

COMPANIES ACT

BILL TO AMEND—FURTHER REPORT OF COMMITTEE ADOPTED

Hon. Mr. Hayden, Chairman of the Standing Committee on Banking and Commerce, reported that the committee had further considered Bill S-22, to amend the Companies Act, and had directed that the bill be reported with certain amendments.

For text of amendments see appendix, pp. 1124-9.

The Hon. the Speaker: Honourable senators, when shall this report be taken into consideration?

Hon. Mr. Hayden: With leave, I move that the report be taken into consideration now.

Honourable senators, you heard something about this bill last evening, when I made a motion to refer it back to committee for further consideration in relation particularly to one section proposed by the committee and having to do with amalgamation as it might apply in the case of one or more federal companies seeking to amalgamate with one or more provincial companies. The committee met last night after the Senate rose, and there was a remarkably good attendance. We discussed the advisability of proceeding with this particular amendment, and in view of all the circumstances it was finally decided by the committee that it should not proceed with it at this time.

The main reason for coming to that decision was that there are so many good things in the bill by way of amendment, and provisions which modernize to a considerable extent the Companies Act, which the committee felt might be imperiled if this particular amendment were in it when the bill is being considered in the other place. It was felt that this amendment might promote a full-scale discussion on the constitutional aspect, because in seeking to provide procedures by which a federal company and a provincial company might amalgamate we are stepping constitutionally on ground that is not clearly defined. It seemed to be the common view that there was a grey area.

I use that language not because I profess to be a constitutional lawyer, but because it does seem to be the language of those who are constitutional lawyers. When such experts are unable to give a definite answer on constitutionality—that is, where the cases do not clearly state whether a procedure is constitutional or unconstitutional—they talk about there being a grey area. This particular amendment seemed to be in such an area.

This suggested amendment gives leadership in this direction, and the method that we proposed to employ for that purpose is now a matter of record. In going that far we have possibly issued a challenge not only to the

provincial authorities and the federal authority, but to lawyers and those in corporate operations, and eventually this field may be further explored to the end that a procedure can be worked out.

While the committee was sitting last evening it also made what we might call some incidental and consequential amendments to items that were already incorporated in the first report submitted to the Senate. Those amendments involved no change in substance. In other circumstances it was a further simplification of the arrangement within sections that we had drafted; provisions were made easier to read and to follow by dividing them into subparagraphs instead of having a whole provision in one paragraph.

I think the tone of the bill has improved as a result of the changes we made last night. The main thought I had in mind, in taking advantage of the occasion to do that, was that I would rather make those changes here and now than have the bill sent back to us from the other place with some suggestion that our language in this regard or our arrangement in another regard was not as it should be.

Having said that, I think I should touch on a few of the highlights of the report. I do not think it is important that I should go through the details of the bill and indicate the many changes, but possibly I could touch very briefly on some of the highlights.

The first point which I should like to mention is the question of the prospectus. When a federal company is proposing to offer shares to the public under the federal Companies Act, a prospectus must be filed with the Secretary of State. There are elaborate sections in our Companies Act at the present time, and have been since 1934, outlining the documentation which must be done and the information which must be furnished before you can offer shares to the public.

Since that act was drafted, our provinces have enlarged very considerably their securities laws, and of course there are securities laws in foreign countries. Notwithstanding that, a federal company might have to file documentation under the Ontario Securities Act, if it were going to offer shares to the public in Ontario; and if it were going to offer some of those shares in the United States of America, it would also be obligated to file documentation under the Securities Exchange Act in the United States. There would still be the requirement that you must in all those circumstances file under the federal act in detail all the required information.

This amounted almost to suffocation in the paper work involved. There was so much detail that one wondered which was the more