

when the Senate does not sit he lives in the City of Edmonton.

COMPANIES ACT

BILL TO AMEND—REPORT REFERRED BACK TO COMMITTEE

On the Order:

Consideration of the Report of the Standing Committee on Banking and Commerce with respect to Bill S-22, intitled: "An Act to amend the Companies Act".—(Honourable Senator Hayden).

Hon. Salter A. Hayden: Honourable senators, I have an unusual motion as chairman of the committee. I move:

That the report of the Standing Committee on Banking and Commerce be not now adopted, but that it be referred back to the Standing Committee on Banking and Commerce for further consideration.

When the motion is put I will give my reasons for making it.

The Hon. the Speaker: Honourable senators, it is moved by Hon. Senator Hayden, seconded by Hon. Senator Crerar, that the report of the Standing Committee on Banking and Commerce be not now adopted, but that it be referred back to the Standing Committee on Banking and Commerce for further consideration.

Is it your pleasure to adopt the motion?

Hon. Mr. Hayden: Honourable senators, the portion of this report dealing with the proposed new section 128B which the committee is proposing, appears to involve serious constitutional questions. The purpose of this section is to lead the way in company law to provide for an amalgamation and procedures for amalgamation between a federally incorporated company and a provincially incorporated company.

There are two things covered by Bill S-22 in respect of which this report relates. One is to put an amalgamation procedure in the federal act, providing for the amalgamation of two or more federal companies. That does not present any problem. The procedures we outlined by way of amendment are important, I think, and at the proper time I shall give an explanation of them. But, with respect to the other section we inserted, we received some submissions from organizations that appeared before us to the effect that when we were considering amalgamation we should consider it in its entirety and try to deal with the situation in regard to amalgamations involving one or more federal and one or more provincial companies.

We did that, but since the publication of the report questions have been raised which

point to the fact that we are operating in what the constitutional lawyers like to call a grey area, in which the law is not too clear. I would say that in one aspect of what we are doing the law may be clear enough, but in its entirety I think I would have to agree that it is not absolutely clear. I felt that this question should be specifically considered by the committee before we finally put it forward, if indeed we are going to insist that it go forward as part of this report, and as part of this bill, which ultimately will go from this house to the House of Commons.

There are many good features in this bill, and particularly in the amendments that we have proposed, which would give a modern, up-to-date and more flexible federal statute. I would hate to think that we might imperil all of that by provoking a constitutional debate—we have had enough of those, and it looks as though some more are in the offing. The real merit of this bill, with the many provisions it makes by way of amendment, might get lost. I feel that instead of going ahead with the report at this time, in view of the fact that these questions have been raised, and seriously raised, the committee should be reconvened. Therefore, I am proposing that the committee reconvene this evening when the Senate rises, because we have not a great deal before us on the Order Paper. There we can consider this aspect, and also whether in the circumstances we should insist that this particular provision be incorporated in the amendments. That is my reason, after giving the matter full consideration, for making the motion I have made this evening.

We shall not delay consideration of this report. I am sure we can deal with the matter this evening, and present an amended report, if necessary, tomorrow afternoon and debate it.

There are times, particularly in presenting amendments in the legislative field, when one likes to pause and give a little more consideration to a situation if there is a feeling that within reason you may be provoking legal considerations and constitutional aspects that may be upsetting to business and corporate relationships. It is for this reason that I make this motion.

Hon. Jean-François Pouliot: Honourable senators, I congratulate honourable Senator Hayden for his caution in dealing with this legislation. As a member of the Standing Committee on Banking and Commerce I have found that he is an ideal chairman. I congratulate him wholeheartedly for the excellent work he does in that capacity.

Honourable colleagues, the provisions of this bill, after it is adopted, will become part of the Revised Statutes of Canada of some future