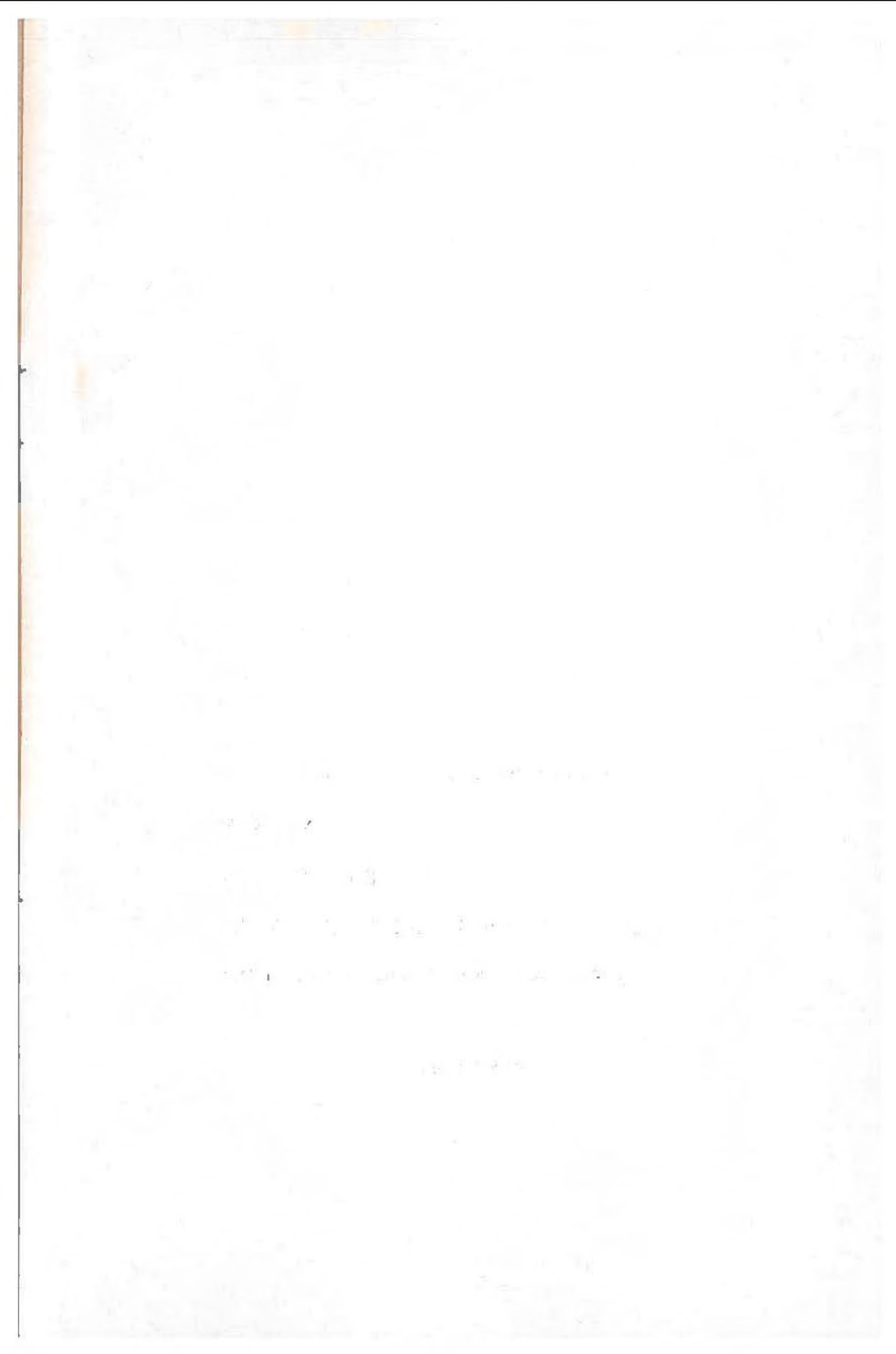
The History of the Canadian Consumer Council

The Activities and Recommendations - first year

The Financial Report

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HISTORY

The creation of the Canadian Consumer Council in 1968 reflected a growing awareness and interest in consumer problems, not only in Canada, but in most countries of the western world.

While individuals and organizations had for some time been urging such a development, the federal Department of Consumer and Corporate Affairs may in one sense be said to be an offspring of the Economic Council of Canada and the Special Joint Committee of The Senate and House of Commons on Credit (Prices) (the so-called Croll-Basford Committee). In 1966 the Economic Council was asked to study and advise the government on several topics related to the effective functioning of the Canadian economy, including such questions as consumer affairs, competition policy, and policy concerning trade marks, patents, copyright and industrial property. The consumer boycotts of that fall lent some urgency to their study, and in July, 1967 the Economic Council presented its first interim report on "Consumer Affairs and the Department of the Registrar General". One key recommendation of the Council was that a single organization take over "co-ordination, research and information activities, representation of the consumer interest, and the administration of a limited number of laws affecting both trade and financial matters". The Croll-Basford Committee, in its 1967 report, also supported the principle of an agency of departmental status to represent the consumer interest. In December, 1967 assent was given to Bill C-161, establishing a Department of Consumer and Corporate Affairs. One section of that Act provided for establishment of an advisory council to the Minister, as had been urged by the Economic Council:

"The Governor in Council may establish a consumer advisory council to advise or assist the Minister or to perform such duties and functions as the Governor in Council may specify, and may fix the remuneration and expenses to be paid to the persons appointed as members thereof."

Members of the Canadian Consumer Council were appointed by Order in Council in November, 1968 and met for the first time in early December. Subsequent meetings were held on February 17-18, April 28, June 23, September 29, and November 24, 1969.

At the time of the Council's first meeting, the Minister of Consumer and Corporate Affairs, the Honourable Ron Basford, offered the following guidelines as an aid to the launching of the Council's program:

". . . What we in Consumer Affairs are trying to do is right the balance a little and, in doing so, trying to make our mixed market economy work a little better than it does at present.

On that basis, I believe it is possible for men and women drawn from various sectors of our economic life to come together here to

discuss the problems facing the consumer and to reach agreement on how to adjust the balance of power between producer and seller. Any improvement that can be made to the consumer's position will make our economic system perform more effectively and thus help everyone."

"Each of you has been chosen for your particular knowledge, in the belief that together you represent our society. I expect that your advice will be tendered on the basis of your personal experience and wisdom. I appreciate the fact that many of you are also leaders in your field and often act as spokesmen for a particular organization or section of the economy. However, you have not been chosen for your ability to speak for a special group — be it producer or consumer — but rather you have been chosen on the basis of your own merit. I repeat, it is your personal advice that we are seeking. In my work, I can be governed by only one standard — the standard of the public interest. I know the same will apply to your work and to your deliberations."

"In every statement that I have made about the operation of the Council, I have stressed the independence of its advisory role. In arranging for the establishment of the Council, I have provided for an independent staff and independent funds for research. When I seek your advice, or when you choose to offer your advice to me, I look for your thoughts, your ideas and your recommendations. . . ."

"I expect that as an advisory body you will offer your advice to me in the first instance. However, I intend to make that advice widely known, and the Council should also feel free to do so in any way that it sees fit."

". . . You have the opportunity to explore the whole spectrum of consumer problems, to seek solutions and to recommend action. . . ."

". . . One of your main tasks is to improve the quantity and quality of the dialogue between producer and consumer."

These directives have been discussed from time to time by the Council, and a concept of the Council's role and function has emerged; the main dimensions of this concept are as follows:

1. The Council is designed to bring a wide variety of viewpoints to bear on issues of concern to consumers. It does not represent any single group or segment within our society.
2. The members of Council, although chosen in some cases because of their membership in certain groups, are not representatives of those groups. The views they express are their own, and are sought because of the individual's personal expertise or experience. The relevant criterion to be applied is that of the overall public interest.
3. The Council is an *autonomous* body, speaking independently of the views of government or other bodies. While cognizant of the pro-

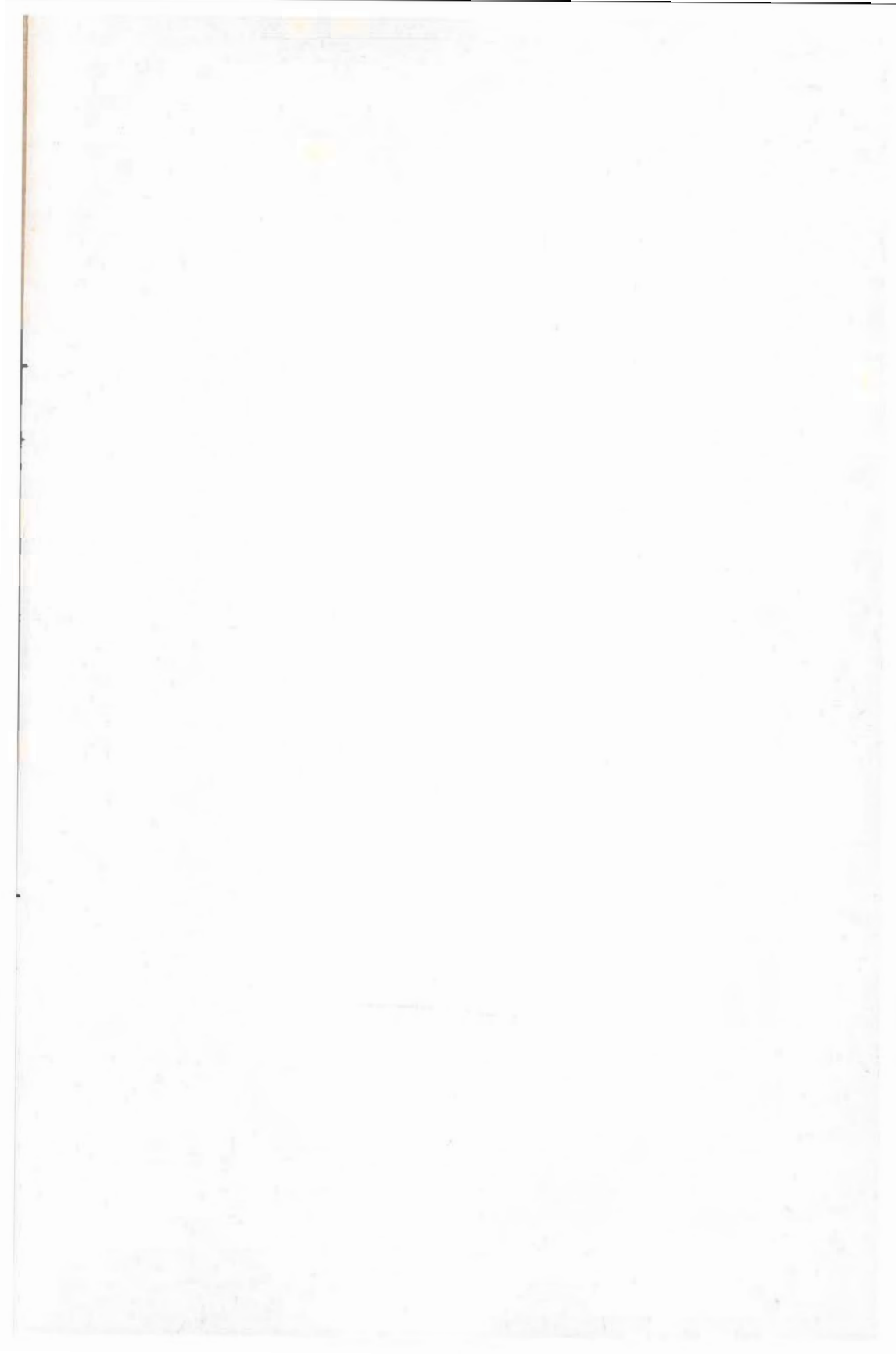
blems of different jurisdictions, it does not consider itself limited in its interests by constitutional constraints.

4. The Council, while offering its advice and counsel first to the Minister, retains the right to publish its views in a form and manner which members themselves determine.
5. The fundamental goal of the Council's activities is to improve the consumer environment, and to remove those imperfections which operate contrary to the most efficient and productive allocation of resources.

Because of its nature, the Council has seen itself as being ill-equipped to deal with relatively narrow problems of a short-term or current nature. It has, therefore, confined itself to consideration of recurring and broader matters of public policy.

Budgetary considerations limited the Council to a small staff, and have significantly shaped the direction and nature of Council's activities. It has been Council's policy to contract out the bulk of its research requirements, and to work actively with and through other organizations which have greater resources for carrying out programs. One of our major roles is seen as helping bring together the many groups active in consumer affairs, providing a vehicle for communication and coordination of such activities. In addition, we have undertaken a number of specific activities ourselves.

In the view of Council members, one of the most significant problems in the field of consumer affairs is the lack of communication among consumers, business, government and other organizations with interests in the field. We have addressed ourselves as a matter of high priority to the difficult task of improving such communication, a task for which we feel the Council is uniquely suited by virtue of its composition.



ACTIVITIES

On the basis of the broad guidelines set out by the Minister of Consumer and Corporate Affairs, the Canadian Consumer Council organized itself and completed plans for a program that includes two main lines of activity:

1. A series of projects on significant and continuing consumer problems, designed to culminate in precise policy recommendations, or in publications of importance to Canadian consumers.
2. A continuing project to assess the general state of consumer affairs across the nation in order to isolate these issues most urgently needing attention.

SPECIFIC CONSUMER PROBLEMS

Several specific consumer problems received the attention of the Council during its first year. Priority was given to investigation and study in the areas on consumer credit legislation, misleading advertising and product standards and testing.

The Report on Consumer Credit *

This report was completed, submitted to the Minister, and released to the public in November, 1969 at a news conference called by the Chairman.

In its report, the Council made recommendations to the Minister on seven specific issues which, in total, suggest a comprehensive consumer credit act.

Highlights of the seven points are:

1. Sweeping changes in the Small Loans Act that include raising the ceiling on small loans from \$1,500 to \$7,500, and the transfer of the administration of the Small Loans Act from the Minister of Finance to the Department of Consumer and Corporate Affairs.
2. The early adoption of a federal disclosure act which would apply to all consumer loans up to \$25,000 regardless of the identity of the lender, and without regard to whether the loan is secured or unsecured, or the form of the security.
3. Credit card legislation that would include regulation of the extent of the card holder's responsibility for misuse of the card by unauthorized persons.
4. Bankruptcy legislation — No specific recommendations, as the Bankruptcy Act is presently under study by a federal task force,

* The full text of the credit report is appended to this report.

but the report draws the Minister's attention to the gravity of the problems and the need for remedial legislation without delay.

5. New provisions for the regulation of consumer notes, including the provision that the holder of any such note take it subject to all equities between the maker and the original promisee of the note.
6. The establishment of a "corps of experts" on consumer credit that would constitute a separate division within the Department of Consumer and Corporate Affairs.
7. A Federal Consumer Credit Protection Act.

The Council's Committee on Credit and Selling Methods is continuing its investigation of other aspects of these problems and expects to complete further studies in the coming year.

Misleading Advertising

The subject of misleading advertising has claimed the attention of Canadian consumers for a number of years, and was explored by the Council through a preliminary study of pertinent legislation in advertising. Following discussion of this working paper, a comprehensive study was initiated which is expected to lead to specific recommendations.

This broader study will explore the experience of those in the United Kingdom and the United States, and the present efforts of Canadian advertisers at self-regulation within the context of a consumer-orientated Canadian economy. The study will be completed in 1970.

Product Standards and Testing

A third area which the Council began to explore during the year was that of Product Standards and Testing. Existing standardization and testing activities in Canada and other countries are being studied by Council. As a consequence of the preliminary review, the Council forwarded two recommendations to the Minister of Consumer and Corporate Affairs prior to the pending enactment of the Canada Standards Council Bill. The letter of recommendation (November 27, 1969) stated —

"The Council is keenly aware of the importance of product standards to the Canadian consumer. We are concerned that the primary emphasis of the pending bill may be on industrial and export standards rather than on standards for consumer products. Therefore, we have made the following recommendations:

1. "That the Minister of Consumer and Corporate Affairs make every effort to assure that the Canada Standards Council Bill contains a strong statement regarding *the need of standards for consumer products.*"

2. "That the Minister of Consumer and Corporate Affairs make every effort to obtain *adequate consumer representation* on the Canada Standards Council, if and when it is established."

As a further result of discussions on the subject of product testing, the Council also included in that letter of recommendation the following statement —

"The Council is aware of the fact that the Government of Canada purchases a large array of consumer products and issues technical specifications which these products must meet in order to qualify for public purchase. We feel that these specifications might be a rich source of information for consumers in the marketplace if they can be interpreted in non-technical language and published in popular form."

"So we recommend that the Minister of Consumer and Corporate Affairs ask the Minister of Supply and Services if a qualified person can be appointed by the Canadian Government Specifications Board to interpret and produce for consumer use, lay versions of the technical specifications used in government purchasing of consumer products."

Three matters were referred to the Council by the Minister during the year. These concerned a Charter of Consumer Rights, the problems of low-income consumers, and the whole area of consumer education in Canada.

A Charter of Consumer Rights

This is a problem the Minister requested the Council to examine with a view to making specific recommendations.

The Council, aware of consumer rights as publicly expressed in the U.K. and the U.S.A., directed the staff to explore ways and means of providing data for a Council decision on a declaration of rights which would be Canadian in philosophy, and expressed in straight-forward terms that would be useful to Canadians. This subject is under continuing investigation and discussion.

The Problems of the Low-Income Consumer

Council has appointed a committee to investigate these problems so that appropriate and effective recommendations for public action may follow.

Consumer Education

An education study has been designed to help assess the worth of many of the consumer education activities now being carried out in Canada.

Because "consumer education" is such a broad concept, and because activities of an educational nature are pervasive throughout Canada, a respectably complete study is beyond the means of the Council. However, it was decided to initiate a partial study, and to encourage other interested groups to sponsor complementary studies, so that this extremely important subject would soon get the attention it deserves.

Working Papers

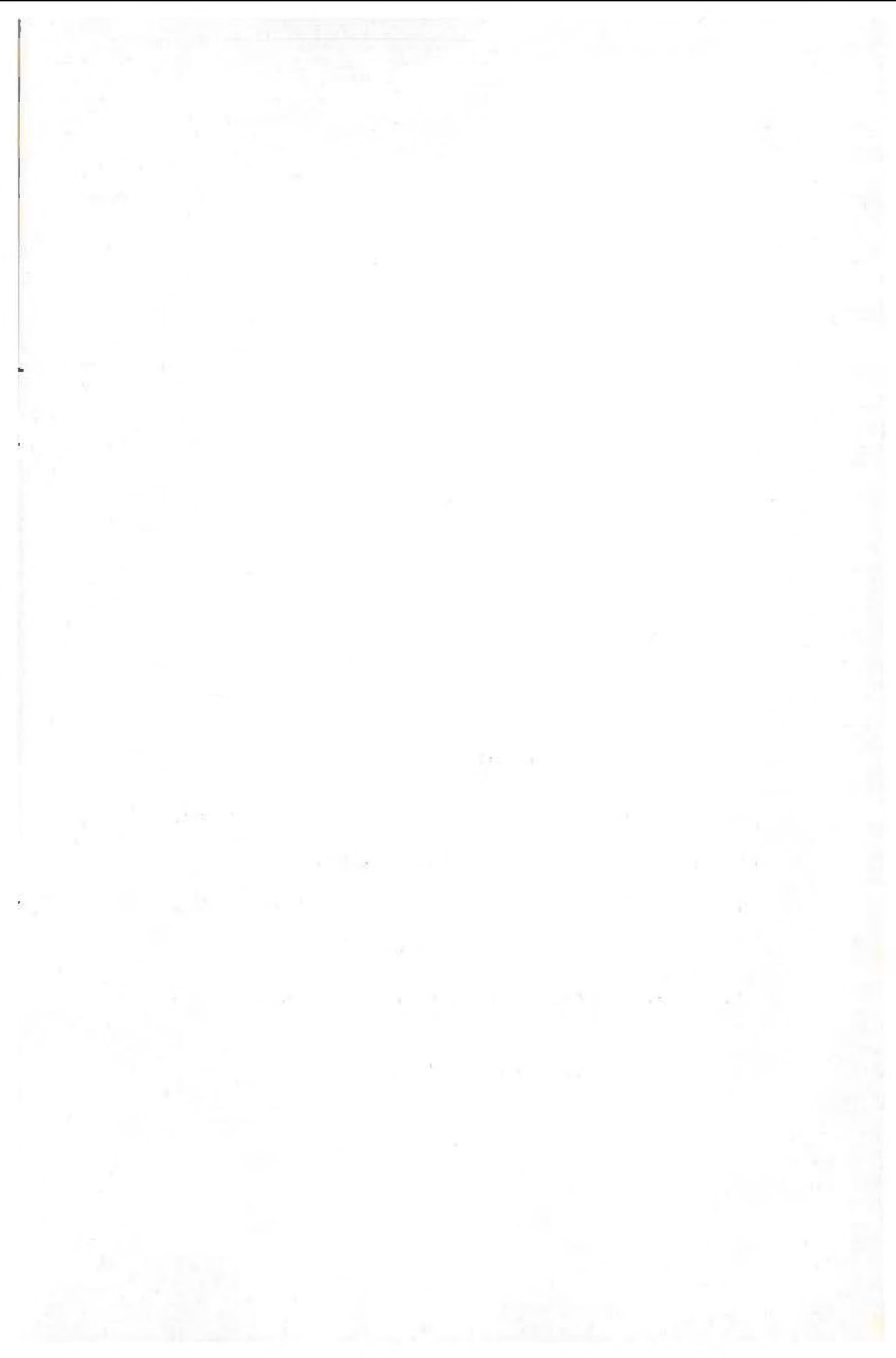
In addition, Council released to interested parties the first of a series of Council working papers, *A List of Recommendations from Various Royal Commissions, Senate/Commons Hearings and Briefs of Other Agencies Concerning Consumers Which Have Not Been Satisfied By Action Taken*, which contains a list of recommendations for legislative changes drawn from Royal Commissions, Senate and Commons reports, government hearings, and briefs from other agencies and groups, and which have not yet been acted upon by government.

Although the paper was originally prepared as an internal working document, the Council recognized its potential interest to others, and decided to make it available to all bona-fide parties requesting it.

FINANCIAL REPORT

Expenses incurred during first Council year to December 31, 1969

Establishment of staff facilities	\$ 6,500.00
Office expenses	1,288.00
Council and committee meetings	15,072.00
Salaries and research	32,050.00
TOTAL	\$54,910.00



APPENDIX

REPORT TO THE MINISTER OF CONSUMER AND CORPORATE AFFAIRS ON CONSUMER CREDIT

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REPORT TO THE MINISTER OF CONSUMER AND CORPORATE AFFAIRS ON CONSUMER CREDIT

I. INTRODUCTION

1. At its meeting in February of this year the Council appointed a small committee of its members with special qualifications in the area to review the existing federal legislation with respect to consumer credit and to indicate what changes, if any, were desirable to bring it up to date. The committee has now reported and the council has studied and approved its recommendations. As a result the Council is pleased to make recommendations to the Minister on seven specific issues.

2. These recommendations should be considered in the light of the dramatic increase in the use of all forms of consumer credit that has occurred during the last 20 years. In 1948 the balance outstanding on all forms of consumer credit was \$835m; at the end of 1967 it was not less than \$8,324m – an almost tenfold increase over the 1948 figure. The 1967 end of year balance represents approximately 20 per cent of the net personal disposable income of all Canadians as compared to 7.5 per cent for 1948. In other words, the growth of consumer credit has been three times as rapid as the growth in personal incomes. Canada is the second largest user of consumer credit in the free world and its volume of consumer credit greatly exceeds the volume used in such industrialized and more populous countries as France, Germany, and the United Kingdom.

3. Jurisdiction over consumer credit is divided, more or less equally, between the federal and provincial governments. The provincial governments derive their jurisdiction by virtue of their power to regulate property and civil rights (British North America Act, s. 91(13)), whereas the federal jurisdiction is based on its power to regulate interest, banks and banking, bills of exchange and promissory notes, bankruptcy and insolvency, and the criminal law.

4. During the past five years most of the provinces have introduced a substantial amount of new legislation to regulate various aspects of consumer credit. Federal activity, on the other hand, has been confined to two sets of provisions and the federal government has far from exhausted its available jurisdiction in this area. The existing federal legislation covers the following subjects:

- (a) *The Small Loans Act*. This Act, which was first introduced in 1939 and amended in 1956, affects all loans up to a maximum of \$1,500 made by lenders other than the chartered banks and loans where the "cost of the loan" does not exceed 12% per annum. The Act requires such lenders to be licensed and closely regulates the maximum cost of the loan.

- (b) *Part X of the Bankruptcy Act (the "Orderly Payment of Debts" provisions)*. This part was added in 1966 at the request of Alberta and Manitoba and is designed to provide overcommitted debtors with a cheap and expeditious method of consolidating their debts and paying them off by installments.
- (c) *Truth in Lending Disclosure Requirements under the new Bank Act*. These requirements are contained in the regulations issued by the Minister of Finance pursuant to the powers vested in him under s. 92 of the Act. Generally speaking the regulations require the cost of all bank loans up to a maximum of \$25,000 to be stated in terms of a true percentage rate of interest calculated on the declining balance of the loan outstanding from time to time.
- (d) *Interest Act*. This Act contains two old sections (sections 4 and 6) which were designed to curb certain abuses in the calculation and disclosure of interest charges which came to light in the last century. These provisions are now largely obsolete.

II. RECOMMENDATIONS FOR CHANGES

5. The existing federal legislation is defective in a number of important respects and also fails to come to grips with several long standing problems. In the Council's opinion, the following is a list of some of the key defects and omissions in the statutory framework.

(1) Revision of the Small Loans Act

6. The \$1,500 ceiling in the Small Loans Act is now quite unrealistic. Published figures show that loans over \$1,500 have been growing rapidly since 1956 and now account for at least 25 per cent of the total value of all loans made by small loan companies. The Report of the Royal Commission on Banking and Finance recommended in 1964 that the ceiling be raised to \$5,000, and a similar recommendation was made in 1967 in the Report of the Joint Committee of the Senate & House of Commons on Consumer Credit. No action has so far been taken by the federal government on either of these recommendations.

7. The Council strongly agrees that the ceiling needs revision, but we also feel that the \$5,000 ceiling suggested in the earlier reports has been overtaken by subsequent events and is now too low. We think it should be fixed at \$7,500, coupled with a power in the federal government to raise the figure by order in council when increases in the cost of living or other factors justify it. (The cost of living index is used as a criterion in the recently adopted American Uniform Consumer Credit Code (hereafter referred to as "UCCC")). The raising of the ceiling of the Small Loans Act (whether to \$5,000 or any other level) will also involve a restructuring of the step rates of the maximum permissible cost of loans. We think that

this complex and technical task should be handled in future by an independent tribunal, so as to remove the element of political partisanship and to bring this aspect of the Small Loans Act into line with other federal Acts regulating the tariffs of commodities and services. We also recommend that the step rates be automatically reviewed at periodic intervals and that the Small Loans Act contain provisions to introduce flexibility in the rates based on acceptable indicators of the cost of money in the market.

8. Apart from these changes, in our opinion the whole Act is in need of a complete revision and modernization if it is to meet adequately the needs of Canadian consumers in the 1970's. Without attempting an exhaustive enumeration, we list below some of the changes which we deem necessary or desirable:

- (a) Later in this report we recommend the adoption by the federal government of a comprehensive Consumer Credit Protection Act which would incorporate all the federal provisions primarily concerned with the regulation of consumer credit. Until such an Act is adopted, the Consumer Loans Act (the title is more appropriate in the new circumstances than "Small Loans Act") should be divided into two distinct parts. Part I would apply to all consumer loans made by professional lenders up to a maximum amount of \$25,000, and would cover such topics as disclosure requirements, rebate rights, and the regulation of unconscionable terms. Part II would deal exclusively with "regulated loans", i.e., consumer loans up to \$7,500 whose maximum cost of borrowing is regulated by law. Such regulated lenders would require to be licensed, as is true at present with respect to loans up to \$1,500, subject to certain exceptions. We have borrowed this concept of a two-level approach from the Uniform Consumer Credit Code.
- (b) Certain types of abuses that are particularly common in loans of a modest size should also be dealt with in Part II, e.g., the prohibition of wage assignment clauses (with the possible exception of assignments in favour of certain types of credit unions), after-acquired property clauses, clauses purporting to pledge essential household chattels, and clauses involving the creation of a mortgage or hypothec where the loan is \$2,500 or less. (Similar restrictions appear in the UCCC and some of the provincial Acts in Canada). In case of default the lender should also be required to obtain the leave of a court before seizing property given as security and before he seeks to realize it. In addition, wage garnishments and other means of enforcing loan debts should be made subject to the overriding supervision of local courts.
- (c) Our attention has been drawn to serious ambiguities in the Small Loans Act concerning the permitted level of charges in refinanced loans. These should be removed.

- (d) We also recommend enlarging the type of institutions exempt from the licensing provisions of the Small Loans Act (and, *mutatis mutandis*, any Consumer Loans Act) so as to exempt institutions already required to be licensed under another Act, federal or provincial (e.g., Loan and Savings Act, Credit Unions Act) as well as those lenders whose "cost of borrowing" does not exceed 12 per cent per annum. We make this recommendation because our attention has been drawn to the problems that confront small credit unions, previously outside the Small Loans Act, but which now find themselves obliged to apply for a money lenders' licence because increases in the cost of money are forcing them to charge more than 12 per cent per annum for their loan. We understand that the cost of a license is substantial and more than a small credit union can afford to pay. While we favour enlarging the number of exemptions from the licensing provisions of the Act (or, as a possible alternative, the power to remit all or part of the usual fee) we do not suggest that the exemption should be extended to other parts of the Act. We also deem it important that the revised Act should contain adequate policing and disciplinary powers with respect to *all* agencies making consumer loans whether or not they are required to hold licenses under the Act.
- (e) Finally, but not least, we strongly recommend that responsibility for the administration of the Small Loans Act be transferred from the Minister of Finance to the Department of Consumer and Corporate Affairs. The transfer commends itself to us because the Department of Consumer and Corporate Affairs appears to be best equipped to handle the administration of this Act.

9. Before leaving the Small Loans Act, we should draw attention to an important problem that is not susceptible to a simple legislative solution. The prevailing rates for consumer loans charged by banks and credit unions is around 12 per cent; the rates charged by consumer loan companies for loans above \$1,500 appears to average around 18 per cent, or about 50 per cent more than the rates of their principal competitors. We do not cite these figures in order to criticize consumer loan companies because their cost structure and method of operating differs substantially from those of the banks and credit unions. What gives cause for concern is that low income consumers should not have the same access to low cost loans as their more affluent fellow citizens. The unofficial statistics of banks show that the average income of their borrowers is well above the average income of the customers of consumer loan companies. It is reasonably certain that the level of income is a very material factor in a banker's decision whether or not to grant a loan. The difficulty is compounded by the fact that there is little or no flexibility in the bank consumer loans rates; ordinarily, the same rate is charged on all consumer loans regardless of the consumer's income and regardless of the size of the loan. If banks had more flexible rates, this would enable them to

accommodate a larger number of low income consumers. (To a lesser extent credit unions would appear to labor under a similar handicap, although the considerations here are more complex than in the case of the banks).

The Report of the Parliamentary Committee on Consumer Credit favoured government guaranteed loans to low income consumers for constructive purposes. We express no views as to the feasibility of such a plan, but we do urge the Minister to consult with the banks, credit unions, and other interested parties with a view to determining how cheaper credit facilities can be made available to low income borrowers.

(2) Disclosure Legislation

10. There is no doubt that the federal government has a wide jurisdiction in this area which would probably enable it to impose disclosure requirements on all forms of consumer loan transactions. So far, however, the federal government has only exercised its power with respect to bank loans made to individuals where the principal amount of the loan does not exceed \$25,000, and it has been left to the provinces to regulate the disclosure practices of other types of lenders – including, it should be noted, the practices of small loan companies. There are some disclosure requirements in the federal Interest Act, but they are now obsolete and have always been easy to evade.

11. In the Council's opinion the present position is unsatisfactory and involves an abdication of federal responsibility in an important area of consumer protection. While there is a substantial measure of uniformity among the existing provincial statutes there is no assurance that this uniformity will be maintained in the future. Moreover, there are significant gaps and weaknesses in many of the provincial measures and, most importantly, the extent to which they are enforced varies from province to province. We, therefore, recommend the early adoption of a federal disclosure act which would apply to all consumer loans up to \$25,000, regardless of the identity of the lender (so long as he is in the business of making loans), and without regard to whether the loan is secured or unsecured, or the form of the security. The disclosure should be in terms of the money cost and as an effective annual percentage rate. We are particularly anxious that the disclosure requirement shall apply to mortgage loans since this is an area that has spawned more than its fair share of abuses in the post-war period. A comprehensive and well drafted set of disclosure rules will make it possible to repeal much of the Interest Act, and we so recommend.

12. We also recommend that serious study be given to the feasibility of requiring the disclosure – and, therefore, the computation – of the cost of "open-ended" or revolving forms of credit as a percentage of the daily balance outstanding in the customer's account. Present provincial

and, in the case of the bank, federal legislation enables the disclosure to be based on the balance outstanding at the beginning or end of an accounting period without regard to fluctuations that may have occurred in the account between accounting periods. Consumers have difficulty understanding this method of calculation and it can give rise to very arbitrary results. We understand that from the technical point of view it would not be difficult to programme a computer to make calculations based on a daily rate; indeed it is already being done by some American banks and it is a method widely used in Canada with respect to large commercial accounts.

(3) Credit Cards

13. There are two principal types of credit cards on the market today. In the one the issuer of the card also provides the goods or services, and this type of credit is usually characterized as vendor's credit and probably falls outside the federal sphere of jurisdiction. In the other type the card issuer merely provides the credit (as, for example, in the case of Diner's Club cards, Chargex, and oil company cards, although in some cases these companies may also be involved in the direct sale of goods or services to the card holder), but there is an unresolved legal question whether this type of credit involves a loan transaction and whether it is subject to federal regulation. We think this doubt needs to be resolved, and if it transpires that such credit cards are subject to federal control appropriate legislation should be introduced. Such legislation should cover the disclosure aspects, indicate to what extent if any the rate restrictions in the Small Loans Act apply, and in particular regulate the extent of the card holder's responsibility for misuse of the card by unauthorized persons.

(4) Bankruptcy Legislation and Relief for the Overcommitted Debtor

14. One of the less happy by-products of the rapid growth in consumer credit has been a commensurate increase in the number of Canadian families who, for one reason or another, find themselves overburdened with debt. Even if all credit grantors exercised or were required to exercise reasonable care in the granting of credit (a subject which we have not attempted to explore for the purposes of this Report), there would still be a substantial number of casualties. It is for this reason that we attach great importance to the facilities available to provide relief for overcommitted debtors.

15. Part X of the Bankruptcy Act, admirable though it is in its social objectives, is much too restrictive in its terms. It does not apply at all to individual debts exceeding \$1,000, or to secured claims, or in any province whose government has not requested that it be made operative in that province. Again, the court is given no power under Part X to discharge all or part of the debts although it may be clear that the debtor may not

be able to pay them off within a reasonable period of time. The "straight" bankruptcy provisions in the Bankruptcy Act also urgently require revision so as to make them suitable for consumer bankruptcies. We are particularly concerned about the high cost of launching a petition in bankruptcy (\$300—\$500), which alone frequently makes the Act inaccessible to those overcommitted consumers who might wish to take advantage of it.

16. We understand that a federal task force is studying all aspects of the Bankruptcy Act and that its report is expected to be made available early in the new year. We desist, therefore, from making specific recommendations at this time, though we would appreciate an opportunity to comment on the task force's recommendations before any attempt is made to implement them. At the same time we feel bound to draw the Minister's attention to the gravity of the problems and the importance of not delaying remedial legislation beyond the absolutely necessary time.

(5) Regulation of Consumer Notes

17. When a consumer borrows money or purchases goods or services of a substantial value he is frequently required to sign a promissory note as evidence of his indebtedness. When the note is made payable to a merchant or other non-financial institution the note is often discounted with a finance company. The effect of this negotiation may be to confer on the transferee the status of a holder in due course under the Bills of Exchange Act with the result that the consumer will legally be obliged to pay the note even though he would have had a good defence in an action by the merchant.

18. The problem is an old one and one that has been much litigated. It has been dealt with legislatively in many American states and, more recently, in the Uniform Commercial Code. The Report of the Joint Committee recommended amending the Bills of Exchange Act, and we are delighted to hear that the federal government intends to introduce such legislation at the current session of Parliament.

19. In the Council's opinion, if the consumer is to be adequately protected, the new provisions will require careful drafting. We think that the new law should embody, *inter alia*, the following features:

- (a) Consumer promissory notes should be conspicuously marked with the legend "consumer promissory note" and the holder of any such note should take it subject to all equities between the maker and the original promisee of the note.
- (b) The restrictions should be applied to all consumer transactions, including consumer loans and real property transactions, where the payee of the note is in the business of extending consumer credit.

- (c) In order to prevent evasion of the law, where the note is made payable to a lender who has advanced funds to pay for the purchase price of the goods or services *and* there is a close relationship between the lender and the seller, the lender shall take the note subject to all such equities as the promisor would have been entitled to raise against the seller if the note had been made payable to him and subsequently negotiated by him to the lender.

20. We are strongly of the view that federal action in this area should not be contingent on the introduction of parallel provincial legislation. We recognize, of course, that the regulation of consumer notes cannot be divorced from the regulation of "cut-off" clauses and disclaimer clauses since the object of all three devices is the same — to isolate third parties from buyer-seller disputes and, in the case of disclaimer clauses, to protect the retailer against claims for defective goods. It is generally assumed that the provinces have exclusive jurisdiction with respect to the regulation of cut-off clauses and disclaimer clauses. So far only a minority of provinces have exercised their jurisdiction and we deem it important that attention should be drawn to the urgent need for remedial legislation by the other provinces. This is particularly true of disclaimer clauses whose use is common in all types of consumer transactions. Canada lags seriously behind other civilized countries in coming to grips with this long standing problem.

(6) Bureau of Consumer Credit

21. The inadequacy of the existing federal legislative framework is in part due to the division of jurisdiction among several government departments — Justice, Finance, and now the Department of Consumer and Corporate Affairs — but even more, in our opinion to the absence at the federal level of specialists in consumer credit who can competently advise the government with respect to its policies in this area and supervise the administration of the regulatory legislation. The establishment of such a corps of experts seems to us very much overdue, and we think they should constitute a separate division within the Department of Consumer and Corporate Affairs.

(7) A Federal Consumer Credit Protection Act

22. The various points on which we have recommended legislation, though they give the impression of being disparate in character, in fact cover many of the essential landmarks of a comprehensive consumer credit act. They will require much detailed drafting and careful consideration of some difficult policy questions. While as a matter of political expediency it may not be possible to introduce all the desirable changes at once, we see no loss and much gain in their eventually being brought together under one roof, and we so recommend. In this connection attention may be drawn to the Consumer Protection Act which was

adopted at the last session of the Manitoba Legislature and which attempts to do for that province what we should like to see done at the federal level. Indeed, we should like to see the federal government become an enlightened and progressive leader in this branch of consumer protection, as in all other branches.

