

Questions may also arise as to the qualifications of shareholders in a company offering shares for public subscription to elect successors to provisional directors. Sec. 79 says: "They shall be the directors . . . until replaced by . . . others duly elected." But when may an election take place? No "business" may be "commenced" by a company offering shares for public subscription (s. 108) until certain preliminaries have been complied with, and much has to be done before that can be obtained. Does "business" include the election of directors to replace provisional directors, and similar organization work? One would be inclined to say that it means "business as a company with strangers to the company," were it not for the fact that until the provincial secretary has issued a certificate that the company is entitled to commence business, all moneys received for shares must be held in trust, and no allotment of shares can be made until the amount named in the prospectus for a minimum has been subscribed, so that until the aforesaid certificate is issued the new subscribers cannot become shareholders qualified to vote at general meetings, and, therefore, cannot take part in the election of directors; so that until the company is organized the provisional directors must remain in office, or be succeeded by directors elected by those shareholders originally incorporated.

A question may also arise as to the number of directors who can be elected to replace provisional directors. Sec. 79 says: "The provisional directors shall be the directors until replaced by the same number of others." Sec. 86 says: "A company may by by-law vary the number of its directors." In *Manes Tailoring Co. v. Wilson*, 14 O.L.R. 89 (decided before s. 86 was enacted) it was held that the number elected must be the same, and to make this clear, apparently, s. 79 was amended by inserting "the same number" before "others" at the very time s. 86 was being enacted, and the effect has been to create greater doubt and confusion.

The result seems to be that if a company wishes to displace the provisional directors, and also to vary the number of its