

The bill also reflects several secondary objectives. It seeks to eliminate many of the pointless formalities that are a signal feature of the present Canada Corporations Act. Wherever possible, it substitutes clear rules and standards for administrative discretion. And, as a corollary, it provides effective remedies that render the law largely self-enforcing and obviate much of the need for administrative paternalism. To the greatest degree possible, it permits administration by exception, characterizing the administrator more as a fireman who is always ready to act to deal with an emergency, rather than as a policeman who maintains continuous surveillance. It proposes setting out in regulations the detailed contents of the many statutory forms and also the contents of financial statements. Finally, as an effective constraint on the exercise of these regulatory powers, it establishes a procedure to require the pre-publication of proposed regulations for public comment at least 60 days before their effective date.

In general, the bill is an attempt to present an exemplary act to serve as a model to be followed both by administrators of other federal corporation laws and by provincial legislatures. In no case does it sacrifice principle in order to attract more federal incorporations. In summary, then, the bill substitutes for the present Canada Corporations Act an entirely new law that applies only to business corporations, setting out the new concepts in a logical framework but avoiding change for the sake of change, particularly in respect of issues such as proxies, insider-trading, financial disclosure, and take-over bids where uniformity with provincial acts is highly desirable.

● (1420)

Since a number of the parts of the bill are very technical, I shall not discuss them here, knowing that they must be considered in detail by the standing committee of the House. These parts deal with securities registration and transfers, trust indentures, receivers, liquidation, dissolution, and investigations. In addition, since some of the topics that were introduced into the Canada Corporations Act in 1970 concerning insider-trading, proxies and take-over bids are largely continued in substance in the present bill, I shall therefore ignore them today. Instead, I shall underline those parts of the bill that best illustrate the objectives sought and the techniques employed in the bill to achieve those objectives.

Part I of the bill mainly concerns the application of the proposed law. The proposals had recommended that all federal corporations should be brought under the aegis of one comprehensive business corporation law. This was not practical, Mr. Speaker. However, with respect to the acts regulating financial intermediaries, first because it is so difficult to separate regulatory and corporate law provisions in those acts and, second, because it is very desirable to have both the regulatory and the corporate provisions set out in one internally consistent act, the bill applies potentially to all federal business corporations other than the financial intermediaries.

The bill only applies automatically to new corporations that are incorporated under it. With respect to all other corporations, the bill introduces a continuance concept requiring a corporation that seeks to be governed by the new law to take positive steps to become continued under that law. If it is an ordinary business corporation subject

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to part I of the present Canada Corporations Act, it must become continued under the proposed law within five years. If it does not become continued, it is deemed dissolved at the end of that period. There is no corresponding mandatory continuance for special act corporations, but they may be required to continue under the new law by order in council.

As stated, the objective of part I is to create one comprehensive federal business corporation law; That is, to substitute a uniform, understandable legal regime for what is now almost an arcane art.

Essential to a uniform legal regime are the formalities and procedures that govern the operation of the law. Part II, on incorporation, introduces three of the recurrent minor themes of the proposals that are reflected throughout the bill. The first is that incorporation should be a matter of right, rather than a privilege. The second is that wherever possible, administration should be in accordance with express rules of standards and not based on administrative discretion. And the third is that empty formalities, such as incorporating through legal secretaries or students, should be eliminated.

Thus, part II of the bill modifies radically the present incorporating system. Incorporation is clearly as of right. Corporate names are granted pursuant to broad statutory standards that are to be further clarified by regulations intended better to reconcile corporate name policy with trademark and trade-name policies. Decisions of the director of the corporations branch relating to corporate names will be appealable to the courts. The formalities are simple, straightforward, clear and consistent in this part and throughout the bill. To win support for more efficient procedures is a simple task.

Far more difficult—although there is broad agreement that it must go—is elimination of the ultra vires doctrine. For at least two generations, efforts have been made in Canada to seek a uniform corporation law, but most of these efforts have floundered because of the inability of lawyers in different jurisdictions to reconcile the conceptual differences between the letters patent systems and the registration systems that were based on the United Kingdom companies act. Finally, however, these conceptual difficulties have been largely overcome. Like the Ontario Business Corporations Act of 1970, the bill in effect abandons the letters patent or discretionary system and adopts a registration system, which implies incorporation as of right, as I said previously. But the bill does not adhere blindly to the traditional registration statutes. Indeed, one of the themes of the bill is to introduce a simpler registration system free of the unnecessary technicalities with which it has become encrusted over time.

One of the major problems with the registration systems has been to determine clearly the capacity of the corporation. Unfortunately, the common law during the nineteenth century withdrew from the earlier common law proposition that a corporation had all the capacity of a natural person, and equated a corporation with an agent having a mandate to do only those things expressed in its objects clause and only the powers to realize those objects that have been accorded to it by statute or by its internal constitution. As a result, corporation laws and constating instruments have become characterized by excessive ver-