

*Canada Business Corporations Act*

National Energy Program, and it would not have made sense to set ownership criteria which the corporations would not be able to observe or maintain on a permanent basis. In reviewing the legal framework within which corporations must operate, and especially the Canadian Business Corporations Act, it became clear that the present provisions of the act were incompatible with the objectives of the National Energy Program. For instance, to achieve a given rate of Canadian ownership, a corporation might wish to buy back shares held by non-Canadian shareholders, assuming that the shareholders would be willing to sell their shares, which would then be offered to Canadians. In its present form, the Canadian Business Corporations Act would rule out these possibilities.

Let us take another example. A company might wish to impose constraints on the ownership of new shares the company is issuing. Our present legislation on Canadian business corporations would not allow this. Furthermore, without the changes we are proposing, once a company's Canadian ownership rate was achieved, it would be at the mercy of financial market transactions. New investments made by non-Canadians might substantially reduce the profits of the Canadian corporation by causing its Canadian ownership rate to drop, thus restricting its access to certain advantages under the National Energy Program or even disqualifying it for certain licences or permits.

[English]

The challenge to us, then, is to amend the Canada Business Corporations Act so that it provides the necessary mechanisms to allow firms to respond to the opportunities offered by the National Energy Program, while at the same time continues to provide protection to shareholders.

As an example, a firm should not be allowed to acquire its own shares unfettered by any restrictions, because this might allow the management of a firm to entrench itself. Neither should a firm be allowed to place any constraint it might wish on ownership. Such a step could allow a firm to eliminate certain shareholders, as an example, for reasons relating to differences of opinion within the company. Clearly, this kind of result would be unacceptable. As a result, the changes this bill will make, although significant in so far as the National Energy Program is concerned, are strictly limited in their effects.

The two major thrusts of these amendments are as follows: to permit firms to acquire their own shares in accordance with specified terms and conditions, and to give firms the authority to place constraints on the ownership of new classes of shares and to enforce those constraints by permitting the firm to enforce the sale of the shares of a shareholder who contravenes the ownership constraint.

To ensure that shareholders' rights are protected, we have also proposed an amendment to the act in order that these new powers will not be abused. In fact, these amendments are applicable only, and I repeat, only when a firm wishes to qualify for incentives, grants, permits, licences and the like—as an example the petroleum incentives payments—that have

been established under a prescribed Canadian or provincial law, conditional on levels of Canadian ownership. I stress, they cannot be used for any other purpose. We believe these amendments continue to provide shareholders with the kind of protection they have a right to expect under Canadian business law.

First, a corporation cannot acquire its own shares if they are subject to ownership constraints. Further, if a firm acquires shares, that firm can only hold them for two years. If it were to hold them beyond that period, such shares, as is normally the case under the Canada Business Corporations Act, would be effectively cancelled. We regard this period as an adequate time in which any such shares can be resold to new owners.

● (2050)

Second, a firm holding its own shares cannot vote those shares except in the narrow situation where, although it holds the shares, it is the legal representative for someone else. And, third, if a share bears a constraint, that fact must be shown clearly and prominently on the share certificate.

I should also mention that shareholders are also protected if a corporation decides to enforce an ownership constraint. The corporation will be required to notify a shareholder before taking any action to enforce ownership constraints and to give the shareholder an opportunity to sell his or her own shares before the corporation acts to sell the shareholder out. Notice provisions are to be set out in the regulations.

In considering the changes that we are proposing to the Canada Business Corporations Act, there are some points that require emphasis.

I believe that the changes that we are proposing to the Canada Business Corporations Act are fundamentally fair—fair to companies wishing to participate in the development of Canada's energy future, and fair to all investors who have, and who will provide, the capital that allows these firms to grow and thrive.

It was in that spirit, after additional discussions with industry, that we concluded that the provisions allowing for the application of ownership constraints to outstanding classes of shares—as were contained in Bill C-94—were no longer essential.

**Some hon. Members:** Hear, hear!

**Mr. Lalonde:** Since there was little indication that firms would use this provision, and because of concerns, however unjustified, that had been raised in the investment community with regard to these provisions, the amendments in this bill have been revised to remove ownership constraints on outstanding issues of shares.

By limiting the imposition of ownership constraints to new shares, I believe we will ensure that there will be no misunderstandings among investors as to whether or not a share is constrained. By allowing firms to place additional constraints only on new classes of shares and by requiring full disclosure of such constraints, the existence of those constraints will be