

The other problem which was raised by Professor Williamson, a problem which is of great interest, is one arising from section 61. If we come back to section 12(1a)—

The CHAIRMAN: Page 7.

Mr. LESAGE: —we see the words “the letters patent or supplementary letters patent may provide for issuing of preferred shares...subject to redemption or purchase for cancellation out of capital...”

This means that it must be spelled out in the letters patent whether preferred shares may be redeemed out of capital or out of profits. This system is different from the Ontario system whereby preferred shares may be redeemed at large or out of capital or out of profits.

The scheme we have provided is twofold. The companies will have to elect to redeem out of capital or out of profits. Section 62 has been drafted accordingly. It provides that a company must indicate whether the redemption is to be out of capital or out of profits for the obvious reason that redemption out of capital, by the operation of the new subsection (3) of section 49, implies an automatic decrease of capital while section 61, on the other hand, says that a redemption out of profits shall not be deemed to be a reduction of the paid-up capital.

There is such a difference between redemption out of capital and out of profits that we had to create both systems. It will be possible to have the same class of preferred shares redeemable out of capital and out of profits, or only out of profits or only out of capital; but the necessity to mention that in the letters patent or supplementary letters patent while describing the capital stock will avoid all possibility of misunderstanding in that particular field of redemption.

Professor Williamson indicated that in subsections (14) and (15), which deal with the voting rights of preferred shares, the words “stated events” are not sufficiently defined or delineated. I agree that they are not defined or delineated, but that was the intention.

In most cases the practice of the department has been to say that the holders of preferred shares shall have no voting rights unless the company shall fail for two years to pay dividends on those shares. But this is not the only possibility. Voting rights may also be attached to other features such as redemption or purchase for cancellation of part of the capital stock. The broad wording of subsection (15) gives an opportunity to companies to ask for different “stated events”, and the stated events must be those stated in the letters patent. In some legislation, I know, the “two years default” is defined, but we think it is too narrow and we think we would be doing harm to some companies in cases where that scheme would not be appropriate.

Mr. GRAY: May I interrupt, Mr. Chairman?

There would be nothing in the section to prevent a charter from saying that in the event that Christmas occurs after the issue of the charter the voting rights will be vested in that class of shares. Are we not just making it easy for unscrupulous operators?

Mr. LESAGE: The purpose is certainly not to permit at all times a group to be vested with the only authority over the invested capital in other classes of shares.

Mr. GRAY: But, Mr. Lesage, the “stated event” would be interpreted by the courts in the broadest possible way, and you would have no powers to prevent the issue of the charter because of any frivolous event. I suspect if you attempted to prevent people having a frivolous event and they went to court the charter would have to be granted.

Mr. LESAGE: We have kept the act as much as possible as it is. We have operated with those sections over the years and we are predicating our accept-