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The Administration of Foreign Exchange Control in Canada

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I. *Background of Exchange Control*

The many-syllable words frequently associated with questions of international finance too often conceal the simple truth that there is almost a complete analogy between the financial problems of an individual in his own community and the financial problems of a particular country in the community of nations.

Just as an individual's expenditures are limited by the amount of locally acceptable cash he has or can obtain, so a country's expenditures in the rest of the world are limited by the amount of internationally acceptable money, usually referred to as foreign exchange, which it can command. The amount of foreign exchange available to a country is made up of what it earns, plus what it may receive as gifts, plus what it can borrow abroad, plus what it can realize from the sale of foreign assets. A country's earnings are the proceeds of its sales to foreigners of goods and various kinds of services, such as transportation services, business and professional services, services to tourists, services on loans and investments, and the like. These, plus gifts received, are usually referred to as "current receipts". Its expenditures for current upkeep consist of the payments it makes to foreigners for goods and services provided by them. These, plus gifts made, are usually referred to as "current expenditures". If a country's current receipts exceed its current expenditures, it is said to have a "sur-

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plus" or a "favourable balance on current account". If, on the other hand, a country's expenditures on current upkeep exceed its earnings, it is then said to have a "deficit" or an "unfavourable balance on current account".

A surplus or favourable balance on current account, in so far as a country's international transactions are concerned, will be reflected either in greater holdings of foreign cash, foreign securities or other foreign assets or in a reduction of old debts to foreigners. Similarly, a deficit or unfavourable balance on current account must be met either by drawing down foreign cash balances or liquidating other foreign assets or contracting fresh foreign debts. These types of transactions are generally said to be on "capital account".

Factors Affecting Canadian Balance of Payments

A basic factor in the Canadian balance of international payments is its geographical structure. While in most years since the middle 1930's we have had surpluses or favourable balances on current account with the rest of the world as a whole, we have normally had substantial deficits with the United States on the one hand and substantial surpluses with the United Kingdom on the other. Before World War II this was of no particular importance from the foreign exchange point of view since our surplus receipts of sterling could be freely converted into the U.S. dollars needed to meet our U.S. dollar deficiency.

This structural characteristic of our balance of payments was, however, accentuated by the outbreak of war and the readjustments that have followed it. During the war we were a major source of supply of war and essential civilian goods to the United Kingdom and since the war we have been supplying much of the goods necessary for the economic recovery and reconstruction of the United Kingdom and Western Europe. A large proportion of these exports has been financed by Canada through gifts and mutual aid during the war and relief grants and credits since the war ended and therefore did not produce foreign exchange which could be used to make payments in the United States. On the other hand, until after the United States entered the war, our current account payments to them increased with the need to import parts and components of war goods and the greater demand for civilian imports as domestic supplies declined. Since the war our current account deficit with the United States has been at record levels because of the heavy demand for machinery and equipment for conversion of our industries to peacetime pro-

duction and the accumulated demand for many types of consumer goods which were not available during the war. Since all our purchases in the United States have been and are paid for in cash, the Canadian foreign exchange problem since the beginning of the war has been and continues to be to find the U.S. dollars necessary to finance the deficits in our current account transactions in that currency.

An important factor affecting Canada's ability to find the necessary U.S. dollars is our status as a substantial international debtor. Foreign investment in Canada exceeds \$7 billion, of which some \$5 billion is held in the United States. If non-residents should for any reason feel, even temporarily, that their funds are unsafe in Canada or could be more safely invested elsewhere, there is the possibility that they will seek to remove their capital by liquidating their Canadian investments and converting the proceeds into foreign exchange. We are thus exposed to the danger of our available supply of U.S. dollars being drawn on heavily through this type of capital withdrawal and capital flight.

Free Exchange Market

Before the war the balancing of the international accounts of Canada and most other countries, and the allocation of available foreign exchange resources, was achieved through the operation of a free foreign exchange market. In such a market those who come into possession of foreign exchange are free to sell to those who want it at whatever price can be agreed upon between the parties. If the amounts offered for sale are insufficient to meet the demand at the prevailing price, the price (*i.e.*, the exchange rate) moves upward until the amount supplied and the amount demanded are equal. Under this method ability or willingness to pay the going price for foreign exchange is the only criterion in distributing it among those who want it. Would-be purchasers who are unable or unwilling to pay the current price go without.

Exchange Control System

Foreign exchange control is an alternative method of allocating available exchange resources among those who want them on the basis of the additional criterion of the purpose for which they are to be used. Under this system the price of foreign exchange is generally fixed at a level which is considered to be

the most suitable one for a country's economy as a whole over the fairly long term. The exchange rate chosen is not necessarily the one that will equalize the supply of and demand for foreign exchange over a short period. If at the chosen rate the amount of foreign exchange demanded exceeds the amount received from abroad, the difference is dealt with either by drawing upon foreign exchange reserves (*i.e.*, upon accumulated holdings of foreign currency and gold) or by refusing to provide foreign exchange for certain purposes, or by a combination of the two. Since draughts on reserves cannot continue indefinitely, the purpose of the exchange control system is to allocate available exchange resources among would-be purchasers at the ruling rate in accordance with a priority schedule of purposes for which the foreign exchange is to be used.

II. *Exchange Control Legislation*

The foreign exchange control method was adopted by the Canadian Government as the appropriate means of dealing with the problem facing us as a result of the outbreak of war. On September 15th, 1939, foreign exchange control was instituted by order in council under the emergency powers contained in the War Measures Act,¹ with the object of maintaining exchange stability and conserving our supply of U.S. dollars for essential requirements.

The original Foreign Exchange Control Order and amendments² were revised and consolidated in December 1940 and with various subsequent amendments³ continued in effect until the end of 1946. At the session of Parliament in 1946, The Foreign Exchange Control Act⁴ was passed providing in statutory form for the continuance of exchange control on substantially the previous basis. This came into force on January 1st, 1947, and, with

¹ R.S.C., 1927, c. 206.

² P.C. 2716 of September 15th, 1939, as amended by P.C. 2852 of September 25th, 1939, P.C. 3799 of November 22nd, 1939, P.C. 3878 of November 28th, 1939, and P.C. 279 of January 23rd, 1940. In addition, the Foreign Exchange Acquisition Order, 1940, was passed on April 30th, 1940, as P.C. 1735 and supplemented the Foreign Exchange Control Order.

³ P.C. 7378 of December 13th, 1940, as amended by P.C. 1672 of March 7th, 1941, P.C. 2786 of April 22nd, 1941, P.C. 3081 of May 1st, 1941, P.C. 7667 of October 1st, 1941, P.C. 10064 of December 24th, 1941, P.C. 55 of May 31st, 1943, P.C. 5641 of July 17th, 1943, P.C. 1763 of March 16th, 1945, P.C. 5679 of August 21st, 1945 and P.C. 4410 of October 24th, 1946. In addition, amendments were made to the Foreign Exchange Acquisition Order, 1940, by P.C. 7378 of December 13th, 1940, and P.C. 10065 of December 24th, 1941.

⁴ 1946, c. 53.

certain amendments made in 1948,⁵ now governs the operation of exchange control. The Act originally carried an expiry date in 1949 but at the 1949 session of Parliament its force was extended to 60 days after the commencement of the first session of Parliament commencing in 1951.⁶ Prior to that time the question of whether or not there should be a further extension will presumably be considered.

The purpose of this article is to describe, in the light of the objectives it is designed to attain, the basis on which the Canadian exchange control operates and the manner in which it is administered at the present time.

Overall Control

A primary characteristic of the foreign exchange control system is that it necessarily involves a wide measure of supervision and control over all transactions which result in, or would normally be expected to give rise to, claims by "residents" to receive payments from "non-residents" or upon "residents" to make payments to "non-residents".⁷

The basic objectives of the system are, firstly, that all foreign exchange which residents receive or are entitled to receive is turned over to the exchange control authority where it will form part of the country's exchange reserves and, secondly, that residents who wish to buy foreign exchange or enter into other transactions that may involve use of the exchange reserves, apply to the exchange control authority for permission to do so.

The restrictive use of exchange control in Canada has been and is largely confined to the withdrawal of non-resident capital from Canada and the movement abroad of private Canadian capital. Apart from expenditures for non-essential foreign travel by Canadian residents, there has been virtually no restriction on normal current account transactions. Control is nevertheless extended over all transactions having international financial implications for the reason that in order to limit certain types of transactions effectively it is essential to scrutinize all transactions involving transfer of funds or other property between residents and non-residents. A transaction which appears at first sight to be of a permitted type may very easily turn out to be one which is not permitted. For example, if the foreign exchange proceeds

⁵ 1948, c. 51.

⁶ 1949, c. 4.

⁷ See p. 641 below in connection with the definition of "resident" and the determination of residential status under the Act.

of exports are not brought back to Canada but are invested in foreign securities, or if foreign exchange purchased allegedly for imports is used to acquire foreign real estate, what starts out to be an apparently normal current account transaction, which is permitted, ends up as the use of Canadian exchange resources to acquire a new foreign investment, which is not ordinarily permitted.

Scope of Control

The basic objectives of the foreign exchange control system are accomplished principally through requirements that "declarations" be made or "permits" obtained for the transactions in question.

On the one hand, The Foreign Exchange Control Act makes the following provisions designed to ensure that the foreign exchange earned by or accruing to the country as a whole is brought into official reserves:—

(1) Every resident who has or acquires foreign exchange, or the right to it, in Canada or elsewhere, is required forthwith to declare and offer it for sale to an authorized dealer, *i.e.* a branch in Canada of a chartered bank.⁸

(2) Since exports are the main source of our foreign exchange earnings, an exporter is required, unless otherwise authorized by permit, to obtain payment in an appropriate currency within six months from the date of export of not less than the fair value of the goods exported. A permit (which might more accurately be described as a "declaration") is also required covering the physical export of goods as the basis for ensuring that proper payment is received within the specified time and, in the case of foreign exchange, is sold to an authorized dealer.⁹

(3) Since the export of services is also an important source of foreign exchange earnings, a resident performing or agreeing to perform for a non-resident, in Canada or elsewhere, services of a kind ordinarily performed for remuneration is also required, unless otherwise authorized by permit, to obtain payment within six months of not less than the fair value of the services in an appropriate currency.¹⁰

(4) With respect to transactions in securities, a resident is required to obtain a permit to sell, assign, transfer or deliver securities to a non-resident, either in Canada or elsewhere, as the

⁸ S. 22.

⁹ S. 25.

¹⁰ S. 32.

means of ensuring that, when this is done, payment of the fair value is received in an appropriate currency.¹¹ As a supplementary measure of control, permits are also required for exports of securities from Canada¹² and the registration of transfers of securities from residents to non-residents.¹³

(5) In addition to the provisions already mentioned with respect to securities and exports of goods, residents are required to obtain permits to place other types of property, situated either in Canada or elsewhere, in trust for non-residents, except by will, or otherwise to assign, transfer or deliver property to non-residents unless it is done pursuant to a sale calling for immediate payment of the fair value in an appropriate currency.¹⁴

(6) Other acts or transactions involving the receipt of or claims to foreign exchange, which a resident may not do or enter into except in accordance with a permit, are:

(a) to release or fail to take reasonable steps to acquire or recover from a non-resident any property or right thereto to which the resident is or may be entitled;¹⁵

(b) to grant an unreasonable extension of time for payment of any debt owing by or claim upon a non-resident or fail to take reasonable steps to collect any such debt or prosecute any such claim;¹⁶

(c) to assign to a non-resident any claim upon a non-resident except pursuant to a sale or assignment on terms under which the resident receives immediate payment of the fair value in an appropriate currency;¹⁷

(d) to accept satisfaction of all or part of any debt, claim or obligation owing by a non-resident or of a claim upon a non-resident otherwise than in the currency in which the debt, claim or obligation is expressed or was incurred;¹⁸ and

(e) to let, lease or otherwise authorize the use of property by a non-resident, otherwise than on terms providing for payment within six months of the fair value in a appropriate currency.¹⁹

(7) Provision is also made for requiring the transfer to Canada of earnings of foreign companies, firms or branches which are owned or controlled by Canadian residents.²⁰

On the side of controlling the use which is made, directly or indirectly, of our foreign exchange resources, the Act contains

¹¹ S. 27.

¹² S. 25(1)(a).

¹³ S. 28.

¹⁴ S. 31.

¹⁵ S. 33(c).

¹⁶ S. 33(d).

¹⁷ S. 33(e).

¹⁸ S. 33(f).

¹⁹ S. 33(g).

²⁰ S. 34.

the following provisions designed to ensure that demands are made on them only for approved purposes:—

(1) Every resident desiring to buy foreign exchange is required to do so from an authorized dealer pursuant to a permit.²¹

(2) Since Canadian dollars in the hands of non-residents involve liabilities to non-residents, and hence a potential drain on our foreign exchange resources, a permit is required for a resident to make a payment of Canadian dollars to or to the account of a non-resident whether in Canada or elsewhere. Similarly, a Canadian dollar bank account of a resident may not be redesignated as that of a non-resident, except in accordance with a permit.²²

(3) Since payments for imports represent the largest call on our exchange resources, an importer may not buy goods for import except on terms providing for payment of not more than the fair value in an appropriate currency. A permit (which is in effect merely a declaration) is also required for the physical importation of goods to serve as evidence, when the importer applies for permission to make payment for the goods, that they have actually entered Canada and of their value.²³

(3) The export of currency and certain types of negotiable instruments, such as travellers' cheques, whether by a traveller, through the mail or otherwise, is subject to permit.²⁴

(4) With respect to transactions in securities, a permit is required for a resident to buy securities outside Canada or to buy securities in Canada from a non-resident and, conversely, a non-resident requires a permit to sell securities in Canada.²⁵

(5) Other acts or transactions involving charges on our foreign exchange resources for which a resident is required to obtain a permit are:

(a) to borrow from or otherwise incur a debt to a non-resident;²⁶

(b) to pay or agree to pay to a non-resident for any property or services an amount greater than their fair value.²⁷

²¹ S. 21.

²² S. 23.

²³ S. 26. It should be noted that no control is now exercised under the Foreign Exchange Control Act of the kinds of goods that may be imported into Canada. Although there are certain restrictions on imports for the purpose of conserving our U.S. dollar resources, these are in force under the provisions of the Emergency Exchange Conservation Act, 1948, c. 7, and are administered separately by the Department of National Revenue, Customs, and the Departments of Finance, and Trade and Commerce.

²⁴ S. 25(1)(a).

²⁵ S. 27.

²⁶ S. 33(a).

²⁷ S. 33(b).

III. Powers of Governor in Council

Flexibility of Control

In order that a foreign exchange control system may deal effectively with such a wide range of transactions as those just described, it should have, as a second requirement, a considerable degree of flexibility. The degree of control that it is necessary to exercise, and the nature of that control, may vary almost from day to day in the light of such factors as the level and trend of the exchange reserves, the incentives there may be for persons to evade or circumvent the control, actions taken by other countries in the exchange field and changing trends in international dealings. For this reason the authority for exercising control, if it is to serve its purpose, should be that which is contemplated as being necessary under the most unfavourable conditions that are likely to arise. In order to avoid speculative activity which could easily be fatal to the proper operation of the system, it should be possible to make appropriate changes in the system to meet changing circumstances quickly and without prior publicity. The most obvious example of this is, perhaps, in the matter of exchange rates for foreign currencies which the Governor in Council is authorized by the Act to prescribe by order in council.²⁸

Orders and Regulations

In addition to authority to prescribe rates of exchange for foreign currencies at which all transactions in those currencies must take place, the Act confers on the Governor in Council power to appoint authorized dealers or agents for the administration of the Act²⁹ and, by regulation, to designate currencies acceptable or payable in transactions to which the Act applies,³⁰ to exempt persons or transactions from provisions of the Act, to prescribe forms and procedures and generally to provide for carrying out the provisions of the Act.³¹ Under these powers the Governor in Council, acting upon the recommendation of the Minister of Finance, has passed the following orders in council which are in force at the present time:³²

²⁸ S. 18.

²⁹ S. 16.

³⁰ S. 24.

³¹ S. 35.

³² In addition, the following orders in council of a more technical nature have been made under the Act and are now in effect: prescribing remuneration to authorized dealers under s. 17 (P.C. 5218 of December 19th, 1946); prescribing maximum amount of currencies other than U.S. dollars

- (a) prescribing rates of exchange;³³
- (b) establishing the Foreign Exchange Control Regulations;³⁴
- and
- (c) establishing regulations governing currency, securities, etc., forfeited under the Act.³⁵

Under the Act, regulations become effective only upon publication in the Canada Gazette and require to be laid before Parliament within 15 days.³⁶ Although, as in the case of exchange rates, certain powers of the Governor in Council are not stated in the Act as being exercisable by way of regulation, and publication in the Canada Gazette may not technically be necessary, the invariable practice has been to publish in Part II of the Canada Gazette, Statutory Orders and Regulations, all orders in council made under the Act.³⁷

Exemptions

Among important regulation-making powers conferred on the Governor in Council for the purpose of achieving a degree of flexibility in the administration of the Act is that of exempting any person or class of persons or transaction or class of transactions from any provision of the Act.³⁸

The power of exemption is exercised to relieve from the general declaration and permit requirements, or the completion of declaration and permit forms, a number of transactions, mainly those involving small amounts, as a means of reducing routine and inconvenience for the public. Under this authority, for example, residents are exempted from selling to authorized dealers amounts of U.S. currency coming into their possession

which may be held in Exchange Fund Account under s. 5(2)(c) (P.C. 5217 of December 19th, 1946); authorizing advances to Exchange Fund Account from Consolidated Revenue Fund under s. 7 (P.C. 330 of January 30th, 1947, as amended by P.C. 1557 of March 31st, 1949); appointing alternates to members of Foreign Exchange Control Board (P.C. 5219 of December 19th, 1946, P.C. 249 of January 23rd, 1947, and P.C. 4051 of September 9th, 1948).

³³ P.C. 1910 of April 29th, 1948.

³⁴ P.C. 1909 of April 29th, 1948, as amended by P.C. 4561 of October 7th, 1948 and P.C. 1730 of April 7th, 1949.

³⁵ P.C. 2227 of June 3rd, 1947.

³⁶ S. 35(2) and (3).

³⁷ In addition to publication in the regular edition of the Canada Gazette, Part II, orders in council made under the Act are generally published separately in extra editions. For example, the orders prescribing rates of exchange and establishing the Foreign Exchange Control Regulations and the regulations governing currency, etc., forfeited under the Act are available in an extra edition of the Canada Gazette, Part II, dated May 14th, 1948, Vol. LXXXII, No. S-51.

³⁸ S. 35(1)(e).

not exceeding \$10 in the aggregate,³⁹ no permit form need be completed for the purchase of money orders in amounts up to \$10 U.S. and £25,⁴⁰ and no permit is required for a resident traveller to take out of Canada up to \$25, provided that not more than \$10 of this amount is in foreign currency.⁴¹ Since 1947, these exemptions have been at relatively low levels but in the past they have been varied considerably in the light of the exchange situation. In addition, non-resident tourists are for practical purposes exempted from all permit requirements⁴² and, for the convenience of tourists, resident merchants, hotelkeepers, and the like, are authorized to retain reasonable amounts of U.S. currency in excess of \$10 for the purpose of making change for tourists who tender U.S. currency in payment for purchases.⁴³

Residents may also obtain special permits to operate foreign currency bank accounts under which they are exempted, upon certain conditions, from the general requirement that they immediately offer for sale to authorized dealers any foreign exchange they receive.⁴⁴ For example, commercial companies may obtain permits authorizing them to deposit their normal U.S. dollar receipts in U.S. dollar bank accounts and make payments from these accounts for approved purposes, selling only excess funds to their authorized dealer.⁴⁵ Monthly or other periodic reports of their transactions are made by these companies in place of the permit and declaration forms which otherwise would be completed for individual transactions. The purpose of this procedure is to facilitate the carrying on of normal day-to-day transactions within the general exchange control framework.

Designation of Currencies

A further important regulation-making power is that of the Governor in Council to designate currencies that may be received or paid or may not be received or paid in connection with transactions to which the Act applies.⁴⁶

At present the rest of the world, from the point of view of the Canadian foreign exchange control, is divided into three groups:

³⁹ Act, s. 22(1)(a) and Reg., s. 13.

⁴⁰ Reg., s. 17(2).

⁴¹ Reg., s. 49(2).

⁴² Act, s. 25(3) and Reg., s. 40(2)(e) and 50; Act, s. 26(3) and Reg., s. 46(2)(c); Act, s. 32(2) and Reg., s. 60(1).

⁴³ Reg., s. 21.

⁴⁴ Reg., ss. 70 to 76.

⁴⁵ Reg., s. 75.

⁴⁶ Act, s. 24.

- (1) the sterling area, comprising principally the British Commonwealth and Empire, except Canada;⁴⁷
- (2) special arrangement countries, the principal members of which are France, Belgium, the Netherlands and Norway;⁴⁸
- (3) the United States dollar area, made up of all countries not in the other two groups.⁴⁹

Transactions between Canada and the sterling area are conducted on the basis of sterling or Canadian dollars, the arrangements between the two countries being such that payments or receipts in either currency are made only through official channels and have the same effect. Since the sterling area has a deficit in its balance of payments with Canada and payments to the sterling area may be made in sterling or Canadian dollars, the use of U.S. dollars for that purpose is generally prohibited by designation under the regulations.⁵⁰ On the other hand, residents may accept payments from the sterling area in either sterling or Canadian dollars.

The special arrangement countries also have balance of payment deficits with Canada and, although current transactions with them are conducted to a large extent on a U.S. dollar basis, any Canadian dollars they receive from Canada, whether from current or capital transactions, can be used to meet any of their expenditures here under certain technical arrangements for ensuring that the Canadian dollars so used were derived from a proper source. Accordingly residents may normally pay either Canadian or U.S. dollars in settlement of current transactions with, or accept payments in either of those currencies from, special arrangement countries.

So far as concerns United States dollar area countries, with which we have an overall deficit, it is normally necessary for us to make our current account payments in U.S. dollars and it is largely to our receipts from transactions with those countries that we must look to obtain the U.S. dollars required for that purpose. The most important exercise of the authority to designate currencies is, therefore, that residents who are entitled to receive U.S. dollars from non-residents or who have amounts due from residents of United States dollar area countries as a result of exports, services and other current transactions are re-

⁴⁷ Reg., s. 2(1)(m) and Schedule II.

⁴⁸ Reg., s. 2(1)(j) and Schedule I.

⁴⁹ Reg., s. 2(1)(n).

⁵⁰ Reg., s. 19.

quired to obtain U.S. dollars, which will accrue to the official reserves and thus be available to meet our U.S. dollar needs.⁵¹

Unofficial Market for Canadian Dollars

A feature of the Canadian exchange control system for which there is no counterpart in the systems of most other countries is the existence of an unofficial market for Canadian dollars in the United States. U.S. dollars are made available out of official Canadian reserves for virtually all current account payments to the United States dollar area. In addition, certain capital payments are permitted but only in Canadian dollars which are not convertible from the official reserves, *e.g.*, proceeds of maturity of Canadian dollar bonds held by United States investors. A United States dollar area resident receiving these "inconvertible" Canadian dollars is free, however, to sell them to another United States dollar area resident at whatever price in U.S. dollars may be agreed upon between them. Through the existence of this procedure it has been possible to allow a considerable leeway to individual non-residents to repatriate capital assets held by them in Canada without a direct demand on our U.S. dollar resources and thereby to avoid the complete blocking of non-resident capital which is a feature of many other exchange controls. This desirable result would not be accomplished, however, if non-residents could use these inconvertible Canadian dollars to make payments to Canadian residents for purposes for which the latter would normally be expected to obtain U.S. dollars. If this were possible, Canada would earn no U.S. dollars from the transactions giving rise to the payments and the effect would be that U.S. dollars would have been provided out of official reserves to allow non-residents as a group to reduce their investment in Canada.

One effect is, of course, to limit strictly the use which non-residents can make of inconvertible Canadian dollars acquired in the unofficial market. In general, the use of such funds by non-residents is confined almost entirely to new capital investments

⁵¹ Transactions for which currencies payable or acceptable are specifically designated in the Regulations are: exports of goods (ss. 42 and 43); imports of goods (s. 48); sales of property to non-residents (s. 59); services performed for non-residents (ss. 61 to 63); assignment to non-residents of claims on non-residents (s. 64); debts or claims due from non-residents (s. 65); leases of property to non-residents (s. 66); profits of controlled non-resident businesses (s. 67); legacies and other payments from non-resident estates (s. 68); and, payments due to residents on foreign securities optionally payable in Canadian and foreign currency (s. 69).

in Canada and tourist expenditures. Because of these restricted uses the non-resident demand for Canadian dollars frequently falls short of the supply, with the result that the Canadian dollar is traded in the unofficial market at a price lower than the official rate. In its nature, however, the unofficial market is a relatively small one and is of no practical significance to Canadian residents who, because of the requirement that they buy or sell foreign exchange only through authorized dealers⁵² at the official rate, have no legal access to that market. Similarly, residents of sterling area and special arrangement countries, because of the arrangements with those countries, are prohibited from buying or selling Canadian dollars in the unofficial market.⁵³

IV. *Administration*

Foreign Exchange Control Board

Responsibility for operations under The Foreign Exchange Control Act is placed specifically on the Minister of Finance.⁵⁴ The Foreign Exchange Control Board is established as the agency to carry out the day-to-day administration of the powers and authority contained in the Act and regulations, under the control and direction of the Minister⁵⁵ who is responsible to Parliament for it in the same way as for the Department of Finance. The Board's functions are purely administrative and no independent regulation-making authority is conferred on it.

The Board consists of the persons who hold or are acting in the offices of Governor of the Bank of Canada, Deputy Minister of Finance, Under-Secretary of State for External Affairs, Deputy Minister of Trade and Commerce, Director of Operations of the Post Office Department, and Deputy Minister of National Revenue for Customs and Excise,⁵⁶ or alternates appointed by the Governor in Council.⁵⁷ The Governor of the Bank of Canada is designated as chairman of the Board⁵⁸ and the government departments represented are those which have a particular interest in or duties associated with the operation of exchange control. Members of the Board serve in that capacity without remuneration.⁵⁹

The Bank of Canada is required, without charge, to act as technical advisor and banker of the Board and to provide the

⁵² Act, s. 21.

⁵³ Act, s. 23(2), and Reg., s. 31.

⁵⁴ S. 4.

⁵⁵ S. 10.

⁵⁶ S. 11(1).

⁵⁷ S. 11(4).

⁵⁸ S. 11(3).

⁵⁹ S. 11(2).

Board with the necessary staff and office space, supplies and equipment.⁶⁰ Other costs of the administration of the Act must be met out of moneys provided by Parliament,⁶¹ thereby giving Parliament an annual opportunity of reviewing operations under the Act.

Authorized Dealers and Agents of the Board

In addition, various authorized dealers and agents to assist in the administration of the Act are designated in the Act or appointed by the Governor in Council under authority contained in it.⁶² The Board is authorized to issue instructions to authorized dealers and agents prescribing the terms and conditions under which they may act on the Board's behalf.⁶³

Each of the more than 2,800 branches in Canada of the ten chartered banks⁶⁴ and the Montreal City and District Savings Bank⁶⁵ are authorized dealers and agents of the Board and, under their instructions from the Board, have wide authority to grant permits for the sale of foreign exchange, payments of Canadian dollars to non-residents, exports of currency by travellers and certain other transactions. For example, authorized dealers may authorize payments for imports in appropriate currencies without limit where the goods have entered Canada or will be imported within ninety days. They also have general authority to sell exchange for or approve Canadian dollar payments in connection with most current transactions, subject to monetary limits in certain cases. In addition, authorized dealers perform a wide range of other foreign exchange functions. They have a large measure of responsibility in particular for "matching" exports of goods by their customers against receipts of foreign exchange or other appropriate form of payment and sales of exchange or other payments made by their customers for imports of goods against evidence of the entry of the goods. For all their work in connection with exchange control, authorized dealers are paid a commission based on their purchases and sales of foreign exchange.⁶⁶

⁶⁰ S. 12.

⁶¹ S. 13.

⁶² Act, s. 16.

⁶³ Act, s. 36(1)(d).

⁶⁴ Act, s. 14.

⁶⁵ Reg., s. 4.

⁶⁶ Order in council P.C. 5218 of December 19th, 1946, made under s. 17 of the Act, establishes this commission at 3/32 per cent.

Customs Officers are agents of the Board to grant permits for exports and imports of goods.⁶⁷ They have authority, so far as The Foreign Exchange Control Act and regulations are concerned, to approve permits covering the importation of any goods which are otherwise legally admissible to Canada and for any exports for which payment is to be received in an appropriate currency within six months.

Postmasters are agents of the Board with authority to issue foreign money orders for approved types of remittances of small amounts.⁶⁸ Express companies and the various savings banks operating in Canada are agents⁶⁹ with similar authority, as well as certain authority to approve travel applications.

All branches in Canada of the chartered banks, most trust and loan companies and all firms which are active members of the various Canadian stock exchanges and the Investment Dealers' Association of Canada are designated as "appointed security dealers"⁷⁰ with authority to approve the necessary permits for practically all types of permissible transactions in securities.

In addition, trust and loan companies,⁷¹ life insurance companies⁷² and the Comptroller of the Treasury of the Government of Canada⁷³ are agents of the Board with a large measure of authority to approve permits for Canadian dollar payments made to non-residents by means of their own cheques.

Functions and Powers of the Board

As a result of the extensive decentralization of exchange control administration among existing agencies and organizations, the Foreign Exchange Control Board is in a position to carry out its functions with a relatively small staff. This numbers about 465 at the present time, of which slightly less than 400 are in the Board's main office in Ottawa and the remainder distributed among branch offices in Vancouver, Windsor, Toronto, Montreal and St. John's.

In volume, the largest part of the Board's day-to-day work consists of the supervision of the exercise by authorized dealers and agents of their authority to approve permits and of the carrying out of their other exchange control duties. Copies of all permits approved are sent to the Board and are scrutinized to

⁶⁷ Act, s. 15.

⁶⁸ Act, s. 15.

⁶⁹ Reg., s. 5 and Schedule III.

⁷⁰ Reg., s. 6 and Schedule IV.

⁷¹ Reg., s. 7 and Schedule V.

⁷² Reg., s. 8 and Schedule VI.

⁷³ Reg., s. 9.

ensure that their approval was in accordance with existing instructions. A check secondary to that of the banks is made to ensure that exports of goods produce appropriate payments and that imports are actually made against payments for that purpose. In addition, reports submitted by persons operating foreign currency bank accounts under special permits are examined to ensure that only authorized types of transactions have been entered into. To a considerable extent, therefore, the Board's supervision and control of ordinary current transactions is exercised after they take place and is largely a routine matter.

A second important function performed by the Board is the compilation of statistical material in connection with our international transactions, based on the permit forms and reports which it receives. These, together with trade and other statistics, provide up-to-date information on trends in our balance of payments on the basis of which exchange control policies can be formulated.

A third phase of the Board's activities, and the principal one involving the exercise of administrative discretion, is the carrying out of the powers under the Act to grant or refuse permits⁷⁴ and to determine questions of residential status for the purposes of the Act.⁷⁵ Another authority of the Board of this same general type is to determine the fair value of property involved in transactions between related resident and non-resident companies where the dealings are not at arm's length.⁷⁶

Residential Status

The Act defines "resident" as meaning any company, partnership, etc., incorporated or having its head office in Canada and any individual who was ordinarily resident in Canada on September 15th, 1939 (the date when exchange control was established) or at any subsequent time, unless he is granted the status of a non-resident by the Board.⁷⁷ In other words, a person who was a Canadian resident at the commencement of exchange control or became a resident after that date cannot, by moving out of Canada, acquire non-resident status for exchange control purposes, unless the Board so determines. The reason and necessity for this are that, in general, the obligations imposed by the Act are on residents and if a resident were able, by moving out of

⁷⁴ S. 36(1)(a).

⁷⁵ S. 36(1)(c)(i) and (ii).

⁷⁶ S. 36(1)(c)(iii).

⁷⁷ S. 2(1)(u).

Canada, to acquire automatically the status of a non-resident, which would enable him to withdraw his funds and other assets from Canada, there would be no effective way of controlling outflows of capital and the purposes of exchange control would be defeated. Certain general exceptions to the definition of "resident" are provided for in the Act⁷⁸ and by regulation⁷⁹ to meet special situations and the Board's power to determine residential status is exercised chiefly in dealing with applications made by persons who wish to move from Canada for permanent residence elsewhere and transfer their funds.

Applications and Permits

Forms of applications and permits for the more common types of transactions are prescribed in the Foreign Exchange Control Regulations.⁸⁰ Applications are in most cases made in the first instance to the appropriate authorized dealer or agent of the Board. In the case of transactions that authorized dealers or agents have authority to approve, their approval of the appropriate application form constitutes the permit for the transaction described in it.⁸¹ For example, applications for permits for the export of goods are made on a combined Customs export entry and exchange control form at the time and place of export and the stamping of the form by the Collector of Customs constitutes the permit for the export. Copies are sent to the exporter's authorized dealers, and also to the Board, so that surrender of the foreign exchange or receipt of other payment can be checked. Similarly, applications for exchange control permits for the import of goods are submitted as one of the set of usual Customs import entry forms when the goods are cleared through Customs. The exchange control form, when stamped by the Collector, is returned to the importer and serves as evidence to be

⁷⁸ S. 2(4) and (5).

⁷⁹ Reg., s. 3.

⁸⁰ The principal forms prescribed by the Regulations, all of which are reproduced in Schedule VII thereto, are: application for change of status from resident to non-resident (Form 107)—s. 12; declaration and sale of foreign exchange to authorized dealer (Forms CT, C and CFC)—ss. 14 and 15; application to buy foreign exchange (Forms FT, F and FFC)—ss. 17 and 18; application to transfer Canadian dollars to non-resident (Form G)—ss. 28 to 30; application to pay dividends or profits to non-residents (Form DIV)—ss. 34 to 39; application for permit to export goods (Form B. 13-B)—ss. 40 to 45; application for permit to import goods (Form E)—ss. 46 to 48; travel permit (Form H)—ss. 49 and 50; application for permit to sell, assign, etc. securities to a non-resident and/or to export securities (Form K)—ss. 52, 53 and 55; application for permit to sell securities in Canada by or for a non-resident (Form S)—s. 54.

⁸¹ Reg., 11(1).

surrendered to his bank in support of his application for foreign exchange or to remit Canadian dollars in settlement.

Applications for permits which authorized dealers or agents have not authority to approve may be referred to the Board, either through an authorized dealer or agent or direct by the applicant, his solicitor or other representative. Such applications may be submitted either on the prescribed forms or by letter, the Board's primary concern being to obtain, in whatever way is most convenient, complete details of the purpose of a proposed transaction and of the relevant facts concerning it so that the application can be given intelligent consideration. Anyone is quite free to discuss an application or other exchange control matter with officers of the Board.

Where an application is for a permit to buy foreign exchange or pay Canadian dollars to a non-resident it is generally preferable that it be submitted by the authorized dealer through whom, if the application is approved, the transaction will be effected. Where applications are approved, the Board normally grants special authority to the authorized dealer or agent to approve the permit rather than doing so itself, so that where an application is made direct to the Board the name and address of the authorized dealer or agent should be given. Similarly an application for a security transaction should ordinarily be made by the security dealer involved. Where a transaction for which no special form is prescribed is approved, the Board's letter of approval constitutes the permit.⁸²

Organization of the Board

The Board's executive organization⁸³ at Ottawa consists of the chairman or, in his absence, the Deputy Governor of the Bank of Canada; an executive head designated as the chairman (alternate); assistants to the chairman; advisors on foreign exchange, securities and statistics and research matters; secretarial statistics and research and enforcement sections; and the following sections which normally deal in the first instance with the indicated types of applications to the Board:

- (1) Commercial — Distributors: transactions of firms and individuals whose principal business consists of transportation, merchandising goods or selling services;

⁸² Reg., s. 11(2).

⁸³ S. 36(1)(e) of the Act authorizes the Board to plan its organization and to appoint officers, clerks and employees furnished by the Bank of Canada to offices or positions under the Board and authorize them to act on the Board's behalf.

(2) Commercial — Producers: transactions of firms and individuals whose principal business is manufacturing or the production or processing of natural products;

(3) General: transactions of trust and loan companies, non-profit organizations and matters pertaining to individuals, such as non-business travel, residential status, benevolent remittances and estates and trusts;

(4) Insurance: transactions of insurance companies;

(5) Interest and Dividends: payments of dividends, profits and inter-company interest;

(6) Securities: transactions of security dealers and those involving publicly issued securities generally.

Applications to the Board are dealt with by the appropriate sections in accordance with the current exchange control policy as approved by the Minister of Finance. Borderline cases, those involving large amounts or those on which general policy is not clearly established are discussed at periodic meetings, usually held weekly, of all section heads and other senior officers, or at meetings of the members of the Board. The members of the Board meet as occasion requires,⁸⁴ usually monthly, for the purpose of reviewing the general operation of the control, formulating administrative policies within the general framework of the Government's overall exchange control policies and considering any advice that should be given, with respect to the latter, to the Minister of Finance. When an application is refused, the general practice is to outline the general policy applicable to the particular case and indicate the reasons why it does not qualify for approval.

An applicant may ask for reconsideration of any adverse decision made by an officer of the Board and, where this is done, the matter is invariably referred to and discussed with a more senior officer or officers and, where requested, with the members of the Board, either individually or at their regular meetings. The members of the Board do not, however, follow the practice of sitting formally as a body to hear representations made personally by applicants.

The Board's branch offices operate like the main office at Ottawa and deal directly with the more usual types of application made in their local areas, referring others to Ottawa.

Appeals

The Act gives a right of appeal to the Board from the re-

⁸⁴ Act, s. 11(5).

fusal of any application by an authorized dealer or agent⁸⁵ and to the Minister of Finance from any determination, decision or ruling of the Board for which an appeal to a court is not provided.⁸⁶ The Minister may on any appeal give such decision as to him appears proper under the Act and regulations and his decision is stated to be final.⁸⁷

The question of appeals to the Board from decisions of authorized dealers and agents is largely academic since they are in most cases dealing with their own customers and there is every reason for them to refer reasonable applications to the Board if their instructions do not permit them to approve the transactions. Many applications are referred to the Board by authorized dealers and agents and, as indicated previously, applicants may, and frequently do, write direct to the Board.

The decisions or rulings of the Board from which there is an appeal to the Minister are confined to determinations of residential status and refusals to grant permits. The final decision on these matters necessarily depends on foreign exchange policy at the time and, since this is a question for day-to-day determination by the Government, there does not appear to be any basis on which a court would be able to review the Minister's decision. In any event, no attempt to do so has been made up to the present time.

No formal procedure is followed in appeals to the Minister, the only requirement under the Act being that they should be made in writing. From time to time the Minister receives letters and representations from and on behalf of persons who are submitting applications to the Board or have had applications refused, although it is difficult to know which and how many of these could be considered as constituting "appeals" within the meaning of the Act. In all these cases, however, the facts and the applicable general policy are carefully reviewed and are placed before the Minister who communicates his decision to the person concerned.

In the case of decisions of the Board as to the fair value of property in transactions between related companies, in which questions of fact susceptible to proof are involved, an appeal to the Exchequer Court of Canada is provided.⁸⁸ The Board has rarely had occasion formally to exercise this power and, up to the present, no appeals have been taken from its decisions.

⁸⁵ S. 37(1).

⁸⁶ S. 37(2).

⁸⁷ S. 37(3).

⁸⁸ S. 38.

Publicity on Exchange Control Policies

Important changes in general exchange control policies decided upon by the Government are normally announced by the Minister of Finance to Parliament or through press releases, while changes in administrative policies and procedures are communicated by the Board through authorized dealers and agents and public announcements as may be appropriate. Fairly extensive use has been made of newspaper advertisements and spot radio announcements to publicize matters of wide public interest, such as the regulations relating to travel and the turning in of U.S. currency to banks. The banks through which most of the public's contact with exchange control occurs, are in frequent touch with the Board and are in a position to advise on most exchange control matters. On various subjects of general interest to sections of the public the Board has issued, and revises as necessary, circulars describing existing policies and procedures⁸⁹ and distributes them widely through its mailing lists or upon request.

In addition, the Board is required to submit an annual report to the Minister of Finance of operations under the Act,⁹⁰ in which it is the practice to describe the more important policy and procedural changes made during the period under review.⁹¹

V. Enforcement

For the most part the enforcement provisions under The Foreign Exchange Control Act are based on or are similar to those contained in the Customs⁹² and Income Tax Acts.⁹³

The principal enforcement agencies are Customs Officers, the Post Office, the Royal Canadian Mounted Police and the Board's own enforcement staff. The Act places on customs officers⁹⁴ and postmasters⁹⁵ the duty of ensuring that exports of goods, securities and currency do not take place through the

⁸⁹ Current circulars of this nature deal with the following subjects: borrowing by Canadian residents from non-residents; new investments in Canada by non-residents; diplomatic officials; exports of goods; imports of goods; travel by Canadian residents; change of residential status (by emigrants); payment of dividends, profits and interest to non-resident parent companies, head offices or proprietors; and withdrawal by non-residents of capital invested in Canada.

⁹⁰ S. 39.

⁹¹ Reports to the Minister of Finance have been made and published covering the period of exchange control down to the end of 1945 and for each of the years 1946, 1947 and 1948.

⁹² R.S.C., c. 42.

⁹³ 1948, c. 52.

⁹⁴ S. 45.

⁹⁵ S. 46.

customs ports or post offices over which they have authority, unless they are satisfied that no permit is required or that the requisite permit has been obtained. In these duties they are assisted, where necessary, by members of the R.C.M. Police who also handle the majority of investigations into offences under the Act. The Board's Enforcement Section acts largely in the capacity of supervising the various enforcement activities but members of the Board's staff also conduct or assist in investigations, particularly where they involve examination and analysis of accounting records or other technical knowledge.

Inquiries

The Board is authorized under the Act to appoint Inspectors to assist in its enforcement,⁹⁶ with authority to conduct inquiries or investigations into matters relating to transactions to which the Act applies. An inspector may require any person to furnish information relevant to an inquiry or investigation and may summon before him any person and examine him and require him to give evidence orally or in writing. For this purpose an inspector may issue a subpoena or summons requiring a person to appear to testify at a specified time and place and produce relevant documents or records.⁹⁷ At present there are approximately 100 inspectors appointed by the Board under this authority, the large majority of whom are members of the R.C.M. Police in various parts of the country and the remainder members of the Board's own staff.

The Act provides that any person who is examined and required to give evidence in the course of an inquiry or investigation is entitled to be represented by counsel at the examination.⁹⁸

With one exception, the provisions of the Canada Evidence Act are specifically made applicable to inquiries or investigations under The Foreign Exchange Control Act.⁹⁹ The exception is from the provision of the Canada Evidence Act¹⁰⁰ under which banks are not compellable to produce books or records or give evidence relating thereto unless by order of the court made for special cause after notice to the parties concerned. Since banks are authorized dealers and agents of the Board for the administration of The Foreign Exchange Control Act and since the majority of transactions affected by the Act involve banking trans-

⁹⁶ S. 40.

⁹⁷ S. 41(2).

⁹⁸ S. 41(6).

⁹⁹ S. 41(4).

¹⁰⁰ R.S.C., c. 59, s. 29(3) and (4).

actions, it is essential to its effective enforcement that the Board be in a position to obtain information readily from their books and records without having to show special cause.

Powers of Enforcement Officers

Because of the large volume of travel between Canada and the United States, an important foreign exchange control function of customs officers is in connection with the export of funds by travellers. Persons about to leave Canada are required to answer truly questions asked by customs officers as to funds or other property which they are proposing to take out of Canada.¹⁰¹ If a customs officer has reasonable cause to believe that such a person has currency or other property concealed, he may search the person or examine his property and seize and detain any currency or other property, the export of which is not authorized.¹⁰² Before a person may be searched by a customs officer, however, he may require the officer to take him before a police magistrate, justice of the peace, or before the chief officer at the Customs port, who must, if he sees no reasonable cause for search, discharge the person.¹⁰³

Persons carrying on business who engage in transactions to which the Act applies are required to keep proper records and books of account and make them available at reasonable times for inspection by inspectors appointed by the Board.¹⁰⁴ Where during the course of such an inspection it appears that there has been a violation of the Act, the inspector may seize and take away books and records and retain them until produced in court proceedings. If no court proceedings are commenced within 90 days after the seizure, however, the books and records must be returned.¹⁰⁵ An example of the circumstances in which these powers are exercised is in the case of firms which are appointed security dealers. Since they have wide authority to approve permits for security transactions, periodic examinations are made of their books to ensure that their authority is being exercised properly.

Provision is also made in the Act whereby an inspector may, with the approval of a judge of the Exchequer Court or of a Superior or County Court, which approval may be given *ex*

¹⁰¹ S. 47(1).

¹⁰² S. 47(2).

¹⁰³ S. 47(3) and (4).

¹⁰⁴ S. 42.

¹⁰⁵ S. 42(4).

parte, authorize searches and seizures in particular cases.¹⁰⁶ Any property seized as a result of such a search must be returned if no court proceedings are commenced within 90 days.¹⁰⁷

Arrest without warrant for offences under the Act may be made for offences which may be prosecuted by indictment.¹⁰⁸ Indictable offences are those involving property having a value of more than \$1,000.¹⁰⁹

Prohibitory Orders

An authority of a special nature contained in the Act is that where in the opinion of the Board it is necessary, for ensuring observance of the Act, to exercise control over the property of any person, the Board may by order prohibit absolutely or conditionally any disposition of or dealing with all or part of the property of such person.¹¹⁰ The order is binding on anyone having notice of it.¹¹¹

Exchange control offences most frequently relate to illegal exports of currency or other property. Once such exports occur, the property is beyond control and, where the offender himself leaves Canada, he cannot of course be apprehended, but he may be able to employ others unknown to the Board to carry out illegal exports. A procedure enabling quick action to be taken to prevent such transactions is, therefore, important to effective enforcement. The most common way in which the procedure has been used is to prohibit withdrawals from bank accounts or safety deposit boxes by owners whom the Board has reason to believe were transferring or about to transfer capital from Canada contrary to the Act.

Any person whose property has been made the subject of a prohibitory order has the right to apply to a court having jurisdiction in bankruptcy to rescind or vary the prohibition and the court may vary or rescind the order in whole or part.¹¹² A considerable number of prohibitory orders have been issued by the Board but no appeals have been taken against them up to the present time.

¹⁰⁶ S. 43.

¹⁰⁷ S. 43(3).

¹⁰⁸ S. 44.

¹⁰⁹ S. 59.

¹¹⁰ S. 48(1).

¹¹¹ S. 49.

¹¹² S. 48(2).

¹¹³ S. 55.

Prosecutions

Proceedings for offences under the Act consist of prosecutions and the forfeiture of property seized as having been dealt with contrary to the Act.

Prosecutions may be commenced only with the consent of the Attorney General of Canada or counsel representing him.¹¹³ The practice is that, when the Board reaches the conclusion that a prosecution should be instituted and that evidence is available to support a conviction, the facts are submitted to the Attorney General. If the necessary consent is granted, the Attorney General appoints local counsel to act as his agent in the prosecution. Prosecutions may be instituted not longer than three years from the commission of the offence¹¹⁴ either under the summary conviction provisions of the Criminal Code or, where property of a value of more than \$1,000 is involved, upon indictment.¹¹⁵ On summary conviction the maximum penalty is double the value of any property involved and imprisonment for twelve months, while on conviction upon indictment, the term of imprisonment may be up to five years.¹¹⁶

Forfeiture Proceedings

The permit requirements and restrictions on exports of currency by travellers inevitably lead to a large number of offences involving, in individual cases, relatively small amounts which it would be impractical or undesirable to deal with by way of prosecution. To deal with these offences the Act provides a summary administrative forfeiture procedure for currency up to a value of \$100 which a person attempts to export from Canada or, in the case of foreign currency, has in his possession contrary to the provisions of the Act.¹¹⁷ Briefly, the procedure is that when such a seizure is made the Board is required to notify the owner by registered mail of the reasons for it and to call on him, if he wishes to do so, to furnish within 30 days evidence by way of affidavit or statutory declaration.¹¹⁸ If evidence is furnished it is given consideration and the owner is then notified whether or not the seizure is to be maintained.¹¹⁹ The owner has the right within a further 90 days to object to a decision to forfeit

¹¹⁴ S. 58.

¹¹⁵ Ss. 57(2) and 59.

¹¹⁶ S. 59.

¹¹⁷ Ss. 61 and 62.

¹¹⁸ S. 61(3).

¹¹⁹ S. 61(4).

the funds, in which case the Board is required to have the matter referred for determination to a magistrate.¹²⁰

There is, in practice, no rigid adherence to the time limits specified and, in dealing with these small seizures, the Board endeavours to take in account all the circumstances of the individual case. In 1948, for example, some 2,475 cases were dealt with under this summary procedure, in about 40% of which the funds seized were returned. During the year appeals to a magistrate from the Board's decisions were made in seven cases.

In addition to the summary forfeiture procedure, currency and other property seized in connection with offences under the Act is liable to forfeiture at the instance of the Attorney General of Canada upon proceedings in the Exchequer Court of Canada or in any Superior Court.¹²¹ This procedure has been followed in relatively few cases, mainly those where seizures of currency were made from persons leaving Canada who have not returned.

Onus of Proof

The only exception to the ordinary rules of evidence in prosecutions or forfeiture proceedings under the Act is that the onus of proof is placed on an accused or defendant who alleges that he had a permit or had declared foreign exchange as required by the Act to establish that this was the case.¹²² The reason and need for this provision are that the great majority of permits and declarations are approved by or made to authorized dealers or agents of the Board and it is generally impossible for any officer of the Board to state definitely that no permit has been made or declaration made covering any particular transaction. On the other hand each declarant or applicant for a permit is normally provided with, or can obtain from the authorized dealer or agent concerned, a copy of the declaration or permit with which to establish his allegation.

Use of Information Furnished to the Board

The Act specifically prohibits the communication by officers of the Board of any information furnished in support of application or otherwise, except to a person legally entitled to it, to a department of the Government of Canada requiring it in the discharge of its duties or in legal proceedings instituted by or on behalf of the Crown.¹²³

¹²⁰ S. 61(5) and (6).

¹²¹ S. 60.

¹²² S. 56.

¹²³ S. 67.