CONSUMER POLICY IN THE CANADIAN FEDERAL STATE

by

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PREFACE

Case studies in Canadian public policy are all too few, and fewer yet address the impact of federal-provincial relations upon policy-making. In this paper, Nicholas Sidor offers a concise case study of the effects of Canada's federal system on the development of national consumer protection policy, and highlights policies intended to regulate consumer credit (the 1976 Borrowers and Depositors Protection Act, or BDPA). Contrary to the view that federal systems benefit vested interests, in this case the impact of the federal system was to the advantage of neither the consumer nor the business interests, as intergovernmental conflicts over consultation and the control of economic policy dominated. Although concurrent jurisdiction can lead to the formation of innovative policy, it generated legislative paralysis on the BDPA.

As Nicholas Sidor shows, federal-provincial concurrency is the common thread throughout the full range of consumer issues — trade practices, advertising standards, and credit regulation. In each of these areas, the federal system structures the expression of consumer and business interests, and the content of consumer policy. Although Sidor acknowledges that the federal system has benefited consumer policy in some ways, and in some provinces, his analysis suggests that consumer interests are not well advanced under the Canadian federal system.

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Institute Discussion Papers are designed to provide an opportunity for informed comment on important issues in federalism and intergovernmental relations. The views expressed are those of the author.

David C. Hawkes
Associate Director
August, 1984

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Finally, I wish to thank those who have been involved in updating and editing the paper, particularly Mark Schultz and David Hawkes of the Institute of Intergovernmental Relations at Queen's.

Nicholas R. Sidor
August 1984

A NOTE ON SOURCES

Much of the material used in the preparation of this paper was obtained during interviews with officials of the federal government and the governments of Ontario and Manitoba. These include several senior officials in consumer ministries, and representatives of agencies responsible for intergovernmental relations in Ottawa and Queen's Park. All interview respondents, including those at the Consumers' Association of Canada, were assured that they would not be quoted directly in this study.

Remarkable agreement exists among officials about what is occurring in the consumer protection field, how the consumer should be protected, and what sort of government activity is appropriate. Because of this consensus, it is most unlikely that respondents will be able to identify their own comments. The positions noted in this paper as those of public officials almost always reflect an amalgamation of a number of responses.

I was also provided with various documents which were not prepared for public consumption — again, these are not cited, so that sources' confidentiality is protected.

I INTRODUCTION

Many government policies aid the consumer. Some, such as those establishing common measures of weight and volume, or prohibiting fraud, are among the oldest forms of public policy. In addition to defending the consumer, these policies support honest traders against unscrupulous competition; no market economy can operate effectively without such forms of regulation. A newer set of policies, however, goes considerably beyond such minimal forms of regulation. These policies are specifically designed to assist and protect the consumer, who frequently finds himself disadvantaged in a market dominated by large corporations, bewildered by extravagant advertising, products whose quality he cannot judge, and easy borrowing which may ultimately prove financially ruinous.

A 1980 survey of regulatory statutes, undertaken by Priest and Wohl for the Economic Council of Canada, shows a rapid recent growth of consumer protection measures. At the provincial level, two-thirds of "consumer protection, information and registration" statutes have been enacted since 1959.[1] At the federal level, the survey identifies "financial markets and institutions" and "information and standards for non-agricultural products" as areas of "particularly noticeable regulatory activity" during the 1970s.[2] Most federal consumer protection statutes fall into these classifications.[3]

This study divides government activities to protect the consumer into three categories: support for voluntary consumer groups, regulation of merchandising and the establishment of product standards, and regulation of consumer borrowing. Though each of these fields relates to consumer protection, each illustrates different elements of government activity in Canada.

The activity of the federal department, Consumer and Corporate Affairs Canada (CCAC), is used in this paper to illustrate the relationship between public interest groups and government. It underscores some difficulties in identifying and aggregating the consumer "interest", and speaks to certain features that may be inherent in "clientele departments",[4] particularly those charged with representing certain interests within the federal bureaucracy.[5]

An examination of merchandising and product standards control and consumer borrowing regulation produces contrasting studies in the operation of the Canadian federal system. Included in the first group are government efforts to prevent misrepresentation of goods: prohibitions against misleading advertising, product standards legislation, packaging and labelling regulations, and measures to prevent deceptive sales techniques. In this area, intergovernmental cooperation has been close and harmonious. The second category, the regulation of consumer borrowing, includes regulations to assist the consumer in avoiding unduly burdensome debts, as well as rules imposed on financial institutions in granting credit. This field has been dominated by intergovernmental conflict. In this paper, the conflicts arising in this field are illustrated by a case study of the federal government's attempt to enact the Borrowers and Depositors Protection Act (BDPA) in 1976-77, which is described in chapter IV.

Both the substance of consumer policy and the instruments through which it is implemented are affected by Canada's political structures. Among the most important influences on policy are institutional variables, principally those having to do with Canada's federal system and the consequent division of jurisdiction in the consumer protection field.

These variables influence the relative strength of the governments, the policy instruments available to them, the strength of organized consumer groups and other economic interests, which together form the constellation of interests mediated by governments. Given the primacy of government actors, this monograph focuses on the roles of the federal and provincial governments in consumer protection, and analyses the impact of the federal structure on the policies which result. Of course, constitutional changes that restructure the division of governmental responsibility will affect both the balance of governmental responsibility and consumer policy development. Accordingly, this study looks at some of the implications of constitutional change for consumers. As well, the paper is a modest case study of the influence of intergovernmental relations on the formulation of consumer policy in Canada.

Consumer protection policy has not evolved as the sole responsibility of either level of government. Federal government action has been based on Ottawa's constitutional authority over "weights and measures", "banking", "trade and commerce", "interest", and "the criminal law".[6] The provinces legislate by virtue of their jurisdiction over "property and civil rights"[7] which has been interpreted to include most of contract law. This constitutional division of responsibility has made concurrency, and hence entanglement, a central feature of policy in the consumer protection field.

The constitutionality of any statute, of course, depends ultimately upon the decision of the courts. However, because judicial review is cumbersome and the results often unpredictable, governments have generally avoided testing consumer legislation in the courts. Rather, governments have practised extensive intergovernmental bargaining and negotiation to design and implement policy in consumer protection, as in other fields. This confirms W. R. Lederman's 1962 prediction, before most of the current consumer legislation was enacted, that the existence of a concurrent field "means that there is room for political agreement between provincial and federal governments" about which government will legislate.[8] This practice of intergovernmental bargaining has been described as "executive federalism", "co-operative federalism", or "federal-provincial diplomacy".[9]

Clearly, "executive federalism" may generate new difficulties for governments at the same time as it addresses some of the problems of concurrent jurisdiction. As Richard Simeon has noted, duplication may occur; programs may be fragmented between two levels of government; incursions into a policy field that is already occupied may result; "spillovers" from policy at one level of government may add to the burden at another. These effects may increase program costs by increasing the time and effort needed for goverments to co-ordinate policy.[10] As well, these interferences may neutralize the policies of the other governments. Third, federalism may complicate a consumer's efforts to seek redress through government offices. Finally, "executive federalism" may reduce the extent to which any single government can be held accountable for its policy decisions.[11] This study will strive to discover to what extent these problems arise in consumer protection legislation in Canada.

In exploring how federalism affects the Canadian consumer, we shall consider to what extent Canada's federal structure may also have a differentiated impact on particular interests in the society. We note that shared policy responsibility hampers the organization of consumers into an effective pressure group (see Chapter II). A broader question, however, is also relevant: does the structure of federal-provincial relations favour narrow but well-organized and financially privileged groups against more diffuse "public interest" groups, of which the consumer is perhaps the best theoretical example?

The effect of the federal structure on interest group activity is ambiguous. Intuitively, one might expect that the federal structure would reduce the effectiveness of consumer activism. "Executive federalism" connotes a closed and inaccessible decision-making process. In such a system, loosely organized consumer interests could suffer. However, two qualifications must be made to this conclusion. First, at the most basic level, it would appear that some duplication of programs by the federal and provincial governments may benefit the consumer in certain provinces. Where provincial financial constraints prohibit the introduction of new programs, federal action can provide minimum standards to all citizens.

The extra cost of duplicating programs already offered in some provinces may be offset by gains to consumers in others. Second, competition among governments for citizen loyalty and electoral support may generate more responsive policy than would occur in a unitary state, or in a federal state in which jurisdiction and responsibility are clear cut.

In considering how federalism affects the Canadian consumer, we also have to explore a number of questions arising from the uneven regional distribution of various interests. It is likely that the consumer interest, relative to those of manufacturing and commercial groups, is stronger in some provinces than in others. Uneven consumer activity may be less detrimental to consumer interests than might at first appear because of the federal system. In practice, some of the provincial governments have adopted innovative policies favouring the consumer. This initially benefits their own residents, but may ultimately benefit others as well if a "demonstration effect" arises, that is, if the legislation of one jurisdiction acts as a model which is subsequently emulated by others. The demonstration effect may augment the differing provincial priorities. Consumer protection policy may, in the end, cover a wider range of problems than would be the case in unitary systems.

In at least one case, the law of one province has benefitted consumers in others. In 1979, Mastercharge and Chargex-Visa wanted to raise customer interest rates to respond to upward movements in the costs of borrowing. Quebec law, however, requires six months' prior notice of interest increases. Rather than differentiate between rates in Quebec and other parts of Canada, which would have required separate accounting systems and run the risk of encouraging demands for similar legislation in other provinces, both companies delayed implementing higher rates for six months. Observers of Canadian public policy, of course, will recognize that this type of spillover effect from provincial legislation is unusual.

Federalism also allows governments to experiment with a range of policy instruments. The experience of one government in implementing a policy is

considered by other governments when similar policies are designed. The result may be an ongoing process of adjustment and improvement in the suitability of policy instruments.

In view of the wide range of jurisdictional factors potentially affecting the consumer interest in Canada, it may be difficult to judge whether federalism, on balance, is advantageous or detrimental to the consumer. The various factors bearing on this will be explored further in the chapters that follow, as we examine the effects of concurrency on the "scope" and "means"[12] of consumer protection.

Finally, our inquiry into how the federal system in Canada helps or hinders the consumer should take into account the question of intergovernmental conflict and its consequences for policy. Is intergovernmental conflict inevitable in concurrent fields? Findings presented in this study suggest that it is not, but that conflict tends to arise when consumer protection regulations affect other fields of economic policy. Such conflict diminishes the strength of the consumer interest, and contributes to paralysis in the development of new policy at both levels.

2 THE CONSUMER INTEREST IN CANADA

The need for a strong consumer voice in policy is rooted in the economic imbalances which structure the modern marketplace. Large corporations provide most of today's merchandise; to balance corporate economic power, consumers have attempted collective action, pressed for government agencies to protect their interests, and lobbied vigorously for the right to be heard in regulatory proceedings. As with any group, consumers are motivated to organize essentially by self-interest, believing their ends can be better served through collective action.

The possibility of effective consumer organization is mitigated by economic and social influences. Canadian consumers, whether organized or not, suffer from inherent disadvantages. First, there is the weakness of the individual consumer, which arises in the first instance because his economic interest is diffused over a lifetime of some 50,000 transactions.[1] At stake in any given transaction are small amounts; hence, the costs in time and money involved in pursuing claims against vendors almost always outweigh personal loss. This is doubly true, of course, when actual litigation is contemplated. Conversely, of course, the threat that any one dissatisfied consumer can pose to a business is small. Second, the consumer is also subject to cross-cutting pressures.[2] The purchaser of gasoline may reside in an oil-producing province, or may be employed in the oil industry. His interest as a consumer in low gas prices may be opposed

to some extent by his regional interest, or his interest in high profits for his employer.

There are other problems which inhibit the development of consumer organizations. Some of these originate in the difficulty of identifying a "consumer interest," while others relate to the organization of consumers as "public interest" as opposed to "special interest" pressure groups. As Mancur Olson points out, large groups seldom succeed in organizing themselves as effectively as the circumstances — the potential benefits from organization — would warrant, because the benefits actually achieved accrue to every member of the group, whether or not he contributed his time or money to its organization.[3] Just as there are compelling reasons why the consumer is unlikely to make strong efforts on an individual basis, there are economic arguments why the rational, self-interested consumer should not participate or contribute to lobbying efforts, legal action, which would benefit equally all purchasers of a given product or service, or the shared costs of product testing. Olson argues that pressure groups can attempt to circumvent these disincentives by providing "non-collective goods" to members.[4] These are benefits which apply to group members alone: trade unions may sponsor medical or social insurance schemes; motor leagues provide free towing and assistance with travel planning. The Consumers' Association of Canada, for its part, provides its members with a subscription to its journal containing product information and testing results.

Our specific concern with the costs or difficulties involved in organizing the consumer interest is to know whether these are augmented or diminished by Canada's federal structure. One facet of the question is that federalism can impose heavy administrative costs on groups trying to parallel a complex governmental structure by multiplying the relevant governmental actors to be covered. As well, Paul Pross suggests that pressure groups may experience a tension between national and regional patterns of behaviour.[5] He argues that groups tend to be less institutionalized, and hence more "idiosyncratic," at the provincial level. Both of these factors would diminish an organization's effectiveness. On

the other hand, referring to the power of organized groups, Pross suggests that the growth of provincial power has provided groups with "new leverage" in the policy process.[6] Similarly, Richard Simeon argues that the federal system provides eleven points of contact for interest groups, and concludes:

> . . . by giving a strong voice to provincial interests in policy formation, it is likely that regionally based groups have their voice increased while national ones have relatively less influence.[7]

CONSUMER ORGANIZATION IN CANADA

The Consumers' Association of Canada (CAC) is the major national voice for consumers. It is a non-profit voluntary association founded in 1947 as "an outgrowth of the Women's Section of the Wartime Prices and Trade Board,"[8] and incorporated in 1962. Current membership is composed of some 150,000 subscribers to the Association's publications, **Canadian Consumer** and Le **Consommateur Canadien**[9]. The purposes of the CAC are spelled out in its constitution: to improve the standard of living in Canada by bringing the views of the consumer to the attention of the government, trade and industry; to study consumer problems; and to conduct research on consumer goods and services.

The CAC attempts to parallel Canada's federal structure. There are about 65 local associations, and provincial umbrella organizations are located in each capital city. The main strength of the Association, however, is its national office in Ottawa which conducts product testing, publishes the Association periodicals, and administers the Regulated Industries Program.

The chief governing body of the Association is the Board of Directors, elected annually by the membership. It is composed of the Executive Committee (the President, ten regionally elected Vice-Presidents, the Treasurer, and the Past President) and the Presidents' Council (provincial association presidents). Policy is established at the annual meeting, where resolutions are submitted for ratification by the delegate body.

Day-to-day operations of the Association are conducted under the supervision of an Executive Committee, which meets about five times each year. Funding constraints and distance prevent more frequent meetings.

The CAC national office is divided along functional rather than regional lines. It contains four sections, each headed by a staff director and a subcommittee of the Executive Committee. The divisions are Publications, Association Policy and Activities, Administration, and the Regulated Industries Program (RIP). In 1983, there were 53 full-time paid staff members in the national office. Of these, seven staff members were assigned to administer the CAC's advocacy programs, and three worked on the RIP.[10]

Two mechanisms are used to integrate regional policy at the national level. First, formal structures have been adjusted to accommodate regional views. Meetings of provincial presidents always precede meetings of the Board of Directors to which they belong. These preliminary meetings (the Presidents' Council) are used to air regional grievances and to evolve a unified position for later discussion. Second, the Association Policy and Activities branch of the national office tries to maintain close links with provincial and local associations. This relationship is characterized by frequent informal contact between provincial executives and national office staff on a variety of matters, especially between the Ontario CAC and the Ottawa group. This contact appears to diminish with increased distance from Ottawa.

Helen Jones Dawson conducted an extensive investigation of the Consumers' Association in 1963.[11] She noted four consistent problems: "lack of money and membership; poor communications, bad organization and regional jealousies; executive procrastination and lack of agreement on the proper role of CAC; and pursuit of too many objectives."[12] She noted that the CAC had relied on government grants to survive from its first year of operation.[13]

The admission of men to the CAC in 1961 to some extent eased the shortage of members. Yet, by May 1962, total membership was only 17,724.[14] When the

Association began publishing Canadian Consumer and Le Consommateur Canadien, and defined "member" as "subscriber" to these periodicals, membership increased dramatically. But the organization has remained chronically short of funds.

In 1982, the CAC launched a drive to expand its membership from 150,000 subscriber/members, where it had plateaued since the late 1970s, to 180,000 subscriber/members. Andrew Cohen, director-general of the CAC, suggested that this would alleviate the Association's chronic funding difficulties. He said: "The plan was to spend five years building up the magazine, and in a few years we expect the magazine to pay not just for itself but for all the activities of the association."[15] Financial self-sufficiency for the magazine would itself be a major step forward for the Association. Now, the "bulk of the association's $3.4 million budget" goes towards producing the magazine. The magazine was a large contributor to the Association's loss, in fiscal year 1982, of $459,685 on revenue of $3,026,267.[16] As well, the membership drive was intended to rectify, at least in part, the unpredictability of membership revenue. Several times in its history, the CAC has been unable to estimate accurately membership income, even for the next year.[17] As recently as 1979, the budget was cut back partly because of a shortfall in estimated subscription revenue.

Increased membership revenue was also intended to reduce the need for government funding. Federal government grants, which traditionally comprise from one-third to one-half of the national association's budget, were reduced marginally in the late 1970s as more consumer organizations competed for government funds. Since then, the CAC funding as a proportion of total payments by Consumer and Corporate Affairs Canada (CCAC) has stabilized. Each year, the CAC must approach the government and argue its case for further funding. And, although some contribution has always been forthcoming, the federal government insists on an annual ritual in which the minister reminds the Association that it must develop alternate sources of funding. At the 1978 CAC Annual Meeting, Consumer and Corporate Affairs Minister Warren Allmand complained about the Association's grant request, which would have been 40 per cent of the CAC budget for the coming year.

Allmand stated: "This cannot go on forever: you must find some on-going funding, that you can rely on, from other sources."[18] While political constraints probably prevent the government from substantially reducing its financial support, this annual posturing may adversely affect the CAC's resolve in pressing its lobbying effort.

The federal government has also moved away from unconditional operating grants, towards an increasing proportion of "contributions" earmarked for specific programs, to "reflect the need for greater accountability and control of public funds."[19] Notably, an increasing proportion of CCAC contributions to the CAC is being absorbed by the Regulated Industries Program (RIP). From fiscal year 1977 to fiscal year 1982, the RIP moved from absorbing 25 per cent of total contributions to taking 41 per cent.[20] While this shift may increase government control of public expenditures, it also reduces the CAC's flexibility and discretion.

There is another drawback to government funding: it has been unpredictable. In 1978, for example, CAC expected a total of $472,500 from CCAC and the Secretary of State. Only $345,000 was actually received.[21] When this was coupled with the membership revenue shortfall noted earlier, the CAC was forced to cancel several meetings of the Board of Directors and the Executive Committee, and staff in the Ottawa office was reduced by about 25 per cent. The result was less effective coordination and communication with regional groups, and as one CAC staff member stated, "some jobs just didn't get done." The Association was forced to rely much more heavily on volunteers. The unpredictability of annual allocations, in short, detracted from the CAC's ability to provide its services, and may have compromised the CAC's independence. And it was clearly more difficult to plan ongoing programs in the face of these sorts of funding uncertainties.

Grants to local associations are not an important source of funds for the CAC, since they are almost always for specific projects, and are usually quite small.[22]

In recent years, however, there has been an increase in the number of local organizations receiving funds directly from the federal government. For example, the federal government provided a $3,165 grant and a $3,125 contribution directly to the Ontario CAC in 1981; this was the only direct federal grant to the Ontario provincial association since fiscal 1977.[23] This is consistent with the recent federal movement toward direct delivery of services and funds to recipients. This trend clearly has implications for the balance of federal-provincial influence over the CAC in particular, and the consumer movement in general.

What benefit does the government derive from supporting the CAC? The Association is used as a source of policy research, advice on consumer matters, delivery of consumer services, and political support for departmental activities. The Association is consulted as a matter of course on proposed legislative measures and new products in the Canadian marketplace. Studies of consumer problems are sometimes commissioned by the CCAC to consumer lawyers who are active in the CAC. CAC research, performed partly by volunteers, is cheaper for the government than its own investigations. Volunteer consumer information programs also reduce the government's burden in the delivery of services.

Despite the regional organizations' representation in national policy-making forums, the CAC is highly centralized, particularly in its financial arrangements. The national office controls virtually all the Association's funds, and provincial associations receive a grant from the national group based on the number of subscriber/members in the province. Currently, this amount is approximately fifty cents a year for each member. This financial dominance reinforces the pre-eminence of the national association.

The dominance of the national office can be illustrated by a comparison of the Ontario CAC budget with the national budget. CAC Ontario's total receipts for fiscal 1982 were $59,113. Of this total, $38,000 was granted by the Government of Ontario, but only $14,771 was allocated by the

national association.[24] In contrast, the same year's national budget shows revenue of $3,026,267. The payments from CCAC were $687,750, or about 23 per cent of this total. Subscription revenue was $1,992,997 or 66 percent of the total. National allocations to all ten provincial CAC groups in 1982 were only $53,671, or 1.7 per cent of total national revenue.[25] And while the changing funding practices of the government may be redressing this imbalance by channelling more funds directly to the provincial and local groups, the national CAC itself does not appear to be making significant moves in this direction.

The weak regional funding structure is reflected in the provincial associations' performance. Lobbying is not a major function. Provincial associations are much less organized and more idiosyncratic than the national group. Lobbying is not a major function. They sometimes seem uncertain about what activities to undertake, or what priorities to set. For example, the agenda for the February 1979 meeting of the Ontario Board of Directors contained an item "Function of Ontario Office and Job Description of Executive Director."[26] This was a striking example of the operating difficulties of an organization that was more than thirty years old even then.

Policy conflicts within the Association, which originate from two sources, have pronounced regional dimensions. First, there is disagreement among members over the proper role of the Association, especially with regard to the scope of Association pressure group activity. This disagreement was noted by Dawson in 1963.[27] The Quebec group, L'Association des Consommateurs de Québec, for example, has argued that the national organization tries to cover too many consumer areas, and has been reduced to a "firefighting" role, simply responding to consumer problems, because of this diffusion. The Quebec position is that the CAC should set more concentrated priorities, and compile detailed "dossiers" on consumer problems of current importance. Implicit in the CAC Quebec's position is a more extensive lobbying effort, and one which is focused on specific issues.

The second group of policy conflicts is a direct result of the divergence of national and regional economic interests. The national CAC supports general reductions of tariffs to reduce the prices of imported goods. The Quebec group has objected to this, on the grounds that Quebec industry needs tariff protection, especially from imported clothing. In October 1976, for example, the Quebec association submitted a brief on import regulation to the Textile and Clothing Board which directly opposed the position taken by the national association before the same agency.[28] Similarly, the positions of the national CAC and the Alberta CAC on beef import quotas are opposed. The Alberta association sees quotas as a necessary protection for Alberta farmers; the national group would like to see quotas reduced in the hope of cheaper meat prices.

To an extent, these differences may be inherent in public interest groups. Jonah Goldstein, in a 1979 article, argued that public interest groups — those which seek benefits for every member of society — have no "automatically defined priorities" in the sense that private interests do.[29] Still, the distinctly regional expression of CAC differences is noteworthy. In the past, according to Dawson, resolving these sorts of conflicts caused serious discontent on both sides.[30] Indeed, the relationship between the Quebec association and the national office took a turn for the worse in 1979. The Quebec group changed its name from L'Association des Consommateurs Canadian du Québec to L'Association des Consommateurs du Québec.

The increased size of the Association has allowed members with various orientations to participate actively as they choose, and contemporary CAC policy is to "agree to disagree" in these matters, and try to ensure that each group makes it clear to media and government alike that it is speaking only for itself.

Goldstein argues, though, that these public disagreements are at least a partial cause of the CAC's relatively weak public image.[31] If this is so, the current CAC approach to dealing with regional differences does little to change this.

Goldstein suggests that a set of groups, each with a special interest in a narrow consumer problem, may be able to express the consumer interest more effectively than a general public interest group such as CAC.[32] These "'constituency' groups", according to Goldstein,

> are better designed to combat the problems of economic dependence, confused priorities and limited legitimacy which beset many general organizations.[33]

The latter two points are well taken. It is not clear, though, that dependence on government support would be reduced in special interest groups, since the economic disincentives to strong consumer participation also apply to special interest groups. Dependency, in the CAC's case, might best be reduced by statutory funding, guaranteed over several years.

One can see, then, that the CAC faces three serious problems. First, the difficulties in attracting members noted by Dawson in 1963 continue, despite a successful recent strategy to revamp the Association's magazines. The Association is heavily dependent on the federal government for financial support, and would not be viable without it. Third, and perhaps as a result, the CAC is highly centralized and oriented toward federal policy. This contributes to significant regional policy disputes among its constituent organizations and weakens its lobbying effort in the provinces.

These problems remain despite CAC and government efforts to rectify them. It appears at this time that there is no long-term solution to the problem of financial dependence. One could expect at most that increased funding, guaranteed by statute rather than secured annually on a program by program basis, could reduce some of the ancillary problems associated with executive grants. And, while financial dependence may contribute to regional tensions within the CAC, it is not the primary cause of these tensions. The regional problems noted here result more from the structure of the country's and differentiated regional economies.

With these observations in mind, it must also be noted that the CAC's efforts to parallel the federal structures of government impose serious

financial costs on the organization. They may also cause delays in policy-making. In times of financial constraint, it is extremely difficult for the national association to maintain effective communication with provincial groups. Public displays of policy conflict between provincial and national CAC organizations contribute to the Association's weak image.

The centralized bias of the CAC's internal organization also contrasts with the recent shift of political power from the central institutions to federal-provincial negotiation. The centralized structure, which arose with the CAC's creation as a national body, and has endured over the organization's thirty-seven year history, may no longer be the appropriate form for consumer activities in the 1980s. If the CAC is to become more effective in presenting the consumer case to government, and more representative of its constituents, steps should be taken to increase the strength of provincial associations. These steps might include greater support for the provincial associations from the national body, and possibly a deliberate devolution of decision-making powers to provincial groups.

Within government, both federally and provincially, the interests of the consumer are addressed by specific departments with responsibility in this area. How effectively do these ministries represent the consumer interest?

The federal Department of Consumer and Corporate Affairs (DCCA, now Consumer and Corporate Affairs Canada, or CCAC) was established by statute in December 1967.[34] Its purpose was to centralize and coordinate consumer programs carried on by various departments. When the Department was created, its mandate included responsibility for securities, patents, trademarks, copyrights, and the incorporation of certain companies under Canadian law. Consumer policy was linked to these functions because, in the words of the Economic Council of Canada, both are directed "towards enhancing the probability that household money incomes will be efficiently transformed into desired goods and services. . . ."[35]

CCAC is divided into four bureaux: Consumer Affairs, Corporate Affairs, Competition Policy, and Policy Coordination. The CCAC also contains the Office of the Registrar-General, the Metric Commission, and the Restrictive Trade Practices Commission. Personnel and financial resources, in the past, have been roughly divided equally between "consumer" and "corporate" functions, but consumer-oriented spending now doubles that of corporate regulation.[36]

Although a junior department, CCAC showed remarkable growth since 1967. The scope of departmental activities has also increased dramatically, especially in the consumer field. Statutes developed and administered by the department include the **Hazardous Products Act**, the **Consumer Packaging and Labelling Act**, the **Textile Labelling Act**, the **National Trade Mark Act**, the **Precious Metals Marketing Act**, the **Bankruptcy Act**, the **Canada Corporations Act**, the **Canada Cooperative Associations Act**, the **Trade Unions Act**, the **Pension Funds Society Act**, the **Canada Business Corporations Act** and the **Tax Rebate Discounting Act**. In addition, the department introduced amendments to the **Weights and Measures Act**, and to the **Combines Investigation Act**. The department's mandate includes enforcing the product standards and misleading advertising provisions of the **Combines Investigation Act**, conducting consumer information programs, regulating bankruptcies, and administering competition policy. The department also registers public documents, patents, trademarks and copyrights.

The department's budget has grown at the same rate as its expanded responsibilities. The first department budgets show net expenditure of just over one million dollars.[37] By fiscal year 1982-83, this had grown to over $175.5 million dollars.[38]

Bruce Doern has suggested that this organization and mandate gives the department a rather paradoxical mix of functions. First, it is expected to regulate some categories of economic transactions on the consumers' behalf. At the same time, it must often behave as a neutral umpire in citizens' relations with the business community. Finally, and in spite of politicians' statements to the contrary, the department provides a number

of services to business.[39] Moreover, although the Consumer Affairs Bureau's legislative mandate includes the enforcement of Canadian product safety and legal metrology (weights and measures) statutes, no mention is made in statute law of consumer education or information programs. Although the bureau maintains "storefront" offices to provide these services, and responds as best it can to consumer complaints, its programs and workforce have been eroded since 1978. The absence of legislation in these areas increases the ability of successive governments to impose cutbacks, and has contributed to low staff morale in some consumer services branches.

One of the most important functions of the Department is to provide funding for volunteer consumer groups. In 1982, the Department provided $1,562,860 in contribution and grant funds to many diverse consumer interest groups. Of this funding, the Consumers' Association—both national and regional—received 48 per cent,[40] consistent with CAC allocations since the mid-1970s. Although the Association has been encouraged by CCAC to develop a "consumer advocacy" role, this is resented by some officials who regard the CAC funding as something of a burden on departmental finances. Others see the CAC as performing a function which should be included in the department's legal mandate.

CCAC is decentralized, and about 45 per cent of the departmental work force is located in "regional and district offices across the country."[41] Regional offices are located in Halifax, Montreal, Toronto, Winnipeg and Vancouver, and there are 61 district and area offices. Not all offices, moreover, offer the full range of department programs. Consumer services activity is maintained in about 30 towns and cities.[42] Most liaison with provincial consumer protection officials now takes place outside of Ottawa.

The department has had a very rapid turnover of ministers; seven have directed the department since 1967, an average tenure in the portfolio of just over two years. The first minister was Ron Basford, who resigned after amendments to the Combines Investigation Act, which he championed, met strong resistance both inside and outside of cabinet. Basford was followed by Herb Gray, André Ouellet, Bryce Mackasey, Anthony Abbott,

Warren Allmand, Allan Lawrence (in Joe Clark's government), André Ouellet again, and Judy Erola, the present minister. Only in the case of Basford and Ouellet did departure from the portfolio reflect departmental duties. Ouellet, for example, resigned from the cabinet following a citation for contempt of court after some rather intemperate remarks about a judgement in an anti-combines case involving Canadian sugar companies. For the others, the Consumer and Corporate Affairs portfolio was used either as a step to a more senior position, or was a temporary position to begin with.

The deputy ministers of the department are worthy of special notice, for they have been among the most influential public servants in Canada. James Grandy, who moved on to become deputy minister of Industry, Trade and Commerce was followed by Gordon Osbaldeston, now Clerk of the Privy Council. His successor was Michael Pitfield, who after a long term as Clerk of the Privy Council was elevated to the Senate. He was followed by Sylvia Ostry, who was Chairman of the Economic Council of Canada before joining the Organization for Economic Cooperation and Development in Paris. George Post is the present deputy. Under Pitfield's guidance, CCAC developed consumer policy which contributed to serious tensions between Ottawa and the provinces. During his tenure, consumer legislation was deliberately designed to test the extent of federal constitutional authority.[43]

The rapid succession of ministers, and the stature of deputies, may have increased departmental activity. New legislation is often developed as a result of a new minister's desire to impress voters or his cabinet colleagues. Rapid changes in policy emphasis, however, have sometimes undermined department morale.

Federal efforts in consumer protection are not confined to the CCAC. Statutes concerning pure food standards, food handling, and the control of prescription drugs form part of the responsibilities of the departments of Agriculture and of Health and Welfare. This, of course, compounds the government's coordination difficulties as well as the CAC's access difficulties and lobbying costs.

Provincial consumer programs generally began during the 1960s, and umbrella departments and branches were formed during the early 1970s as a component of an overall trend toward the rationalization of program administration. At the provincial level, there are three structural models for consumer services. The provinces of Alberta, British Columbia, Manitoba, Ontario and Quebec follow the federal model, with consumer and corporate services in the same portfolio. Saskatchewan and Nova Scotia departments are solely concerned with consumer affairs. (This was also the case in British Columbia until 1976.) In New Brunswick and Prince Edward Island, consumer protection is one of the duties of the Provincial Secretary. Finally, Newfoundland's department is entitled Consumer Affairs and Environment.

Despite the fairly uniform statutory regime among the provinces, differences exist in consumer information programs, complaint handling, and enforcement efforts. Quebec and Manitoba are normally regarded both by consumer activists and government officials as leaders in the field. In fact, the Quebec program, which includes a free monthly publication Protegez-Vous/Protect Yourself, has been so successful it may reduce to some extent the membership in the Quebec CAC.[44] British Columbia had been included in the list of leaders in the field until the 1983 provincial budget. The government closed its four consumer assistance offices, stopped all funding for voluntary consumer groups, and rescinded its policy of awarding costs to interveners at public utility regulatory hearings.[45]

In general, provincial consumer affairs agencies are responsible for matters similar to those of their federal counterpart. Some additional responsibilities, however, may increase a minister's political "clout" within the cabinet. The most important is the administration of liquor sales and licensing, performed by the Ontario and British Columbia departments. Where they exist, regulations for rental accommodation and film classification are often administered by consumer departments. Other duties include government information offices and Queen's Printer in the province of Manitoba, and the office of the status of women in Quebec.

Comparing the statutory base of provincial consumer affairs departments with that of the CCAC, one sees a prima facie case for the notion that the consumer voice is stronger at the provincial level. Many provinces have given their departments a wider statutory mandate than Ottawa has given the CCAC, particularly in consumer education. In the consumer complaint-handling field, provincial efforts superseded the federal government's original "Box 99" program. In fact, "Box 99" was terminated partly because of the superior efficacy of provincial programs.

Provincial consumer departments appear to place much less emphasis on the development of strong local consumer voluntary associations than the federal department. This is partly a matter of the historical alignment of consumer interest groups with the federal government, but it also suggests that interdepartmental power struggles at the provincial level may feature less well-supported bureaucratic opponents to consumer policy. Provincial cabinets, moreover, may represent a rather narrower group of interests.[46] Finally, consumer protection has been used to foster loyalty to the provincial level of government: Quebec, Alberta and British Columbia, in particular, tend to make special mention of the "provincial" aspect of consumer measures.

What mechanisms exist for coordinating provincial policies or creating greater uniformity among them? Regular informal meetings of provincial ministers and officials began as early as 1966. As new provinces entered the field of consumer protection, and as the activities of the field itself grew, these meetings became increasingly formalized, and various interprovincial committees were struck to deal with specific matters. Interprovincial consultation has been characterized by close personal contact in the exchange of ideas and information about pending legislation. Both interview data and a study of provincial consumer protection statutes suggest that "cross-drafting" is widespread. This is either informal, with provinces copying the statutes of others, or as a result of formal cooperation. Provincial officials are quick to offer or seek advice from their counterparts.[47] The experience of officials in enforcing legislation has been incorporated in subsequent statutes in other provinces. As a

result of this consultation, a level of statutory uniformity has been preserved. As well, out of this process and the special efforts of some provinces -- particularly Alberta and British Columbia -- and in response to federal initiatives, the provinces have developed a unified position toward Ottawa.

Federal-provincial contacts have grown along with the provinces' increasing interest in consumer protection. Professor Louis Romero argued in 1976 that activities had expanded at both levels of government. "Their activities have begun to overlap and this has increased the likelihood of duplication and the need for cooperation."[48] According to Romero, "one of the first" joint meetings was held in Ottawa in December of 1966.[49] The next, convened by Ontario, took place the following June. By 1970, the provinces had scheduled annual meetings at the ministerial and deputy minister levels; federal officials were always invited. In 1974 and 1975 this tradition ended, and federal officials attended only "certain sessions of the interprovincial meetings."[50] Romero notes that this break with tradition displeased federal officials. The present structure of intergovernmental relations in the consumer field is discussed in Chapter IV.

At both levels of government, the consumer voice is specifically represented at the cabinet level. Canada was one of the first nations to establish cabinet-level consumer representation,[51] and remains ahead of most other western nations in its range of consumer protection policies. However, the nations of the European Economic Community (EEC) and the Organization for Economic Cooperation and Development have developed numerous consumer protection statutes in recent years;[52] consumer protection in Canada is being overtaken. This is the result not only of other nations moving to establish basic protections, but also of increasing resistance within the Canadian federal government to efforts to further advance consumer interests.

In Ottawa, Consumer and Corporate Affairs Canada often encounters resistance to new programs from other departments. The Department of

Regional Industrial Expansion (DRIE) sometimes objects to regulations which, in its view, might impede the growth of Canadian industry or diminish the effectiveness of job creation or industrial development programs. The Department of Finance resists CCAC moves into borrowing regulation. Finance officials argue that only the Inspector-General of Banks has the responsibility for administering the regulations governing chartered banks.

Resistance to department initiatives within the bureaucracy, in sum, arise from other departments' fears of bureaucratic encroachment, or from other departments' view of themselves as champions of other economic interests — the corporate sector or farmers, for example.[53] In some cases, departmental objectives are strongly and openly opposed. It is safe to conclude that the policy initiatives of Consumer and Corporate Affairs Canada are watered down in their passage through cabinet and Treasury Board. When the interests of departments such as Finance or DRIE are engaged, their importance allows them greater leverage in cabinet than the CCAC.

The CCAC, for its part, did establish a division in its Consumer Fraud Protection Branch "to ensure that the interests of consumers were taken into account in the development and revision of agricultural product legislation"[54] by the Department of Agriculture. The Bureau of Competition Policy, in particular, has had a long history of resistance within cabinet to proposed anti-combines legislation. Consumer legislation brought forward by the Bureau of Consumer Affairs has not been opposed quite so vigorously, since much of it has been directed at improving product standards, in which other departments have a less significant economic stake, or with which they are more likely to concur.

In the intragovernmental bargaining, the Consumers' Association can provide the department with valuable countervailing support before cabinet. The presence of an active private interest group is often the department's strongest argument for new consumer policies.[55] To some extent, it can manipulate consumer demands by funding investigations into particular

consumer problems, and thus help to ensure the support of the Association when submitting proposals to cabinet.

The close relationship between the CAC and CCAC generally serves the consumer interest well. Although the department is clearly the dominant partner, the Association generally does not seem to be constrained by its association with government; and the CCAC may be able to accomplish things through the CAC that it would be unable to do on its own. This is illustrated best, perhaps, by the CAC's Regulated Industries Program (RIP). Its goal is to express the consumer interest before regulatory agencies, and, by so doing, to encourage a more open and responsive climate in which such interventions can be pressed.[56] The RIP's primary aim is to promote an environment in which regulatory decisions can be made which will serve the public interest.[57]

It was in the context of the "citizen participation politics" which prevailed in the early 1970s that the CAC was encouraged to take a more active role in consumer advocacy.[58] The most tangible effect of this mood, and policy, was the initiation of the RIP in June 1973 with an experimental grant of $100,000 to the CAC "to intensify and expand its advocacy activities,"[59] for the most part before the Canadian Transport Commission and the Canadian Radio-television and Telecommunications Commission (CRTC). This was an unconditional grant; the CAC allocated $35,000 to formal regulatory interventions.[60] In 1974, the government raised the total to $116,000 — "all of this money to be used in regulatory proceedings, appeals therefrom, and test cases in the courts."[61]

For the purposes of this study it is unnecessary to review the RIP's record in interventions. Former RIP General Counsel Gregory Kane, however, concluded in a recent study that

> consumer interest groups . . . that have attempted to participate on a regular basis, acting in a responsible manner . . . find their efforts being frustrated by procedural deficiencies or by the fact that little or no recognition is given to their concerns or interests.[62]

He provides evidence which suggests that some groups are ignored or treated scornfully.[63] This general pessimism must be tempered by the RIP's generally successful record before the CRTC. As early as 1975, Michael Trebilcock argued that the RIP had had a direct influence in altering the procedures of some regulatory agencies, and that it had been successful in pressing the consumer case on several occasions.[64]

The CRTC clearly has been more responsive to RIP interventions than other regulatory agencies, but there is no doubt that the program generally has affected Canadian regulatory proceedings, encouraging more adequate representation of consumer interests. The CAC's much-publicized experiences in the regulatory arena have contributed to a recent spate of government reviews of the mandates and procedures of a number of regulatory agencies. They have also helped focus the interest of a number of academics on regulation and its effects, and on the role of public interest groups in the regulatory process.

In 1976, government funding for the RIP reached $200,000. In 1977, the CAC successfully argued that the experimental phase of the program had been concluded, and received a five-year funding commitment from the department. From a 1977 grant of $175,000, the RIP allocation has expanded to reach the peak of $325,000 attained in 1981.[65] While the government has stressed the need for the CAC to develop alternative sources of funds, it appears that the government places a high priority on funding the RIP.

Many of the problems noted in earlier discussion of the CAC are reflected in the Regulated Industries Program. First, reliance on federal funding may compromise the independence on the program. Trebilcock argued that this had not occurred by 1975,[66] but it remains an ever-present danger. And an important limitation on the effectiveness of the RIP is its focus on the federal regulatory arena at the expense of provincial agencies. Many of the decisions which affect the consumer most directly are made by provincial agencies, such as marketing boards and utilities commissions. The absence of input into regulatory proceedings at the provincial level may be a serious flaw in representing the consumer interest.

In a limited way, some provincial governments have attempted to mitigate this problem. The Alberta government has funded CAC interventions before the Alberta Public Utilities Board regarding electricity rates. The Ontario government provided an experimental grant so that CAC Ontario could submit briefs to the (Porter) Royal Commission on Electric Power Planning. In general, however, these initiatives have been narrow and sporadic. No provincial government has yet committed itself to ongoing funding of regulatory interventions. The CAC itself supplements these efforts with the RIP board of directors encouraging provincial associations to intervene in provincial regulatory proceedings. A Provincial Initiatives Fund of $5,000 was established to aid provincial associations in this function. As well, staff members aid in formulating or presenting submissions to provincial regulatory bodies when they are available to do so. This happens rather infrequently, however, since program staff have much to do within the federal regulatory arena.

Many provinces have demonstrated a serious concern for the consumer in their policies. Nevertheless, provincial governments must be more supportive of provincial associations, including more substantial funding of consumer groups. Obviously, this is more likely to occur in wealthier provinces than in poorer ones. There is no reason why the benefits which accrue to the federal government from the CAC's efforts should not be better distributed at the provincial level, especially in regulatory proceedings.

It should not be concluded that the CAC is badly managed or ineffectual in articulating the consumer interest. In spite of its internal problems, the CAC has often provided an effective voice for consumer interest in Canada. Many of the policies implemented by Canadian governments and regulatory agencies have responded directly to CAC pressure. The CAC's problems in attracting members, and in paralleling federal structures, occur in spite of the Association's best efforts.

3 TRADE PRACTICES, MISLEADING ADVERTISING AND PRODUCT STANDARDS: THE CANADIAN CASE

Canadian governments require certain quality standards in goods sold to Canadians, and prevent misrepresentation of products both in face-to-face dealings with the consumer and in advertising. These regulations are perhaps the most important area of official consumer protection efforts, and encompass a number of more specific functions. First are prohibitions against fraud, a criminal offence. Fraud is not dealt with in this study since its prevention is a necessary condition for all market activity, and was a concern of government long before consumer protection became a subject of attention. The prohibition of fraud, moreover, benefits other traders as much as it does the consumer.

This chapter dwells on matters specifically related to the consumer interest. It explores government initiatives in the following fields:

- product standards: regulations providing protection against hazardous or poor quality goods;
- trade practices: government action against shifty or deceptive sales techniques;
- misleading advertising: misrepresentation in mass media sources;
- product warranties: claims about the longevity or performance of various products; and

- certain marketing schemes, notably

  a) pyramid selling, where consumers invest in a product, and derive income from persuading others to invest, rather than by selling the product itself,

  b) referral selling, where the consumer receives a rebate on his own purchase if he supplies the seller with the names of others who ultimately purchase the product, and

  c) "negative option" schemes, which require that the consumer either return unsolicited goods mailed to him or pay for them.

For purposes of analysis, it is useful to treat these subsets of consumer protection policies together. They are intimately linked theoretically and functionally, and all respond to similar demands. Regulations on product warranties, product standards, and misleading trade practices may all come into play as a result of the same transaction. The purpose of all these regulations is to prevent harm to the consumer through misrepresentation in the broadest sense of that term. Product standards legislation, for example, differs from laws concerning warranties only in its solution to the problem of faulty or misrepresented merchandise.

In this chapter, federal activities in these fields are first described; this is followed by a description of provincial initiatives. The efforts of the two levels are then contrasted. Finally, government interaction is described and analysed both to assess the standard of consumer protection which has evolved, and to understand some of the consultative mechanisms used in Canadian federalism.

Increased government activity in these fields was a direct response to the growth of "consumerism" in the 1960s. Both Ottawa and the provinces responded to consumer demands, and serious "entanglement" now exists in these policy areas. Federal-provincial interaction here can be usefully contrasted with the field of consumer credit, the subject of the next chapter. Characteristically, the government interaction discussed in this chapter is harmonious, and, on the whole, consumers benefit from joint occupancy of the field. In general, provincial statutes extend federal protection in the trade practices, misleading advertising, and product warranty fields.

In these fields, the substance of policy must be distinguished carefully from the means of implementation. The most important distinction is between enforcement mechanisms. Several enforcement methods exist. At the federal level, legislation can be enacted only through the Criminal Code or through the **Combines Investigation Act**. In both cases, sanctions are based on Ottawa's jurisdiction over criminal law power. In the case of the Criminal Code, prosecutions depend on the provincial attorneys-general. Under the **Combines Investigation Act**, in contrast, investigations and prosecutions are carried out by the Department of Consumer and Corporate Affairs and the federal Department of Justice.

Canada's constitution restricts the federal government from entering the field of contract law, and limits Ottawa's use of such techniques as voluntary compliance agreements, cease and desist orders (under which practices can be halted without penalty), and substitute action (where the government initiates civil litigation on behalf of consumers). It is more common for Ottawa to apply suasive pressure. Moreover, federal law can provide no civil remedies under which consumers themselves can litigate.

The federal government can be credited with the first efforts to prevent misrepresentation. Ottawa moved immediately after Confederation to provide standards for weights and measures. Legislation was also enacted to control the use of patents, copyrights, and trademarks. A third significant focus of early federal activity was standards for agricultural products.

The federal government has sustained these concerns, none of which is specifically or uniquely aimed at protecting the consumer, and has since added those articulated by consumer groups in the 1960s. The **Hazardous Products Act**, passed in 1969, allows the federal government to prohibit the sale of dangerous products, and requires warning labels on poisonous, flammable or corrosive products. Federal inspectors are empowered to seize dangerous products, but manufacturers cannot be compelled to recall them after they have been purchased. The **Consumer Packaging and Labelling Act**, passed in 1971 but not proclaimed until 1974, requires manufacturers to

supply their address, to list the ingredients contained in food products, and to show the net quantity of goods in the package. The Act prohibits "slack fill," so that container size must accurately reflect the volume of the contents. It also stipulates that pictures of the product on the container must be accurate. In 1972, the federal government enacted the **Textile Labelling Act**, which requires the fabric composition of yard goods to be shown on the label.

A second area of federal action regulates trade practices and advertising. In 1917, by amending the Criminal Code, Ottawa prohibited statements or guarantees "of the performance, efficacy or length of life" of a product, unless it was based on "an adequate or proper test" of the claim. In 1960, "materially misleading representation" about the price at which an article was usually sold was prohibited by the **Combines Investigation Act.** Because the 1917 Criminal Code provision was not being enforced by provincial attorneys-general,[1] it was added to the **Combines Investigation Act** in 1969. This empowered the Department of Consumer and Corporate Affairs to enforce these regulations.

Enforcement problems have arisen as a result of the restrictions that limit the federal government to criminal sanctions alone as a means of controlling misleading advertising. By early 1971 only 110 cases had been successfully concluded on the sections of the **Combines Investigation Act** dealing with price claims, Section 33(c). The average fine per conviction was less than $275, and court orders prohibiting further offences were obtained in only 43 per cent of convictions.[2] Although fines were higher for misrepresentations enumerated in Section 33(d), only 22 convictions were obtained in eleven years. The government was forced to proceed by proving the existence of an indictable offence, and many cases were thrown out of court on preliminary inquiry because of the heavy burden of evidence placed on the Crown.[3]

In 1976, therefore, the federal government amended the **Combines Investigation Act** to clarify its definitions of illegal practices, and the

types of "representations" which were liable to prosecution.[4] The Act prohibited representations that were "false or misleading" in any material respect, and specified that price claims, warranties, guarantees and testimonials must be accurate. Reasonable quantities of "bargain priced" goods had to be available, and the practice of "double ticketing" (selling goods at the higher of two prices marked on the product) was prohibited. "Representations" were broadly defined to include those which appeared on the container or the product itself, displays surrounding the product, statements made by sales people, and all other forms of description "available to the public."

Pyramid and referral selling schemes were also defined and prohibited by the Act, but these provisions did not apply to such schemes when "licensed or otherwise permitted by or pursuant to an Act of the legislature of a province."[5] All these offences were punishable both by summary conviction and indictable offence. Thus, the government has some flexibility in its prosecutions, and the courts have a broader range of discretion in sentencing offenders.

In 1977, further amendments were introduced which would have permitted consumer class actions and substitute actions by the Competition Policy Advocate of the Department of Consumer and Corporate Affairs. This bill did not reach second reading in the House of Commons because of resistance to some of its competition policy provisions. Similar legislation was introduced again in 1978, but was not passed before an election was called in March 1979.

The Combines Investigation Act has one other provision of special interest to consumers. Section 7 of the Act allows any six Canadians to require CCAC to investigate any practice which they believe contravenes anti-combines, business practices or misleading advertising regulations. The department must institute an investigation; if it decides that prosecution is not feasible, its reasons must be communicated to the minister. These provisions were aimed at providing citizens with a mechanism to force government action on their behalf in anti-trust matters.

Section 7 has not been much used by consumers. In the six years from fiscal 1972-73 to 1977-78, section 7 applications totalled 71. Only 42 of these were related to misleading advertising or deceptive business practices; the remaining 29 dealt with competition law.[6] Although section 7 has occasionally been used by the CAC, it has to some extent become redundant. Follow-up action is taken on all reasonable complaints received by the marketing practices branch — in 1977-78, for example, 8,087 files were opened, and 2,113 investigations were completed.[7] One hundred and thirty-eight cases were referred to the provincial attorneys-general for prosecution (as provided by Section 15), and all but 15 of these were prosecuted. The conviction rate in misleading advertising and deceptive trade practices is usually about 75 per cent. The majority of these prosecutions is launched under section 36.1 (a), which provides a general stipulation against materially false or misleading representations to the public.

In the past, the courts have been reluctant to impose heavy fines, and some businesses have been willing to pay these as an operating expense. Recently, the judiciary has responded to some extent to the social phenomenon of consumerism: fines have increased, and may now provide a powerful disincentive to potential offenders. Those shortcomings of misleading advertising legislation which remain centre on the difficulties of applying criminal sanctions, and in relying on consumer complaints to bring offences to the government's attention.

With federal enforcement powers circumscribed to some extent by the constitution, the most effective mechanisms for enforcing regulations are in the hands of the provinces. In contrast to federal powers, provincial legislation may supplement convictions with civil remedies such as the annulment of contracts, so that consumers can be at least partly recompensed, or with actual awards of costs or damages. These mechanisms are usually judged to provide more effective consumer protection than criminal law penalties.[8] For this reason, provincial regulation in these areas is desirable.

In accordance with their constitutional powers, the provinces enacted Sale of Goods Acts, derived from British law, shortly after Confederation. These were designed to ensure that goods transactions for which no written contract existed were conducted according to common presumptions. They provide so-called "implied" warranties, which must be adhered to if a transaction is to be legally binding. These include warranties of title (that the seller has the legal right to sell the goods); of possession (that such right can be legally transferred to the buyer); of description (that the goods correspond to the seller's description of them); and of sample (that the bulk goods will be identical to the sample shown to the buyer).

Until recently, Sale of Goods Acts were used infrequently as an avenue for consumer redress. They were usually replaced in consumer transactions by "express" warranties, in which the post-purchase obligations of the manufacturer or retailer were specified. Express warranties usually involve "contracting out" of implied warranties, and tend to reduce the obligations of the manufacturer or dealer by stipulating that the manufacturer is liable only for certain parts of the product (such as appliance motors), or by restricting the length of time in which the manufacturer can be held liable for defects.

Sale of Goods Acts are now being taken more seriously by the courts in consumer cases. It has now become illegal to contract out of implied warranties in several provinces. Others have included implied warranties in their consumer protection statutes. In 1979, the Ontario Supreme Court assessed damages against a manufacturer of farm machinery whose equipment could not perform as specified in a sales brochure. This was the first time that a Canadian court "had held a manufacturer liable when no contract existed with the purchaser, or negligence [by the manufacturer] was not proved."[9]

Although the provinces were slower to respond to demands by consumer groups for misleading advertising and deceptive trade practices legislation, the provinces are now very active in the fields of product

standards, warranties, trade practices, and misleading advertising. Omnibus consumer legislation was first enacted in Ontario, with its Business Practices Act in 1974. British Columbia followed suit the same year, and Alberta's Unfair Trade Practices Act was proclaimed in 1975. Most other provinces have since enacted trade practices statutes, all of which include prohibitions against misleading advertising. Business practices legislation is clearly a response to complaints by consumer groups about specific problems.

Misleading advertising statutes were cited as a "critical legislative vacuum" by the Canadian Consumer Council, a federal advisory body, in 1971.[10] Present provincial legislation, enacted in the mid-1970s, is extensive, more specific, and often better enforced than federal measures. Some provinces have regulated mass advertising extensively. In British Columbia, for example, it is illegal to publish an advertisement in which the full price of a product is displayed in less prominent type than that showing the monthly payment or the down payment. In some provinces automobile dealers must be registered and must identify themselves in both display and classified advertising so that they cannot represent themselves as private sellers.

Trade practices statutes usually have two central goals. First, they require that information about a product which promotes sales must be truthful. They generally include specific references to testimonials about the product and the seller, the price and quality of the goods, whether the goods are new or used, and the reasons for the sale of goods at "special" prices (for example, "fire" or "bankruptcy" sales). These provision are typically extended to cover sellers of services such as repairs to homes, appliances, and automobiles. All these, therefore, supplement and extend federal laws. Second, provinces regulate or prohibit certain sales techniques, often including pyramid, referral, and negative option schemes. High pressure sales techniques may be circumvented by consumers under the terms of a "cooling off" provision, where consumers can cancel credit purchases concluded in the home within a period ranging from two days to ten days, depending on the province.

In 1976, Ronald Cohen and Jacob Ziegel identified British Columbia as the most forceful province in the prosecution of trade practices infractions. Manitoba and Quebec were not far behind, but Saskatchewan and the Atlantic provinces were termed "relatively tranquil." Ontario's enforcement activity was judged "modest."[11] The result, according to Cohen and Ziegel, was

> a clear variation in the type and level of activity across the country. The result is that not all of Canada's consumers are being protected to the same extent . . .[12]

Differences between provincial regulations result from the emphasis that governments place on the various sub-fields of consumer law and enforcement efforts. For example, British Columbia has paid special attention to regulations on mass advertising; Saskatchewan has focused on consumer warranties. In British Columbia and Ontario, contracts are automatically void if trade practices statutes are contravened, while the Alberta act requires separate court action for private remedy. Also, British Columbia's statute permits the Director of Trade Practices to initiate substitute actions and class action suits, and permits class action suits by consumers. These are not permitted in most provinces.[13]

Such uniformity of laws as exists results from close interprovincial cooperation and the cross-drafting of provincial statutes. Interview data suggest that cooperation among provincial officials is widespread. Problems with legislation in one jurisdiction are often brought to the attention of other provinces' officials, so that legislation can be corrected in other jurisdictions. The help provided by other governments, or the use of other provinces' laws as models, is often acknowledged by provincial governments. For example, a White Paper accompanying Saskatchewan's Trade Practices Act noted that the act had been "patterned on" the Ontario, British Columbia, and Alberta laws.[14]

Overall, the provinces have responded more comprehensively to consumer demands than has the federal government, although provincial actions often followed federal initiatives. Provincial statutes are more specific in identifying offences, provide wider scope for enforcement, and permit consumer remedies and criminal penalties to be applied simultaneously.[15]

Administrative and civil law techniques are widely used, providing needed flexibility for government and consumers alike. Civil law remedies are available under which consumers can initiate their own litigation. Provincial consumer affairs departments, as noted earlier, normally have a legislated mandate to provide information and education services.

Relations between Ottawa and the provinces should be assessed at both the enforcement and policy-making levels. At the administrative level, bureaucrats are faced with problems of overlapping or duplicative statutes -- it is common for federal and provincial officials to receive complaints about the same offence. This problem has been circumvented by devolving prosecutions of industry-wide or trans-provincial matters to the federal government, while provincial officials handle complaints and prosecutions on single consumer transactions, the activities of local firms, and so on. Care is taken that investigation and prosecution of an offence is not undertaken by both levels of government. Sometimes, legal criteria, such as the probability of conviction, determine whether offenders are prosecuted under federal or provincal laws. These decisions are typically informal and routine, furthered by shared professional standards among the lawyers, investigators, and economists charged with enforcing the statutes. Standard legal benchmarks are used at both levels. Officials appear more committed to protecting the consumer in the most effective manner than to augmenting their own role, or the role of their branch of the bureaucracy. There is little evidence of the type of friction that Alan Cairns has identified as typical of expanding bureaucracies.[16]

Both governments generally have avoided political conflicts in this area. The quick withdrawal of some federal legislative initiatives has allowed administrative relationships to flourish without being hampered by conflicts at the political level. For example, until December 1978, the province of Ontario had a statute regulating pyramid selling. In order to eradicate pyramiding, the province repealed its legislation, which brought section 36.3 of the Combines Investigation Act into force and outlawed the practice.[17] Relationships among officials could be strained by unproductive

and disharmonious ministerial meetings, but fortunately for consumers this has not generally been the case.

Observers of Canadian federalism will recognize that this sort of cooperation is not typical of intergovernmental relations in Canada, or of the competition between Ottawa and the provinces to supply citizens with services. In a way, this field has provided the governments with a unique opportunity for cooperation. Traditionally, governments have tended to view the consumer protection fields described in this chapter as ones in which political benefits were inexpensive, and where symbolic action alone could help foster citizen loyalties to the government of the day. For these reasons, ministers and senior officials are often prominently featured in press releases announcing prosecutions of offenders in the business community.[18] Sharing political credit is another area where harmony tends to prevail, because different offences are prosecuted by each level of government, and because plenty of offences are available to give each some credit for vigilance on behalf of consumers.

Perhaps the most important reason for this harmony is that misleading advertising and deceptive trade practices statutes are of limited economic significance. At both levels, they apply to single consumer transactions or advertisements, and it is small firms which usually succumb to the temptation to break these laws. Canada's major retailers have satisfactory operating policies, and hence marketing practices legislation has had little effect on them.

In contrast, the passage and administration of legislation that affects government powers to regulate more significant economic or financial activity has notably lacked such a close and harmonious working relationship. This includes competition policy initiatives which directly regulate the affairs of large firms, consumer credit, the subject of the next chapter, and the rationalization of enforcement efforts. The last area became significant in 1977, when the federal government issued a position paper proposing statutory rationalization of efforts in the trade practices field.[19] It suggested that Ottawa concentrate on prosecuting

trans-provincial offences, and that administrative and civil law mechanisms be included in Ottawa's enforcement arsenal. At a ministers' meeting in July 1977, the provinces, led by British Columbia, emphatically rejected the proposals. The provinces had just finished a battle against a federal bill which they viewed as a massive intrusion into provincial jurisdiction over consumer credit (see Chapter IV), and categorically refused to discuss moves to create federally administered civil remedies for trade practices. Ottawa elected not to pursue the matter, and subsequent discussions at that meeting were amicable. Most participants felt that the meeting was "very positive" in overall tone.

The same conflict occurred when the federal government considered the addition of civil remedies, such as the annulment of contracts, to the Combines Investigation Act. Such action was recommended to Ottawa in the 1976 Trebilcock study.[20] There was doubt about whether this could be justified under the federal "trade and commerce" power,[21] and even if it could be, the provinces objected strenuously, labelling the move an intrusion into provincial jurisdiction. The reaction of the Western Premiers' Task Force on Constitutional Trends to federal proposals to establish a joint "technical committee" to study the matter was representative:

> The federal intentions are viewed . . . as an example of Ottawa's apparent compulsion to have a federal presence in all areas of commercial and economic regulation regardless of established provincial legislation and activity.[22]

Federal plans have been shelved, mostly as a result of the events described in the next chapter.

Significant shortcomings in governments' consumer protection efforts remain. First, a number of problems arise from the division of powers. As already noted, the federal government must rely on criminal proceedings. The necessity of criminal conviction limits Ottawa's ability to stop a deceptive practice. Investigations must be very thorough, and then referred to the Attorney General for prosecution, which can cause delays during which offenders can continue to deceive consumers.

Judicial review of consumer law sometimes takes officials by surprise. In December 1979, for example, the Supreme Court ruled that Ottawa's jurisdiction did not extend to the regulation of so-called "legal recipes" of food products, in this case, defining required ingredient proportions under which beer could be advertised as "light" beer.[23] Over 300 of these legal recipes have been enacted since 1953, under the authority of the Food and Drugs Act. In April 1980, Consumer and Corporate Affairs reluctantly withdrew charges against 57 Ontario food stores for selling ground beef containing pork in violation of the federal standard. Jacob Ziegel, commenting on the role of judicial review, noted that the federal government had been "seriously shackled" by the light beer case.[24]

Second, governments at both levels rely on consumer complaints to bring problem areas to their attention. As a result, there is a direct correlation between important complaint areas and the specific practices mentioned in provincial consumer protection statutes. This leaves many potential problem areas as yet unaddressed by legislation. For example, the federal government conducts no "regular policing of store weighing facilities";[25] yet the provinces lack the constitutional authority to perform this function since "weights and measures" are specifically part of federal jurisdiction. The absence of a regular inspection program at both levels of government is a major shortcoming that the federal government seems unwilling to respond to, and to which the provincial governments cannot.

Third, although both levels of government have tried to inform the consumers of their rights, consumers remain ignorant of their legal protection. In a 1978 survey of 956 respondents conducted by Ontario's Ministry of Consumer and Commercial Relations, 62 per cent could not identify a single consumer protection law.[26] Only four per cent knew that a consumer protection bureau existed. Generally, consumers are confused about which level of government they should address to get action on individual complaints. This problem is exacerbated by the fragmentation of consumer protection measures among various departments of government, as in the case of food and drugs. In interviews, bureaucrats and consumer

representatives alike claimed that consumers were confused by concurrency, and unsure about "who did what" in Canada. Quick referral of clients to the proper agency, however, is an important objective of consumer services personnel at both levels. In some provinces, joint information programs have been undertaken -- pamphlets list the activities of both governments in the consumer field.

Concurrency in the field of trade practices has produced generally positive results. Most of the criticisms of government inaction by consumer groups have been addressed, although more effective enforcement is needed in several areas. But this optimistic appraisal must be tempered somewhat. There are difficulties created by the constitutional division of jurisdiction. For example, the presence of federal statutes on misrepresentation may have delayed the enactment of provincial measures. Ottawa's practice of including consumer protection measures in omnibus amendments to the Combines Investigation Act has also decreased the likelihood that federal legislation could be amended to allow for better enforcement. With the heightened sensitivity to the constitutional division of powers, though, it is unlikely that the level of close intergovernmental cooperation displayed in areas of lower priority will be extended in the future. This may make further advancements in consumer protection increasingly complex and difficult.

4 CONSUMER CREDIT AND CANADIAN FEDERALISM

So far, we have dealt mainly with consumer protection in the delivery of goods. This chapter explores the regulation and control of the consumer's most important service: credit. Credit is the grease which lubricates Canada's wheels of commerce. Our consumer economy, at the manufacturing, wholesaling, and retailing levels, is based on the use of credit by virtually every adult Canadian. Consider, for example, that outstanding consumer credit in 1981 totaled about $49.2 billion, and was increasing by about 15 per cent per year through the 1970s. This rapid growth in consumer credit increased per capita debt from $270 in 1961 to $1,090 by 1981 (constant dollars). This moved consumer credit, as a percentage of total debt, from 6.6 per cent in 1961 through 7.7 per cent in 1971 to 7.5 per cent in 1981.[1]

Table I provides a breakdown of the major holders of consumer credit in Canada 1981.

As one can see from the following table, chartered bank loan balances grew most rapidly in the twenty-year period 1961 to 1981. Small loans by sales, finance and consumer loan companies was the only category which showed a drop in its percentage of outstanding balances. This drop reflects a long-term trend, and is an important consequence of public policy, as we shall see.

TABLE I

OUTSTANDING CONSUMER CREDIT
1961 and 1981
BY INSTITUTION (Current Dollars)

HOLDER	AMOUNT (billions) 1961		1981	
Chartered banks	$1.02	(23.8%)	$31.8	(65.5%)
Sales, Finance, and Consumer Loans Companies	$1.34	(31.2%)	$4.9	(9.1%)
Life Insurance Companies	$0.37	(8.6%)	$2.6	(5.3%)
Near banks*	$0.46	(10.6%)	$8.1	(16.4%)
Other	$1.11	(25.8%)	$1.8	(3.7%)
Total	$4.3		$49.2	

*Near banks include credit unions, caisse populaires, trust companies, mortgage and loan companies, and Quebec Savings Banks.

Source: Statistics Canada, **Canadian Statistical Review**, 58, no. 2 (1983), xii.

There are basically three types of consumer credit in Canada: cash loans, "revolving" (variable) credit, and mortgages. Simple cash loans may be secured by collateral, depending on the ability of the borrower to meet his obligations. Mortgage loans are cash loans, usually used to pay for housing, which are secured by real estate. Mortgage loans generally carry a lower rate of interest than unsecured loans.

"Revolving" credit has traditionally been used by department stores and other retail establishments, but now reflects the entrance of the chartered banks' credit cards, Chargex-Visa and Mastercharge. According to a poll published in January 1979, 61 per cent of adult Canadians use at least one credit card. Forty-five per cent use three or more cards.[2] Bank credit cards alone "will account for $5 billion in merchandise and cash advances" in 1979.[3] Sales of bank cards, primarily Chargex-Visa and Mastercharge, are growing by about 33 per cent per year, according to an official of the Canadian Bank Card Association.[4] By 1981, this impressive growth rate had given Canadians 23 million cards for a population of 24.3 million, the highest per capita holdings in the world.[5] Under the terms of revolving accounts, customers may pay their bill on a monthly basis without charge. If they elect to make partial payment, they are charged interest at an agreed-upon rate.

Merchants pay a (usually nominal) fee to join a bank card scheme. They agree to honour the card, and in return receive payment for merchandise from the bank, which then bills the customer. The bank retains a small percentage of the merchant's bank card sales, usually dependent on his volume. For the merchant, the main advantages of bank cards are boosted sales, by making it easier for consumers to purchase goods, and the reduced administrative burden and risks involved in operating their own credit systems.

A fourth type of consumer credit in Canada accounts for a marginal share of the loan market. In most major cities, "loan sharks" exist from whom customers borrow funds. Loan sharks are generally found in the criminal community, but the people who borrow from them are not. According to a study conducted by Montreal police, 80 per cent of loan shark customers are low-income Canadians who cannot obtain credit from legitimate sources.[6] In loansharking, small loans are repayable on a weekly basis, usually at the rate of six dollars for every five dollars loaned or outstanding, or 1,310,462 per cent per year!

Provincial unconscionable transaction relief legislation includes civil remedies against loansharking. But since the onus is on borrowers to apply to the courts to have interest rates adjusted, no loan shark case has ever come before a Canadian court on the basis of interest rate alone. Prosecutions occur only when criminal methods are used to collect outstanding debts. Since most loan sharks rely on threats, rather than actual physical violence, complaints and prosecutions are rare indeed. Loansharking, however, is a problem which cannot be solved by credit regulation. Some citizens, because of their economic circumstances, are simply unable to obtain credit from legitimate sources.

Before discussing what Canadian governments have done in the credit field, it is useful to consider exactly what goals government policy might pursue. First, in an economy based on credit, policy should encourage efficient credit markets. This can be accomplished either by direct regulation of interest rates, or indirectly, by encouraging competition among lenders, so that interest rates operate according to the laws of the market. Full disclosure of the cost of borrowing is a prerequisite to both methods. Disclosure both forces lending institutions to compete with one another for the consumer dollar, and allows the consumer to make rational borrowing decisions.

Second, government policy should avoid distorting credit markets through discriminatory regulations on certain types of loans. In Canada, several sorts of lending institutions have evolved, each catering to different consumer needs. Accordingly, one policy goal should be to encourage differentiation among such institutions, so that consumers can choose the most appropriate credit services. And, of course, very significant financial interests can be affected by consumer credit policy.

Third, policy should help ensure that credit records are accurate, private, and accessible to the consumer for correction purposes. Collection methods should be equitable and reasonable.

Finally, policy should protect the consumer from self-inflicted abuse of credit. Personal bankruptcies in Canada have increased from less than 1,500 in 1968 to just under 32,000 in fiscal 1982.[7] Consumer activists trace the reasons for this alarming increase to poor money management, indiscriminate use of credit cards, and rapid increases in the costs of living.[8]

A wide array of instruments can be used to implement credit policies. These include criminal penalties, voluntary compliance arrangements with institutions, and even, in some cases, "deregulation." Policy can be enforced by administrative or judicial means.

Consumer credit, like trade practices, is a field of concurrent jurisdiction. In the British North America Act, federal jurisdiction includes "banking," "interest," and "bankruptcy and insolvency." However, since borrowing involves contractual obligations, ("property and civil rights"), provinces can also enter the consumer credit field. On this basis, both the federal and provincial governments have defined "the costs of a loan" in their statutes. In both cases, this includes "interest." For example, the federal Small Loans Act defined the cost of a loan as interest, and

> discount, deduction from an advance, commission, brokerage, chattel mortgage and recording fees, fines, penalties or charges for inquiries, defaults or renewals or otherwise . . .[9]

The British Columbia Consumer Protection Act defines the "cost of borrowing" as "the amount by which the total sum that a borrower is required to pay . . . exceeds the principal sum."[10] The Ontario Unconscionable Transactions Relief Act includes "interest, discount, subscription, premium, dues, bonus, commission, brokerage fees and charges . . ."[11]

The courts have upheld concurrent legislation. Ontario's **Unconscionable** Relief Act was tested in the Supreme Court in 1963 to determine if the province had the constitutional authority to regulate the "cost of a loan,"

since that cost included "interest." In the Barfried Enterprises case,[12] the Act was upheld on the grounds that the regulation of contract was the predominant aspect of the act. The justices held that "interest," defined as a cost which accrues "day to day," was only part of the charges which had been found unconscionable by a lower court. According to Louis Romero, the Barfried decision "appears to give constitutional validity to provincial Acts dealing with the disclosure of the cost of consumer credit."[13]

The court's decision in the Barfried case generated doubts about the constitutionality of federal legislation, and the federal definition of the "cost of a loan" in the Interest Act and the Small Loans Act.[14] This uncertainty was resolved in 1976 by the Tomell Investments case,[15] which tested Section 8 of the Interest Act. Section 8 was upheld under the "ancillary" doctrine -- defining the cost of a loan as more than interest was a "necessarily incidental" action to regulate something (interest) already under federal jurisdiction. Mr. Justice Pigeon, writing for the court, noted that it would have been futile for Ottawa to restrict interest if lenders could attach unregulated costs elsewhere in loan contracts.

There are three major federal statutes in the field of credit regulation: the Small Loans Act, the Interest Act, and the Bank Act. The Pawnbrokers Act also refers to interest and credit. The first two of these statutes produce serious distortions in credit markets, and also fail to provide effective consumer protection. The Small Loans Act and the Interest Act apply to only a small fraction of the consumer loan market. The former places a ceiling on interest rates on loans under $1,500. All those who lend amounts of money under $1,500, and who charge interest, must be licensed. Violators of the act are subject to summary conviction, and fines not exceeding $1,000. The Interest Act provides for disclosure of mortgage rates to borrowers and sets a ceiling on prepayment penalties for mortgage contracts of more than five years' duration. It requires that the contractual rate be adhered to by contracting parties. The Act allows a borrower to prepay a mortgage loan at any time after the fifth year subject only to a small prepayment penalty. It has led to the almost complete

exclusion of mortgage contracts of more than five years' duration. Thus the consumer cannot take advantage of prepayment ceilings; in effect, lenders have evaded the consequences of prepayment rights stipulated in the Act. The Interest Act has not been amended since 1917.

Regulations pursuant to the **Bank Act** provide standards of disclosure of the cost of bank loans to borrowers. Chartered banks in Canada have argued that the **Small Loans** Act, the Interest Act, and various provincial consumer protection statutes do not apply to them, although in some instances they have voluntarily agreed to comply with the wishes of provincial policy makers. Responsibility for bank credit rests with Canada's Inspector-General of Banks, an official of the Department of Finance, who has traditionally been concerned for the most part with the solvency of chartered banks.

The federal regulations have determined the structure of the consumer credit market. As noted earlier, small loans have rapidly decreased as a proportion of outstanding credit. Lenders have found it unprofitable to grant consumer loans of less than $1,500 because of interest rate ceilings. To avoid ceilings, consumers have been encouraged to borrow larger amounts. As well, most consumers find themselves in the market for larger loans in order to purchase "high ticket" items such as automobiles. Thirteen years ago, the Canadian Consumer Council recommended that the **Small Loans Act** rates be revised, and applied to loans of up to $7,500.[16]

The exclusion of chartered banks from the provisions of the **Small Loans** Act has given them a substantial competitive advantage in some lending markets, because small loans are unprofitable, and because of restrictions on the lending rates of trust companies, credit unions and **caisse** populaires. But as one federal official pointed out, the reluctance of banks to service the higher risk market, due mostly to considerations of public image, has severely restricted the access of high-risk borrowers to low cost loans. In spite of these shortcomings, the **Small Loans Act** was not amended between 1956 and its repeal in 1980. Less stringently

regulated lending activity has placed the banks in an advantageous position in competing with non-banks.

The provinces have enacted unconscionable transaction relief legislation which provides judicial remedies for harsh lending transactions. The Ontario statute[17] is typical of these laws. Borrowers may appeal to a court to reopen a transaction, adjudicate the interest rate, and if necessary, order the lender to reimburse the borrower. These acts, as mentioned earlier, provide an inclusive definition of the "cost of a loan." Consumers seldom use this legislation. According to testimony by the Government of Saskatchewan before the Commons Committee on Health, Welfare, and Social Affairs in March 1977,[18] only 12 unconscionable transaction cases have come before Canadian courts since the early post-Confederation period. Apparently, consumers who enter into harsh transactions are unlikely to pursue civil remedies in court. In this case, the means of implementation (through individual civil suits) thwarts the intention of the policy.

In the past few years, however, the provinces have taken a more active role in the field of consumer credit. Provincial business practices statutes are now much more important in regulating borrowing and lending than earlier laws attempting to provide relief from unconscionable transactions. Business practices laws require disclosure of lending rates to consumers, and generally have a wide application. Normally, they provide a formula for arriving at the cost of a loan, and insist that this cost be expressed to the borrower both in an annual percentage rate and in dollar terms. Prepayment provisions are stipulated. Often, the only security which may be required by the lender are the goods purchased.

Provincial legislation has been designed specifically to serve the consumer, and commonly provides both criminal penalties and civil remedies. The role of the judiciary in assessing contracts is much more extensive in provincial law than in federal statutes. All provinces have legislated "cooling off" periods during which credit contracts concluded in the home may be rescinded without penalty. Cooling off periods, which vary from two

to ten days depending on the province, help protect the consumer from high pressure sales and resultant debt.

Levels of credit regulation are remarkably uniform across provincial boundaries. Although Nova Scotia enacted its consumer protection statute in 1965, and British Columbia did not follow suit until 1974, the provinces are keenly aware of each other's activities. As in other fields, acts are sometimes copied almost verbatim. The amendment process performed by one province to tighten loopholes is reflected in statutes drafted by others. As in the case of the consumer protection laws described in the previous chapter, cross-drafting is a common phenomenon.

There is variation from province to province, of course. Some provinces have extended credit protection beyond these commonly held provisions. Manitoba, for example, provides that in the event of non-payment, the lenders must choose between seizing goods or suing the borrower for payment. Ontario limits seizures of wages (or "garnishee") in consumer transactions. Some provinces will not permit an increased rate in revolving credit to apply to previous purchases. Others prohibit seizure of goods if they are more than two-thirds paid for.

FEDERAL - PROVINCIAL INTERACTION IN CONSUMER CREDIT REGULATION

How do Ottawa and the provinces interact in the field of credit regulation? Because credit policy affects the nation's economic structure, the cooperation noted in consumer policy is not displayed in credit policy. The lending activities of trust companies, credit unions, and caisse populaires are regulated by provincial statute. The provinces have zealously protected their control. Interest rates and mortgage terms have been set so as to avoid the need for federal regulation ceilings under the Small Loans Act or the Interest Act. Federal officials believe that this has been done specifically to avoid regulation of these institutions by the federal government. By the same token, however, the federal Department of Finance has strongly resisted the application of provincial statutes to chartered banks.

Despite these differences, between 1974 and 1976 there was a gradual increase in consultation among governments. Because the provinces and the federal government pursued different goals during this period, policy conflicts were minimal, and relations were amicable. One major example of joint action before 1976 was the elimination of "holder in due course" provisions from promissory notes granted by sales, finance companies, and chartered banks. In purchasing goods, the buyer would sign a contract to repay a financial institution, which would then pay the retailer on his behalf. Typically, the institution would also pay the retailer a premium, since it would earn interest from the purchaser. Consumers who used these contracts were liable for payment whether or not the goods were faulty, or had been misrepresented. In Canadian law, the obligation to pay the finance company or bank was held to be separate from the purchase contract.

The provinces viewed the removal of financial liability in these cases as a necessary step in consumer protection policy. They were unable to regulate financial institutions under their control without Ottawa's cooperation in applying similar regulations to the chartered banks, because to do so would upset competition. In 1971, after negotiations, provincial consumer protection statutes and the federal Bills of Exchange Act were simultaneously amended to prohibit so-called "cut-off" clauses in consumer purchase contracts.

The provinces, as noted earlier, were first to enter the credit field from a consumer protection perspective. Over time, provincial legislation was tightened, loopholes were removed, and protection was extended. By contrast, and in spite of repeated calls for the reform of federal legislation both from consumer groups and the financial community, consumer credit legislation by the federal government was almost non-existent until 1976.

The federal government's reticence disappeared with the introduction of Bill C-16, the Borrowers and Depositors Protection Act (BDPA), in 1976. This action began a protracted federal-provincial dispute which is significant for several reasons. First, and most importantly, it

illustrates the nature and scope of "province building," and the growth of political and economic power at the provincial level. It shows how some interests are "frozen out" of the process of intergovernmental policy-making. Finally, the BDPA episode also attests to the magnitude of differences between Ottawa and the provinces in their economic policy objectives.

Bill C-16 was drafted to correct the market imbalances noted earlier. The legislation sought to encourage competition among lenders by repealing the Small Loans Act and the Interest Act. Cost ceilings on loans were to be removed, so that lending institutions could undertake the risk of loaning small amounts to low-income, high-risk consumers. As well, the BDPA moved against harsh transactions by stipulating an "unwarranted rate." This was to be defined by the courts after consideration of the circumstances on the borrower; thus the BDPA supplemented and strengthened some features of provincial unconscionability statutes. An interest rate ceiling, above which lenders would be liable to criminal penalty, was to be stipulated in regulations pursuant to the BDPA. This, in effect, would make loansharking a criminal matter.

As well, consumers were to be provided with uniform "truth in lending" provisions for all loans from all types of lending institutions. Thus, Bill C-16 duplicated provincial "truth in lending" statutes by requiring lenders to fully disclose information to borrowers, and by protecting them from misleading lending practices. Loan costs, defined inclusively, were to be expressed in an annual percentage rate. Borrowers were guaranteed a copy of their agreement. Advertisers of credit were required to disclose the cost of loans. Prepayment penalties were strictly limited or abolished, depending on the type of loan.

Most significantly, uniform standards in the regulation of credit across Canada were to be imposed. The BDPA was to apply to all lending institutions in the country, regardless of their previous control by one or the other level of government.

The means by which the Act was to be implemented and enforced varied. The unwarranted rate, as noted above, was to be assessed through civil litigation. In contrast to provincial legislation, however, the onus was placed on the lender to show that the rate was warranted. Under Bill C-16, borrowers could stop making payments on the grounds that they believed the transaction was unduly harsh: the lender was then forced to justify his rate in court to collect the debt.

An Administrator was to be appointed by the Minister of Consumer and Coporate Affairs. This official was to be charged with enforcing the Act, compiling information on credit transactions, and maintaining a registry of Canadian lending institutions. The Administrator was armed with broad powers of audit and inspection in order to carry out these duties.

Several provisions of Bill C-16 were criticized for being impractical. Some would be very costly for some institutions to implement, such as that requiring a daily calculation of depositors' interest, which requires the use of computers. The original Act also could be construed as calling for a very large regulatory agency for retail credit licensing -- almost every retail establishment in Canada now grants some form of credit, and would have required a licence under the Act.

The Standing Committee heard testimony, or received briefs, from representatives of every major lending institution in Canada. Retailers and advertisers sent their delegates. The Canadian Labour Congress and the Canadian Bar Association presented briefs. Two consumer groups, the Consumers' Association and the National Anti-Poverty Organization, also made presentations. The ministers responsible for consumer protection in the provinces of Alberta, Saskatchewan and Ontario appeared before the Committee, and others transmitted their objections to the BDPA in the form of letters or written briefs. Submissions from business, consumers, and provincial governments criticized the lack of consultation between interest groups and the government. It became very clear that these groups had come to expect to be consulted about forthcoming legislation which affected them.

Objections to the BDPA may be grouped according to their source: business interests, consumer groups, and provincial governments. Some of the objections that were voiced, of course, came from more than one source; for example, problems of legislative duplication and confusion were cited by almost every participant in the Committee hearings.

Business interests resented the level of regulation of their activities by the federal government. They disliked being regulated by the same legislation which prohibited a criminal activity (loansharking), and recommended that the criminal loan rate form part of the Criminal Code. The government of Newfoundland and the Consumers' Association echoed this view, but for different reasons. Some deposit institutions claimed that daily calculation of depositors' interest would be a financial and administrative hardship. All lending institutions strongly protested against the government placing the burden of proof upon the lender in unwarranted rate questions, and predicted frivolous litigation by consumers trying to escape their obligations. Some felt that the role of the courts in this matter was too extensive.[19]

Retailers, advertisers, and broadcasters objected to requirements that advertisements mentioning credit had to include details of the cost of credit. They argued that Bill C-16 would prevent retailers and restaurant owners from indicating that credit cards could be used in their establishments. Broadcasters claimed that credit terms were often too complex to include in a 30 or 60-second advertisement. Most business groups also noted that provincial regulations over credit advertising already applied to them.

Arguments were raised that the BDPA's Administrator had too much power, and that too many of the Act's provisions remained as unknown regulations, yet to be imposed by the Minister of Consumer and Corporate Affairs. Important subjects were left to ministerial discretion.

The Consumers' Association of Canada was joined by the National Anti-Poverty Organization and the Canadian Labour Congress in presenting

the consumers' case to the Standing Committee. In contrast to the objections of financial and business interests, these groups argued that, although they welcomed the BDPA as "long overdue," it was too "soft" on lenders. For example, the CAC brief applauded the truth in lending provisions of the Act, and its strengthening of consumers' prepayment rights.[20] It opposed the removal of small loan rate ceilings, and argued that interest on loans of up to $7,500 should be directly regulated.[21] Licensing requirements, which had been deleted by the government before the CAC presented its brief, were another source of CAC objection.[22] The Association also argued that remedies for abuses of the act were not strong enough, and suggested that substitute actions and class actions be added.[23] It pressed for more extensive prepayment rights, liability restrictions for credit card holders, and a general "bill of rights" for users of revolving credit, including quick credit for returned goods, relief from billing errors, and rapid mail-out of credit card statements.[24] In contrast to many of the business representatives, consumer groups wanted the Bill to become law. At no time did they press for its withdrawal. Unlike the provinces, they were concerned with the substance of the Bill, and were much less concerned with its implications for federalism.

Broadly speaking, the provinces also felt that the Bill was too soft. The questions of substance were quickly overlooked, though, when objections to federal style became much more significant. The provinces objected to the BDPA on the grounds that its contents were an intrusion into provincial fields. Their protests were exacerbated by the rather insensitive manner in which the federal government proceeded with the BDPA. Some measure of friction already existed over the Bankruptcy Act and the Orderly Payment of Debts Act. Negotiations were also taking place on the regulation of electronic funds transfers and the decennial revision of the Bank Act, both of which remained as unresolved issues. It was in this context that a draft of Bill C-16, after receiving approval from the federal cabinet and being placed on the legislative agenda for the fall of 1976, was tabled at a meeting of ministers of consumer affairs in Toronto in February 1976.

Provincial objections were immediate -- in the words of one participant, it was "open warfare". That summer, deputy ministers met in Ottawa to

discuss the BDPA, but no agreement was reached. Provincial officials had been faced with digesting a very large and very broad piece of legislation in a short time. Their complaints centred on the lack of "meaningful" consultation on Bill C-16, and on the lack of time provided by the federal government for studies of the implication of the BDPA in the provinces. Privately, provincial officials were concerned that the bill was to be rushed into law because it was part of a federal "master plan" to diminish provincial powers, the result of the political ambitions of a new minister.

This may, in retrospect, have been the federal government strategy. Bill C-16 was a major federal economic policy initiative, and a significant step into areas at least partially occupied by the provinces. It may have been designed as a precursor to further federal efforts to formulate national economic policy unilaterally. It was developed when Michael Pitfield was Deputy Minister of the Department of Consumer and Corporate Affairs, and at a time when federal legislation tended to be upheld by the Supreme Court of Canada.

Alberta, Saskatchewan and Ontario were represented at the hearings by their ministers of consumer affairs, accompanied by senior officials. Ed Whelan, Saskatchewan's Minister, termed the Bill's duplication a "step backwards" [25] and an "invasion of provincial jurisdiction."[26] He noted that the BDPA overlapped at least four provincial consumer protection statutes dealing with disclosure, collection methods, unconscionable transactions and credit unions. Saskatchewan was opposed to any prepayment penalties.

The Ontario government, represented by Minister of Consumer and Commercial Relations Sidney Handleman, spoke specifically to the issue of federal-provincial consultation.[27] He claimed that Ontario had not been properly consulted, and had been forced to "inject" itself into the policy-making process surrounding the Act; he argued that Bill C-16, as presented to the House of Commons, differed substantially from that discussed at joint meetings. The Minister expressed a willingness on the part of the Ontario government to vacate certain portions of the field, but suggested that this would have to be negotiated. Handleman also argued

that the BDPA duplicated Ontario consumer legislation and would confuse consumers, as well as lead to litigation on constitutional grounds.

Graham L. Harle, the Minister of Consumer and Corporate Affairs in Alberta, claimed that although meetings had taken place between officials for almost two years preceding the introduction of the BDPA, these had

> suggest[ed] a somewhat forceful and established federal position rather than a real dialogue. The impression was created that the federal position was irrevocably predetermined and so the dialogue . . . was ineffective.[28]

Alberta specifically objected to federal regulation of its Treasury Branches, which are government-operated lending institutions.[29]

It was clearly the inadequacy of joint consultation which most upset the Government of Ontario. According to its written brief:

> The federal government in this case has fostered the image of consultation with the provinces without any real will to enter into dialogue. It was only after Ontario and other provinces insisted strenuously on participation that any attempt was made to examine the ramifications of the bill. Even then the federal officials did not address themselves to many of the serious issues.[30]

The Province of Newfoundland sent a letter in which it expressed "grave reservations" about Bill C-16.[31] It also saw "serious problems of overlapping and duplication with provincial legislation . . ."[32] A.J. MacDonald, Provincial Secretary in Prince Edward Island, informed the Standing Committee by letter that his government was also concerned about duplication of provincial statutes.[33]

Provincial responses to the Bill were not limited to appearances before the Standing Committee. In December 1976, Alberta hosted a meeting of provincial ministers in Edmonton. Federal Minister Anthony Abbott was invited to a dinner which followed provincial discussions, and Abbott's generally conciliatory stance was welcomed by the provinces. Federal and provincial deputy ministers met in Toronto in May 1977. Agreement was

reached that some sort of consultative machinery was necessary, and should be proposed to consumer ministers.

Also in May 1977, the Western Premiers' Task Force on Constitutional Trends released its first **Report** to the Western Premiers' Conference in Regina. Of the **Borrowers and Depositors Protection Act**, it said:

> The Task Force expressed concern that this legislation could lead to a considerable dislocation of provincial mortgage legislation, trade practices, and consumer credit legislation. . . . conflicting federal and provincial legislation will exist and there is a strong possibility that constitutional litigation will occur. The Task Force suggested that the whole question be reassessed . . . and that provincial representation requesting that no action be taken without further federal-provincal consultation should be submitted.[34]

The Task Force began its list of provincial concerns in the consumer protection field with Bill C-16. It cited regulation of provincally regulated institutions by the federal government as its most important objection.[35]

In response to this hammering, the federal government prepared to move more than seventy amendments to the bill. None of these detracted from its major purposes, although some of its more stringent implications were softened. Publishers who accepted credit advertisements "in the normal course of business" would not be liable, under the revised version of the Bill, for penalties when advertisements excluded the required information on credit rates. (This parallels the so-called "publisher's exemption" in misleading advertising statutes). Payments were to be credited to a customer's account at such time as they were received by the lender and converted into cash, rather than on the date of mailing as the original bill proposed. The office of Administrator was dropped.

Notwithstanding provincial objections, the BDPA was introduced into the House of Commons on October 27, 1976. It was referred to the Standing Committee on Health and Welfare on November 4, and remained in committee until the expiry of the legislative session the following June. The bill

has not been reintroduced. It is difficult to determine the extent to which the government was determined to enact the BDPA--and therefore the effect of provincial protests -- since by the time the Committee began to consider formal amendments, the House was about to adjourn for the summer.

In July 1977, following the BDPA's death on the order paper, federal and provincial ministers met in Montebello, Quebec. In what was described as a "very positive" atmosphere, three task forces were established: on legislative programs, automobile corrosion, and consumer credit.[36] The ministers met again in March 1978. The participants expressed satisfaction with the task force mechanism, and with the work accomplished by officials. The task force approach was viewed both as a policy development mechanism and as a communication route between governments.

Generally good relations were marred somewhat by the release of the Western Premiers' Task Force's Second Report in April 1978. The Task Force noted that although "some effort had been made by the federal government to address provincial concerns, the provinces are concerned that this area [consumer protection] still has the greatest potential for subtle federal intrusion into areas within the provincial sphere."[37] On the BDPA, the Task Force noted that Ottawa had decided that parts of the Act "which are in conflict and which overlap into the provincal area will not be proclaimed without the province specifically requesting it."[38]

At the 19th Annual Premiers' Conference, held in August 1978 in Regina, the premiers issued a joint communique calling for "immediate action to lessen overlapping government services and regulations."[39] Consumer and corporate affairs headed the Premiers' list of "promising areas for early action."[40]

In September 1978, following a meeting of federal and provincial ministers in Halifax, officials were designated to conduct a study of disentanglement in the field. Although no new policy arose from these efforts, channels of intergovernmental communication were increased.

By 1981, intergovernmental relations in the field of consumer credit were relatively calm. The structures put in place to deal with specific matters appear to be working well. A concrete result of the new mood was an agreement on a national standard for automobile corrosion reached in 1978 as a result of task force negotiations. This standard was maintained for a few years through voluntary compliance by automobile manufacturers.

The Trudeau government had planned to reintroduce the BDPA, but a combination of fiscal restraint, electoral uncertainty, and a different strategy for "testing the constitutional frontier" had placed these plans in abeyance when the government was defeated in May 1979. The draft version of the BDPA then being circulated incorporated many provincial suggestions, as well as the amendments to Bill C-16 proposed by the federal government. Most important of these changes is the method of implementation noted in the Western Premiers' Task Force Second Report: the "opting in, opting out" formula. The revised BDPA would complement provincial statutory protection for consumers. The power to withhold agreement would enable provinces to bargain for future changes in federal law as a condition of its being implemented.

Eight provinces have insisted that administration of federal credit legislation with respect to chartered banks be delegated to those provinces that want it. The exceptions are Ontario, which apparently accepts the federal role, and Quebec, which attends discussions on consumer credit matters only as an observer. The provinces disagree about the extent of federal jurisdiction in regulating non-bank financial institutions.

All provinces, again with the exception of Quebec, have reached agreement on the substantive consumer protection measures to be included in any new act. These include a standardized loan cost calculation, mortgage prepayment penalty provisions,[41] standardized disclosure regulations, regulation of credit advertising, and deposit interest arrangements. Some of these agreements have not yet been ratified at the ministerial level, however, as there are still outstanding differences between some provincial governments and Ottawa.

Several respondents interviewed at both levels of government suggested that Ottawa deliberately chose to confront the provinces in order that it could obtain a test of constitutional authority in economic matters by the Supreme Court. If that is the case, the regulation of financial institutions was certain to draw the battle lines for a major confrontation.

One of the most important consequences of the BDPA controversy is that new consumer protection policy has been stalled. The provinces, at present, are not likely to move until federal plans become clear. Consumers have been disadvantaged by Ottawa's retreat, and a similar hesitancy at the provincial level means that the shortcomings in credit policy noted at the beginning of this chapter are likely to continue. Cutbacks in expenditure at the federal level, according to provincial officials, also reduce the possibility that the BDPA will be resurrected. This perception was enhanced following the 1979 election, when the Clark government was perceived as very unwilling to introduce legislation which was known to offend some provinces.

The history of the Borrowers and Depositors Protection Act (BDPA) demonstrates that the federal government must be very cautious when it attempts to introduce legislation in concurrent fields, especially when the sponsoring department is a junior one such as Consumer and Corporate Affairs. Several reasons were cited for Ottawa's shift to a more conciliatory position. First, the election of the Parti Quebecois in November 1976 dramatically underscored one possible consequence of federal expansionism. It contributed to a feeling in Ottawa that it might be strategically wise to soften Ottawa's stance toward English Canadian provincial governments, in order that they might be enlisted as allies against the "separatist" government of René Lévesque. The federal government became less overtly expansionist in a number of policy areas from 1976 to 1980.

Personnel changes at the provincial level also contributed to closer, more cooperative relations. In the West, William Neilson's departure from

the post of Deputy Minister of the British Columbia Department of Consumer and Corporate Affairs reduced the level of tension in federal-provincial relations. Neilson had been an outspoken critic of federal consumer policy in his career as a professor of consumer law in Toronto.

The role of Rafe Mair, the former British Columbia Minister and chairman of the Western Premiers' Task Force on Constitutional Trends, helps to account for the prominence of consumer and corporate affairs in the reports of that body. In its second report, released after the BDPA faltered, the Task Force rhetoric (the federal government is accused of being "insensitive")[42] is not substantiated by the circumstances, and other participants indicate that relations were more amicable. Provincial politicians, of course, need not be criticized for strongly resisting federal moves, but in this case the time for such strenuous resistance appears to have passed.

Government financial restraint, and a wider concern with regulatory reform at the federal level, played minor but significant roles in the recognition by Ottawa of the need to avoid the duplication that the BDPA would have created. Provincial objections which pointed out the costs of duplication were well received by the federal government. New consumer protection policy seems to be viewed as more expensive, and hence governments are faced with higher costs for political gain.

Conspicuously absent from this list of reasons for federal withdrawal is the role of the central agencies responsible for intergovernmental relations at both levels. Intergovernmental professionals believe that their monitoring role prevents major problems in federal-provincal relations. This perception is not shared by officials in line departments, nor is it supported by this case study. While central agencies clearly set the overall tone of intergovernmental relations, they seem very unlikely to affect day-to-day operations of line departments. Intergovernmental agencies appear to have almost no influence in the substance or quality of ongoing federal-provincial relations between departmental officials in the consumer field, and, indeed, such a role would be an unrealistic

expectation. Officials in central agencies have enough to do in simply keeping track of a department's more significant contacts with other governments. A more important role for central agencies is ensuring that the intergovernmental aspect of proposed policy is given due consideration by cabinets. This role, however, may be becoming increasingly redundant as departments develop their own intergovernmental capabilities.

The story of the Borrowers and Depositors Protection Act would not be complete without an appreciation of the position of interest groups. The softening of the Bill by the government attests to the strength of the business community, and to its excellent representation and its dominance of the Standing Committee's hearings.

The provinces adopted a position where their interventions delayed the passage of an important step forward in Canadian consumer protection policy. The provinces' basic intention was to object to federal control of the financial institutions which are prominent in the regional economies.[43] As well, the provinces were objecting to further encroachments into the loan market by chartered banks. Of course, these interventions could have been compatible with consumer interests, since these regional institutions fulfilled an important role in the regionally differentiated consumer credit market. However, by defining the debate in federal-provincial jurisdictional terms, rather than the consumer and his creditors, the provinces helped submerge the consumer perspective, and provincial interventions, ironically, helped stall the Bill.

The view that delays caused by the federal system allow interest groups time to organize resistance or support for policy initiatives appears to be supported by this case study. It is now over seven years since the BDPA was presented to the provinces. If one agrees that interest groups tend to mobilize more strongly against policy innovations, some basis may exist for arguing that federalism is conservative, in that it may increase the strength of groups supporting the status quo.

This situation illustrates what has become a prominent feature of intergovernmental relations in Canada. Governments, it seems, can agree on

what needs to be done to solve problems, but are deadlocked about which level of government should do it. When the federal government attempts to regulate financial institutions viewed by some provinces as instruments of economic development (such as credit unions, trust companies and cooperatives in the western provinces and in Quebec) it can expect the strongest provincial protests. This is reinforced as well by the political and economic power of those impacted by the regulation: the Canadian financial community. When both financial and provincial interests are best served by stalling the legislation, policy innovation can be blocked. While the "opting in" strategy may provide one solution, it is clear that this formula implies a radically different **Borrowers and Depositors Protection Act** than was initially envisaged by the federal government, particularly in regard to uniform national standards for all lenders in Canada. The BDPA episode, in the final analysis, is an example of how policy can be blocked by the impact of federal institutions upon our policy-making process.

5 CONSUMER POLICY AND CONSTITUTIONAL CHANGE

Government policies are shaped by political influences which affect the strength of the interests in Canada, and by constitutional factors which involve the structure and operation of policy-making institutions. These merge in the operation and manipulation of the federal system by bureaucrats, interest groups, and politicians. These policy processes, in turn, influence the selection of policy alternatives and the means through which they are implemented.

Canadian consumers are economically and politically weak. Their problems begin with diffused market power, and are exacerbated by the organizational problems which plague voluntary public interest groups. The Consumers' Association of Canada (CAC) is dependent on government handouts for its survival. As a partial response to these problems, Goldstein has suggested more extensive funding of specific "constituency" consumer groups. While the CAC's comprehensive scope and its close links to the federal government are features that should not be eroded too far, consumer groups concerned with specific consumer problems may be more effective in some areas. It is particularly important that government financial support be better distributed at the level of provincial and local organizations, especially for representation at regulatory proceedings.

The consumer is disadvantaged as well by the operation of Canadian political institutions. Departments responsible for consumer protection are charged with a contradictory mix of functions, and opposed by large and powerful bureaucracies which often represent other interests. Problems with the regulatory system have been documented elsewhere.[1] The legislative process is dominated by strong, focused representations from special interest groups. Shared jurisdiction reduces the possibility of balanced, efficient, competitive markets.

The absence of clear jurisdictional boundaries stops governments from taking new steps to improve the consumer's position, because they fear constitutional litigation. The Supreme Court's decision in the Labatts light beer case, for example, paralysed federal enforcement of regulations on legal recipes. But provincial jurisdiction in this field is not clear, and no parallel legislation exists at the provincial level. A critical policy vacuum has stripped consumers of protection that most of them took for granted.

A more intractable policy problem occurs when consumer policy is submerged in wider conflict between governments. During the constitutional infighting of the late seventies, redistribution of power in the marketplace became entangled in a broader struggle over the redistribution of power between Ottawa and the provinces. In this process, which was illustrated by the battle over the right to regulate consumer credit, the consumer clearly lost.

There are other problems with present arrangements:

(1) They limit the range of sanctions available to each level of government for enforcing consumer rights. Ottawa is unable to add civil remedies to its arsenal, and provinces cannot use the criminal law.

(2) The process of executive negotiation used in concurrent fields reduces the effectiveness of public interest groups, and helps special interests dominate the legislative process.

(3) Consumer protection is not uniform in Canada, particularly in the enforcement efforts of the various provinces.

(4) Consumers are confused by concurrency, and unsure of which level to address for action in specific cases. Government accountability is reduced.

(5) Duplicative legislation imposes administrative costs, in both time and money, on governments and the private sector.

(6) The need to parallel federal structures is a problem for the CAC. It is expensive, and it permits institutionalized, public dissension to reduce the group's credibility.

Shared jurisdiction, of course, has some benefits:

(1) It allows experiments with some new policies on a small scale at the provincial level.

(2) Policy can be designed to respond to regional differences. In the consumer field, it responds to the product mix of regional markets, as in the case of farm machinery warranty legislation on the prairies.

(3) It contributes to a demonstration effect, which may tend to enhance general levels of consumer protection.

(4) Some provinces can supplement national protection with more effective policies of their own.

Concurrent efforts in some fields may be more effective than unilateral measures. In trade practices, for example, de facto "disentanglement" may have allowed governments to spread their efforts and prosecute more offences than might otherwise be the case.

In fact, the evidence presented in this paper supports the conclusion that, for the consumer, the costs of the present division of powers outweigh its benefits, especially in the context of constitutional disputes. Policy initiatives to aid the consumer have been sacrificed in an attempt to maintain intergovernmental harmony or to reduce friction. Policy is needed in several areas important to Canadian consumers, including food standards, truth in lending, and electronic funds transfers. Although governments acknowledge the need for new policy, and generally agree on the level of appropriate state protection, they are divided over

which level of government should have the authority to regulate consumer transactions. Both the federal government and the provinces, for example, want the important economic powers that accompany the regulation of borrowing. Both want the ability to use financial institutions as instruments of economic management and growth.

Alberta's establishment of provincially owned Treasury Branches, its development of the Heritage Savings Fund as a pool of capital, British Columbia's support of the Bank of British Columbia, and the B.C. government's use of credit unions to funnel low cost mortgage funds to British Columbia residents — are all evidence of western resentment of economic policy-making in central Canada, particularly by the chartered banks and the Bank of Canada. At the Western Economic Opportunities Conference in 1973, the premiers issued a communique which argued that the banking system was an oligopoly which, with federal government support, "had not been adequately responsive to Western needs." Banks, the premiers claimed, had fostered high interest rates and conservative, inflexible lending policies which had hindered western development.[2] Non-bank financial institutions are viewed in the West as a countervailing force against the power of federally chartered banks.

The provinces' objections to the **Borrowers and Depositors Protection Act** paralleled provincial resistance to federal initiatives in other policy fields. Provincial demands for more autonomy and control in economic policy-making result from the provincial governments' perception that national policies foster western (and eastern) dependency, and serve the interests of central Canadian elites.[3] This perception, moreover, is widely held by the public, especially in the West.

Ottawa, of course, has presented strong arguments in favour of economic policy-making on a national basis. Federal politicians insist, for example, that balanced national development requires a strong central government which can redistribute economic surplus among the regions in an equitable way.[4] "Balkanization" of the economy may reduce Canada's ability to compete in international markets, and increase our dependency on foreign

ownership. The desirability of having uniform laws is also cited as further support for the centralist case.

It is well beyond the scope of this study to evaluate the merits of federal and provincial positions on broad questions such as these. They are presented here only to place disputes in the consumer field in the context of a wider set of political events. But the closer that a specific aspect of consumer policy is related to direct regulation of the economy, or to the control of important instruments of economic policy, the more likely it is to become the subject of intergovernmental conflict. The reasons for provincial resistance to federal consumer initiatives, in the cases cited in this paper, have little to do with the interest of consumers.

Finally, as provincial economic and political power has increased, the struggle for power between Ottawa and the provinces has become a more evenly matched contest. The present balance favours neither level, often to the detriment of Canadians. Each level of government can either neutralize the efforts of the other, or resist pressure for new policy by claiming that they do not have the constitutional authority to act. Slower government action is the inevitable result. The need for jurisdictional reform is clear; concurrent policy fields have become difficult to manage in the contemporary situation.

Canada's jurisdictional debate, however, is conducted in a manner which reduces the likelihood of substantial improvements for consumers. Put simply, it is usually based on trade-offs of various regional interests against a national interest, as interpreted by the federal government. An interest, such as consumers, without a clear regional base, is normally ignored.

The movement for constitutional reform which culminated in 1982 was a battle in which the interests of the federal government and the ten provincial governments were paramount. Public interest groups, special

interest groups, and even legislatures were excluded from the process, except where they could be invoked to support either of the main protagonists -- the federal government, or the alliance of provinces opposed to federal plans. The debate was often couched in terms which suggested that the fundamental agenda for constitutional reform had been forgotten: the need for effective government action on a number of policy fronts.

The consumer, nevertheless, has a stake in any changes in the division of powers over consumer protection. On balance, it is unclear whether a strengthening of federal powers would serve the consumer better than increased provincial jurisdiction. Decentralization, which has been included in virtually all proposals for constitutional change, may help more consumers than it hurts. The larger provinces -- where most Canadians live -- have demonstrated a commitment to consumer rights which has often outstripped federal initiatives. Among these provinces, of course, are those which appear most committed to province building: Quebec, Alberta, and British Columbia.

Proposals for constitutional amendment can be divided into two groups. First are those which would divide powers and responsibilities into "watertight compartments," wherein each level of government could make policy without affecting the other. This "classical" form of federalism attempts to reduce conflict by reducing the possibility that government activities will overlap.[5] Some policy areas, however, are bound to extend beyond jurisdictional lines; rapid technological changes also guarantee that formal compartmentalization cannot be expected to last long. The second option favours collaborative federalism. This approach appears to have a greater probability of long term success.

With regard to the first option, dividing powers in the consumer field presents very difficult problems. Most reform proposals emphasize the need for a Canadian common market, and suggest that the federal government retain the most important economic powers. The Task Force on Canadian Unity supported this position, but, rather paradoxically, recommended that

consumer and corporate affairs become an exclusively provincial responsibility.[6] This demonstrates some lack of awareness of the economic powers which are at stake in the regulation of consumer transactions.

The Task Force also recommended that, where no contention exists between Ottawa and the provinces, the previous distribution of powers should be maintained. The example used to support this view, surprisingly, is the regulation of financial institutions.[7] The Task Force recommended that the regulation of caisses populaires and credit unions be retained by the provinces to preserve the continuity of local and provincial traditions. In light of the evidence presented in this study, this appears rather shortsighted. The Quebec Liberal Party also supported strong central economic powers, but recommended no change in the present jurisdiction over financial institutions.[8]

The plans for collaborative federalism most often call for restructured national political institutions to allow regional representation at the centre. The goal of such institutions is to foster ongoing direct contact between Ottawa and the provinces, and also, as the Task Force on Canadian Unity pointed out, to encourage attitudes which will enhance our concept of nationhood and reduce the fragmentation of our country into regional communities.[9] Typical suggestions include the restructuring of the Senate to provide direct representation of provincial governments. Proportional representation in the House of Commons has also been suggested, so that the governing party is provided with members of Parliament from all the regions.[10] Other proposals call for the "provincialization" of national regulatory agencies. Properly designed national institutions attempt to capture the benefits of concurrency without paying its present costs. Policy might tend to move toward the "highest common denominator," and the demonstration effect would be augmented. The dangers of large differences in provincial laws would be reduced, and national redistribution of resources could ensure that poorer provinces are able to implement agreed-upon programs.

Richard Simeon suggests that governments need to be provided with incentives to consult, inform and mutually educate if collaborative

mechanisms are to work.[11] He strongly supports the creation of a Council of the Federation, but would limit its formal powers to those concerned with the federal system: Supreme Court appointments, spending power and residual power, for example.

Consumers, in the final analysis, should anticipate continued joint regulation of financial institutions. The success of joint policy in supplying consumer benefits will depend to a large extent on the level of agreement on broader economic objectives for our nation. Much will also depend on the willingness of governments to compromise. Consumers would benefit if steps were taken towards achieving a more collaborative federalism. Formal collaboration might enable governments to avoid the paralysis caused by present jurisdictional difficulties. A greater provincial role might improve consumer rights and remedies, particularly if the provinces can act together to preserve uniformity. Finally, jurisdictional reform may present an opportunity to open the federal system to public participation. Consumers must insist that any renewed negotiations encourage participation in policy-making by interested citizens and public interest groups, particularly in regard to restructuring the regulatory arena. Intergovernmental bargaining must no longer take place behind closed doors, hidden from the public and unaccountable to citizen demands.

NOTES: CHAPTER 1

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1. Margot Priest and Aron Wohl, "The Growth of Federal and Provincial Regulation of Economic Activity, 1867-1978" in W.T. Stanbury (ed.) Government Regulation: Scope, Growth, Process (Montreal: Institute for Research on Public Policy, 1980), pp. 69-149, p. 99.

2. Ibid., p. 111.

3. Ibid., Appendix I, pp. 119-121.

4. J.E. Hodgetts, The Canadian Public Service (Toronto: University of Toronto Press, 1973), pp. 129-131.

5. See Rianne Mahon, "Canadian public policy: the unequal structure of representation" in Leo Panitch (ed.) The Canadian State: Political Economy and Political Power (Toronto: University of Toronto Press, 1977), pp. 165-198.

6. See Constitution Act, 1867, s. 91.

7. Ibid., s. 92.

8. W.R. Lederman, "The Concurrent Operation of Federal and Provincial Laws in Canada," McGill Law Journal, Vol. 9, No. 3 (1962-63), pp. 185-199, p. 199.

9. See, for example, Richard Simeon, "The Federal-Provincial Decision Making Process," in Intergovernmental Relations (Toronto: Ontario Economic Council, 1977), pp. 25-27. See also Donald Smiley, Canada in Question: Federalism in the Seventies (Toronto: McGraw-Hill Ryerson, 1976.)

10. For a full exposition, see Albert Breton and Anthony Scott, **The Economic Constitution of Federal States** (Toronto, University of Toronto Press, 1978.)

11. Simeon, op. cit., pp. 28–29.

12. See Richard Simeon, "Studying Public Policy," **Canadian Journal of Political Science**, IX:4 (December 1976), pp. 548-580.

NOTES: CHAPTER 2

1. Michael Trebilcock, "Winners and Losers in the Modern Regulatory System: Must the Consumer Always Lose?" **Osgoode Hall Law Journal**, Vol. 23 (1979), pp. 619-647, p. 620.

2. Ibid., pp. 623-624.

3. This problem is noted in Mancur Olson, Jr., The Logic of Collective Action (Cambridge: Harvard University Press, 1971).

4. Ibid.

5. A. Paul Pross, "Pressure Groups," in Bellamy, Pammett, Rowat (eds.), The Provincial Political Systems (Toronto: Methuen Publications, 1976), pp. 132-146, p. 132.

6. Ibid., p. 143.

7. Richard Simeon, **Federal-Provincial Diplomacy** (Toronto: University of Toronto Press, 1972), pp. 281-283.

8. Consumers' Association of Canada, **A History of Accomplishments** (Ottawa: CAC, undated).

9. "CAC launches drive for more support to end need for government financing," The Globe and Mail, 25 July 1983.

10. Ibid.

11. Helen Jones Dawson, "The Consumers' Association of Canada," in **Canadian** Public Administration, Vol. VI, No. 1 (March 1963), pp. 92-118.

12. Ibid., p. 96.

13. Ibid.

14. Ibid., n. 19, p. 97.

15. Quoted in "CAC launches drive for more support to end need for government financing," The Globe and Mail, 25 July 1983.

16. Ibid.

17. Dawson, op. cit., passim. The department announced that five local CAC groups received a total of $32,000.

18. Cited in Canadian Consumer, Vol. 8, No. 4 (August 1978), p. 38.

19. Consumer and Corporate Affairs Canada, Annual Report (Ottawa, 1980), p. 14.

20. Consumer and Corporate Affairs Canada, Annual Report (Ottawa, 1978 to 1983).

21. CAC, Budget, op. cit. CAC receives a separate grant earmarked for its Regulated Industries Program.

22. Department of Consumer and Corporate Affairs, Press Release NR-78-43 (Ottawa: June, 2, 1978).

23. Consumer and Corporate Affairs Canada, Annual Report (Ottawa: 1982), pp. 13, 14.

24. CAC (Ontario), Financial Statement (Toronto: February 28, 1983).

25. CAC, Financial Statement (Ottawa: 1983).

26. CAC (Ontario), Board of Directors Agenda (for meeting February 12, 1979).

27. Dawson, op. cit., pp. 99-100.

28. Ibid.

29. Jonah Goldstein, "Public Interest Groups and Public Policy: The Case of the Consumers' Association of Canada," in Canadian Journal of Political Science, XII:1 (March 1979), pp. 137-155.

30. Dawson, op. cit., pp. 99-100.

31. Goldstein, op. cit., pp. 144-45; and "CAC launches drive for more support to end need for government financing," The Globe and Mail, July 25, 1983.

32. Goldstein, op. cit., pp. 149-55.

33. Ibid., p. 155.

34. R.S.C. 1970, c. C-27.

35. Economic Council of Canada, **Consumer Affairs and the Department of the Registrar-General**, (Interim Report), (Ottawa: Economic Council of Canada, July 1, 1967), p. 8.

36. Department of Consumer and Corporate Affairs, **Annual Report** (Ottawa: 1978), p. 54.

37. $1,197,808. Cf. Department of Consumer and Corporate Affairs, 1st **Annual Report** (Ottawa: 1969), p. 32.

38. Consumer and Corporate Affairs Canada, **Annual Report** (Ottawa: 1983), p. 3.

39. See G. Bruce Doern, **Scientific and Technological Controversy in the Policy and Decision Process: A Case Study of Three Federal Departments** (Science Council of Canada, mimeo., January 1980), pp. 79-80.

40. Consumer and Corporate Affairs Canada, **Annual Report** (Ottawa: 1983), p. 12-14.

41. Consumer and Corporate Affairs Canada, **Annual Report** (Ottawa: 1978), op. cit., p. 55.

42. Ibid., p. 56.

43. This position is widely held by both federal and provincial officials. See **supra.**, Chapter IV.

44. Francophone subscribers in Quebec now total 6,812.

45. David Cohen, "Squeeze Play," **Canadian Consumer**, 14, no. 1 (1984), 17.

46. See Garth Stevenson, **Unfulfilled Union** (Toronto: Macmillan of Canada, 1979), esp. Chapter 4.

47. In one case, an official dictated his province's consumer protection statute (with proposed revisions) to his counterpart in another province on the telephone. The bill was introduced in the second provincial legislature on the next day.

48. Louis J. Romero, **Federal Provincial Relations in the Field of Consumer Protection** (Ottawa: Consumer Research Council, 1976), p. 3.

49. Ibid., p. 35.

50. Ibid., p. 36.

51. Jacob S. Ziegel, "The Future of Canadian Consumerism" in **Canadian Bar Review**, Vol. 51 (1973), pp. 191-206, p. 197.

52. See, for example, Organization for Economic Cooperation and Development, Consumer Policy in Member Countries (Paris: OECD, annually).

53. A neo-Marxist approach to the structure of interest representation by government departments can be found in Rianne Mahon, op. cit. Her findings on the position of the Department of Labour in state hierarchies very closely parallel my own general views on the position of Consumer and Corporate Affairs Canada.

54. Annual Report (1976-77), op. cit., p. 15.

55. Cf. Goldstein, op. cit., p. 147.

56. Trebilcock, "Winners and Losers . . .," pp. 631-35.

57. CAC, Regulated Industries Program, (Ottawa: CAC, undated).

58. Goldstein, op. cit., p. 146.

59. Trebilcock, "Winners and Losers . . .," p. 631.

60. Ibid.

61. Ibid.

62. T. Gregory Kane, Consumers and the Regulators (Montreal: Institute for Research on Public Policy, 1980), pp. 121-122.

63. Ibid., p. 121.

64. Trebilcock, "Winners and Losers . . .," p. 639.

65. Consumer and Corporate Affairs Canada, Annual Report (Ottawa: 1978 to 1982).

66. Trebilcock, "Winners and Losers . . .," p. 639.

NOTES: CHAPTER 3

1. In 55 years there was only one reported case. Cohen and Ziegel, op. cit., p. 3.

2. R.I. Cohen, "False Advertising in Canada: An Overview of Sections 33C and 33D," in W.C.J. Meredith Memorial Lectures, (Montreal: McGill University, 1971), pp. 102-134, pp. 131-132.

3. Ibid., p. 134.

4. S.C. 1974-75-76, c. 76. (Came into force January 1, 1976). For a brief discussion of this change, see Cohen and Ziegel, op. cit., pp. 9-10.

5. Combines Investigation Act, (as amended) s.36.3(4) and s.36.4(4).

6. Derived from data in Director of Investigation and Research, Annual Report (1977-78), (DCCA, 1978), p. 15, p. 61.

7. Ibid., p. 61.

8. See Michael J. Trebilcock et. al., Proposed Policy Directions for the Reform of the Regulation of Unfair Trade Practices in Canada (2 vols.) (Ottawa: Department of Consumer and Corporate Affairs, 1976) and R.I. Cohen and Jacab S. Ziegel, The Political and Constitutional Basis for a New Trade Practices Act, (Ottawa: Department of Consumer and Corporate Affairs, 1976). Both these studies are based on this evaluation of enforcement mechanisms.

9. Toronto lawyer Rodney L.K. Smith, cited in "Consumers win new right to sue," Toronto Star, January 23, 1979, p. 1.

10. Canadian Consumer Council, Report of the Canadian Consumer Council on Misleading Advertising (Vancouver: Canadian Consumer Council, 1971), p. 13.

11. See Cohen and Ziegel, op. cit., pp. 18-19.

12. Ibid., p. 19.

13. Ibid., p. 12.

14. Government of Saskatchewan, White Paper on Trade Practices: Backgrounder (Regina: Department of Consumer Affairs, 1976).

15. See Cohen and Ziegel, op. cit., p. 10.

16. Cairns, Alan, "The Governments and Societies of Canadian Federalism," Canadian Journal of Political Science, x:4, December 1977.

17. See Ellen Roseman "The Consumer Game," in The Globe and Mail, December 18, 1978, p. 11.

18. See, for example, "Ontario to swoop on car repair ripoff," in Toronto Star, December 2, 1978, p. 1.

19. Director of Investigation and Research, op. cit., pp. 64-65.

20. Trebilcock, op. cit., pp. 301-335.

21. Cohen and Ziegel, op. cit., p. 112.

22. Western Premiers' Task Force on Constitutional Trends, Report (Victoria: May 1977), p. 21.

23. Labatts Breweries of Canada vs. Attorney-General of Canada (1979).

24. Jacob S. Ziegel, "An ominous setback for food standards in court rulings," Globe and Mail, June 20, 1980, p. 7.

25. Ellen Roseman and Phil Edmonston, Canadian Consumer Survival Book (Don Mills: General Publishing, 1977), p. 27.

26. Moyer, et. al., Ontario Consumer Issues (Toronto: Ministry of Consumer and Commercial Relations, 1978), p. 27.

NOTES: CHAPTER 4

1. Statistics Canada, **Canadian Statistical Review, 58**, no. 2 (1983), pp. xi-xv.
2. "Weekend Poll," reported in ibid., p. 3.
3. Parry, op. cit., p. 10.
4. Douglas Hamilton, Canadian Bank Card Association, quoted in Ibid., p. 10.
5. "Credit-card love affair faces test of strength," **Toronto Star**, February 20, 1983.
6. Reported in Standing Committee on Health, Welfare and Social Affairs, 2nd Session, 30th Parliament, **Proceedings**, Number 24, (Appendix). (Cited hereafter as Standing Committee).
7. Consumer and Corporate Affairs Canada, **Annual Report** (Ottawa: 1983), p. 19.
8. See Phil Kinsman, "Sliding into the financial red may end in bankruptcy blues," Ottawa Citizen, October 24, 1979, p. 65. The increase is only partly due to changes in federal laws which make it much easier for individuals to declare bankruptcy.
9. R.S.C. 1970, c. S-11, s.2.
10. Ibid., s. 1.
11. R.S.O. 1970, c. 472, s. 1.
12. SCR 570, 42 DLR (2d) 137.
13. Louis J. Romero, **Federal Provincial Relations in the Field of Consumer** Protection, (Ottawa: Consumer Research Council, 1976).

14. Bill C-44 was introduced into parliament to repeal the Small Loans Act and replace it with amendments to the Criminal Code. C-44 received assent December 17, 1980, but the relevant section (s. 9) has not been proclaimed as of September 1, 1983, and the Small Loans Act remains in force.

15. Tomell Investments Ltd., v. East Marstock Lands Ltd., et al., 77 DLR (ed) 145.

16. Canadian Consumer Council, 1st Annual Report, (Ottawa: Canadian Consumer Council, 1969), p. 22. See also (Croll-Basford) Joint Committee on Consumer Credit and the Cost of Living, Report on Consumer Credit, (Ottawa: 1967), p. 5.

17. Unconscionable Transactions Relief Act, R.S.O. 1970, c. 472.

18. Standing Committee, Number 27.

19. The comments of the Ontario Mortgage Brokers Association are typical. (Standing Committee, Number 27, p. 6).

20. CAC, Submission to the Standing Committee on Health, Welfare and Social Affairs on (Borrowers and Depositors Protection Act) (Ottawa: CAC, February 1977), p. 4.

21. Ibid., p. 4.

22. Ibid., p. 18.

23. Ibid., pp. 20-21.

24. Ibid., pp. 29-31.

25. Ibid., Number 27, p. 13.

26. Ibid., p. 5.

27. Ibid, Number 30.

28. Standing Committee, Number 10, p. 5.

29. Ibid., p. 10.

30. Cited in ibid., Number 30, p. 26.

31. Cited in ibid., Number 31, p. 4.

32. Ibid., p. 5.

33. Cited in ibid., Number 12, p. 6.

34. Western Premiers' Task Force on Constitutional Trends, First Report (Brandon, Manitoba: May 1977), p. 2.

35. Ibid., p. 18.

36. This meeting was not as harmonious in the trade practices field. See infra, p. 74.

37. Western Premiers' Task Force on Constitutional Trends, Second Report (Victoria: April 1978), p. 10.

38. Ibid.

39. 19th Annual Premiers' Conference, Duplication of Government Services, (Regina: Communique #1, August 9, 1979).

40. Ibid.

41. Saskatchewan disagrees with any prepayment penalty on any loan transaction.

42. Western Premiers' Task Force on Constitutional Trends, Second Report op. cit., p. 10.

43. The Third Report of the Western Premiers' Task Force on Constitutional Trends, for example, reiterated longstanding western objections to a "national regulatory presence for all financial institutions." (Victoria: March 1979), p. 13.

NOTES: CHAPTER 5

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1. Gregory Kane, for example, notes that the procedures of regulatory agencies (and appeals therefrom) often discriminate against public participation. He suggests that consumer groups concentrate on procedural reform. See Kane, op. cit., passim.

2. Western Economic Opportunities Conference, Capital Financing and Regional Financial Institutions (Calgary: 1973), pp. 3-5.

3. See Garth Stevenson, op. cit., esp. Chapter 4.

4. See, for example, A.E. Safarian, Canadian Federalism and Economic Integration (Ottawa: Information Canada, 1974) and Judith Maxwell and Caroline Pestieau, Economic Realities of Contemporary Confederatism, (Montreal: Howe Research Institute, 1980).

5. For a critique of this model, see Gérard Veilleux, "Intergovernmental Canada; government by conference? A fiscal and economic perspective," in Canadian Public Administration, Vol. 23, No. 1 (Spring 1980), pp. 33-53.

6. Op. cit., p. 85.

7. Ibid., p. 88.

8. See Constitutional Committee of the Quebec Liberal Party, A New Canadian Federation (1980), pp. 101 ff.

9. A Future Together (Ottawa: Government of Canada, 1979).

10. See William P. Irvine, Does Canada Need a New Electoral System? (Kingston: Institute of Intergovernmental Relations, Queen's University, 1979).

11. In "Intergovernmental relations and the challenges to Canadian federalism", Canadian Public Administration, Vol. 23, No. 1 (Spring 1980), pp. 14-32.

LIST OF PUBLICATIONS

Peter Russell, **The Court and the Constitution: Comments on the Supreme Court Reference on Constitutional Amendment**, 1982.

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Federalism and Intergovernmental Relations in Australia, Canada, the United States and Other Countries: A Bibliography, 1967.

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