

The CHAIRMAN: We will move over to page 42.

Mr. LESAGE: In clause 43 we have the concept of new section 140A which provides for the winding up of companies in three specific circumstances:

- (a) fails for two or more consecutive years to hold an annual meeting of its shareholders,
- (b) fails to comply with the requirements of section 121E or 121F, or
- (c) defaults in complying for six months or more with any requirement of section 125,

Although the procedure for winding-up under the Winding-up Act appears to be rather strong, it is not left in the hands of the administrative people, but rather to the courts of justice which in every instance will hear evidence when we are going to ask for dissolution in any of the three cases outlined in (a), (b) and (c).

Mr. LAMBERT: Of course, we do not have the whole of the Companies Act before us, but I am wondering, in respect of (a) and (b) particularly, what are the automatic disabilities under which a company could not be able to maintain an action in court, could not register property in its name, and could not defend an action in court. These are disabilities which are attached to companies which are not in good standing. These three points refer to companies not in good standing with regard to the filing of returns. I have in mind the provisions of the Alberta companies act whereby if you failed to file your annual return and the company has property it wishes to register in the land titles office, it cannot do so until it files its annual return.

Mr. LESAGE: This was the original joint stock company law and this was the Quebec law up until recent years. It was found to be so drastic in respect of the nullity of private contracts, that it was not found advisable to declare in the act a nullity which would affect third parties. Under the sanctions which are provided in section 140A, the matter is left in the hands of the court to decide whether or not there should be a winding-up.

Mr. LAMBERT: I did not introduce the case of a company which by being in default could not act and in respect of which any of its actions were nullities, no; but, rather, the company which could not launch a legal action. The first difficulty is with regard to the issuance of the statement of claim; the company is in default and not able to maintain an action; or, conversely, if it were in default and being sued, indeed it could not file a defence if it were in default. These are effective remedies; they are not drastic ones. All you have to do is file your annual statement.

Mr. LESAGE: I agree, but this would not permit the department to take positive action to dissolve the company. That is what it would need to clear our files and permit the department to go before a court of justice to say that a company must be wound up. If you are the defendant company and you comply, you have to pay the costs, and the department would withdraw the action; if they do not do so, we proceed to the winding up. In the Senate they told us we are asking for a big stick. I think that really is what is needed. There is no other way to have the companies comply.

Mr. LAMBERT: I agree with you there, but I am wondering whether you are being given another stick with which to beat minor offences. This is a wonderful incentive for companies to file their annual returns, and I can assure you it is highly effective and not very costly.

Mr. LESAGE: We have maintained the old provision in subsection (4) of section 125 that we can sue defaulting companies for an offence, but everyone knows that never has been effective; it would cost \$200 or \$300 for the government to make the investigation and to pay the R.C.M.P. and the agents for the Department of Justice, and so on, to collect the \$20 fine and \$11 of court fees.