

*Canada Business Corporations Act*

Speaker. It may be all very well for us to want to have Canadian ownership of corporations, but in doing that, are we going to allow the possibility of directors of corporations, able to use the company's earned surplus, the company's financial ability, to go into the market and buy up shareholders' shares—they could even be Canadian shareholders' shares because presumably they will be shares purchased on the market—take those shares back in, speculate on them or sell them off privately to some other person? If that is allowed, it is a total misuse of the trusteeship that directors elected for public corporations have to their shareholders. Indeed, the corporations could be private corporations. Therefore, we have a situation for the very first time where a company and the officers of a company can go into the market and use the company's assets to buy shares which the company intends to resell. Indeed, the very purpose of the section is to allow the company to buy the shares to resell.

I have no quarrel with the existing system where a company buys up the shares. If for the purpose of continuing to get credit for Canadian ownership they can buy up the shares to qualify in some way for ownership and control in terms of the crazy rules and regulations that were proposed under Bill C-104, that is all right, but what we have here is a situation where the corporation, through its directors, is allowed to speculate using shareholders' equity, to speculate and play around with the shareholders' own money, for private benefit. This is a dramatic change in what until now has been the basis of sound corporate practice. When we make changes in the way corporate law is structured, we not only seriously affect the value of corporate stocks of companies affected by the possible change, but we generally hurt or damage the reputation of federally-incorporated companies. This is a serious concern which the House must address.

● (1530)

Another change in the act involves a provision which was originally contained in Bill C-94. Significant changes have been made to Bill C-94 as a result of the efforts of my party in drawing to public attention the damages inherent in it. Those changes resulted in other portions of the constrained share regulations being altered as they were in the first paragraph on the top of page 9 of the bill. Nonetheless, as pointed out by the hon. member for York-Peel (Mr. Stevens), the changes to Section 43 of the Canada Business Corporations Act that were followed up with amendments to Sections 122 and 168 of the act do not seem to have solved the problem totally.

The essence of Section 43.1 in Part V.1 on page 4 of Bill C-105 is that a company should be entitled, in order to keep its qualification in line, to expropriate somehow the shares of shareholders, then sell those shares to other persons and pay the expropriated shareholders the net value of or the net receipt from the sale. It is true that this only applies where there are constrained shares, but I submit that the definition of constrained shares is inadequate. The details as to how the expropriation sale and eventual distribution of net proceeds are to be effected are not properly set out. Indeed, the entire

concept that directors of a company should somehow be entitled to seize a shareholder's share for which the shareholder has paid, to sell it in the marketplace as if the shareholder never owned it and to pay the net proceeds to the person selected to be expropriated, must be offensive to us all. It is not a fair compensation for property or even an ordinary expropriation. It is an actual seizure and payment of net proceeds to the holder of the share. In other words, all the costs of the expropriation are borne by the person expropriated.

Let me turn to a situation wherein one's property is taken over by the Ontario department of highways. Departmental officials could say that they had to appraise it, do this or that, and that they had only been able to obtain so much for the property, and turn over the net proceeds. This is what we are talking about. While the provision refers to constrained shares, there is no provision with respect to what the constrained shareholder will in fact receive. There is provision in the bill for notice to the constrained shareholder that he had better sell his share or shares, but if there is little or no market, but only hopes for opportunities with those shares, then he could be virtually expropriated without any compensation because in fact he is forced to sell and all he receives as a result of the sale are the net proceeds. In a weak market such as the one of today he could be wiped out. Both of these provisions are bad ones and should not be included in the statute law.

It is one thing to talk about Canadian ownership. I think we want Canadian ownership. But to include these provisions in the Canada Business Corporations Act is wrong. It is wrong to allow directors of a corporation—or the majority of shareholders of a corporation organizing with the directors—to so damage the interest of other shareholders, for the alleged purpose of Canadianizing or allowing the corporation to take advantage of some provincial privilege or some other privilege in some other statute. The hon. member for York-Peel produced in the House a series of Ontario and federal statutes which particularly require some element or a totality of Canadian ownership and control. It is also wrong to allow minority shareholders, albeit foreign or perhaps not that foreign, to be expropriated without really being compensated or to allow, as in the first part of the bill, directors to go into the marketplace to wheel and deal with the money of shareholders, to favour some persons over other persons. These provisions are wrong.

There is no need for this bill. Even if we were to go along with the government's Canadian ownership package with respect to grants to the oil industry, we do not need this bill. Companies can change their incorporations. They can create more shares. They can request supplementary articles of association to give them larger capital. They can organize their control in many other fashions. They do not need these powers. Inasmuch as these powers extend beyond the oil and energy industry, they should not be in this piece of legislation because they do not properly belong there. Therefore, I suggest that we must oppose this bill.