

*Canada Corporations Act*

company in question. Whenever the directors of the offeree company recommend to their shareholders acceptance or rejection of the takeover bid, the directors would be required to issue a directors' circular containing information to explain their recommendation, and indicating whether they themselves propose to accept or reject the offer. It is most desirable that the shareholders receive sufficient information to enable them to evaluate the position of management.

Offers to be effected through the facilities of a stock exchange or on the over-the-counter market would be exempt from these provisions. In these cases the bidders are not in direct contact with the shareholders; the purchase of shares takes place in the market. As the shareholders and the bidders are dealing at arm's length, there is not the same need for protecting the shareholders. Similarly, these provisions would not cover offers made by way of private agreement with individual shareholders. There is also provision for specific exemption by a court upon application. These provisions are substantially similar to the requirements found in the legislation of Ontario and other provinces.

The fifth series of amendments contained in Bill C-4 deal with provisions for inspection and investigation of federal companies. Corporate laws of Canada, most of the provinces and the Commonwealth already contain provisions for inspection and investigation of companies in the interests of shareholders oppressed by mismanagement or fraud, although the mechanics of the investigation process vary greatly.

Under the Canada Corporations Act the minister may appoint inspectors to investigate the affairs of a company, but only on the application of shareholders. Furthermore, the expenses of any such investigation are the responsibility of the applicants or, where I as Minister of Consumer and Corporate Affairs so direct, that of the company. Such requirements tend to deter people from bringing forward valid complaints.

Our experience supports this conclusion. Since 1950 the department has received only 11 formal requests for inspection, although the number of informal complaints received is substantially higher—about six a year. A few of the inspections ordered by the department have paved the way to the laying of criminal charges. In other cases the inspection was useful in showing suspicions of irregularities or misconduct to be groundless and baseless.

The inspection and investigation procedure has a key role to play in maintaining and developing investor confidence in our market system. Through this machinery the administration can help to ensure that the corporate device is not used as a shield to defraud the investors, the creditors or the public generally. Through this procedure the administration can also help to ensure that the shareholders, whatever the extent of their financial involvement in a company, whether their interest is a minority one or not, will be treated fairly and equitably.

With these objectives in mind, and bearing in mind the overriding requirement that the inspection and investigation process be fair and just to all and that the fundamental rights of all be protected, we propose a new approach to inspection and investigation. First, the amendments would spell out the grounds on which an inspection or investigation could be made. These grounds are of two categories; first, suspected fraudulent or unlawful acts, or misconduct on the part of the company; second, acts that are oppressive on the minority of dissenting shareholders.

Second, an investigation could be commenced only with the approval of the tribunal, the Restrictive Trade Practices Commission. This approval could be sought either by my department or by a sufficient number of shareholders of the company. On approving the initiation of an investigation the tribunal would appoint an inspector and define the scope of the investigation to be undertaken. Again I emphasize that in spelling out the powers of the inspector under these provisions great care has been taken to ensure that all be treated justly and equitably. On completing his investigation the inspector will be required to prepare a statement of the evidence he has obtained, and the tribunal must give anyone affected by the statement a fair opportunity to be heard before the tribunal makes its report.

A simpler procedure is provided where the purpose of the investigation is solely to determine the reasons why a company has failed to file with my department a document that is required by the act to be filed. I hope that these powers of investigation and inquiry need never be used. Any investigation or inquiry power has to provide within it proper safeguards. I am confident that these have been built into the act and that they can be defended as proper safeguards in the circumstances. Finally, we propose that the costs of carrying out an investigation be part of the public costs of administering the act. The