

see no real reason for requiring that a company have any shares other than the mutual fund shares. I do not think this is a very serious problem; it is simply a nuisance at the present time.

Mr. LESAGE (*Director of the Companies and Corporations Branch, Department of the Secretary of State*): Where is it provided in section 12A that a company must have two classes of shares?

Mr. WILLIAMSON: I do not think section 12A or any other section requires that you have other shares. What concerns me is the interpretation that mutual fund shares are not really shares, which would lead me to the conclusion that even with section 12A we would be in the same position as we are in now without it; that is, in order to have a company that looks like a company you have to have both mutual fund shares and another class of shares. I would agree there is nothing in section 12A that requires it; but I do not think it is consistent with a single class of shares to say that the mutual fund shares are not shares because this leaves you with a company that does not have any shares at all in the ordinary meaning of the word. I think this would bother most people setting up these funds, and it might bother as well the creditors and the shareholders.

If I may go on, Mr. Chairman, I would like to mention some sections that do not deal with the mutual funds. An element that concerns me a good deal is in clause 10 on page 7 of the bill, section 12(1a), one that I had already referred to. It permits the redemption of preferred shares out of capital. This subclause (1a) was put in after the bill was introduced in the Senate because, I believe, a number of witnesses suggested that the Ontario experience with preferred shares redeemable out of capital had been satisfactory and there was no reason why the dominion act should not permit the redemption of preferred shares out of capital. I think the explanation given in the Senate committee for including this subclause (1a) was that it seemed appropriate to provide for redemption of preferred shares out of capital. However, section 61, which appears on page 17 of the bill, has been retained. It has been redrafted but its essential meaning, I think, has been retained. I think section 61 still says that preferred shares can be redeemed only out of earned surplus. I suggest that there is a contradiction here, that the amendment would keep the concept that preferred shares may be redeemed only out of earned surplus and would introduce the concept that they may be redeemed out of capital.

I am not sure where this leaves the company, whether it has a choice. I do not think it really has a choice. Section 12(1a) seems to say it may redeem out of capital, and section 61 seems to say it may not redeem out of capital. I would suggest that section 12(1a) is a good section to have. This does follow the Ontario pattern that preferred shares may be redeemed out of capital. In this case I would think section 61 should simply be deleted entirely. However, if preferred shares are to be made redeemable only out of earned surplus, then I would think section 61 should be kept, but section 12(1a) would then be dropped. If section 61 is kept, I think some rewording is indicated. The accountants in particular have objected to the phrasing in subsection 4 which says: "The surplus resulting from a redemption or purchase for cancellation of shares of a company made in accordance with this section shall be designated as a capital surplus. . . ." I suppose everyone knows—at least I suppose all company lawyers know that surplus resulting from a redemption of shares is something very different from what is meant here. I think, as the accountants said, the only surplus that results from a redemption of shares would arise if you redeemed the shares for less than you had received for them, perhaps for less than the par value, which would be very unusual. What this subsection means, I think, is that when the shares are redeemed, what would have been a reduction of capital is cancelled out simply because then a reduction in the par