Detailed background papers for the CANADA BUSINESS CORPORATIONS BILL

Consumer and Corporate Affairs
Consommation et Corporations

Detailed background papers for the CANADA BUSINESS CORPORATIONS BILL

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DETAILED BACKGROUND PAPER
CANADA BUSINESS CORPORATIONS BILL

INTRODUCTION

Although amended in 1964 to correct a number of technical deficiencies, and amended again in 1970 to update several topics—proxies, insider trading, financial disclosure, take-over bids, and investigations, the present Canada Corporations Act is still basically a 1934 statute, a composite of earlier Canadian law and of the U. K. Companies Act of 1929.

In late 1967 the government set up a Task Force under Dr. R. W. V. Dickerson, a Vancouver lawyer and chartered accountant, with broad terms of reference to reconsider the philosophy, the substance, and the administration of the Canada Corporations Act. The Task Force members prepared background papers that were submitted to a Working Group, made up of three members of the Task Force that prepared and submitted its report to the Department of Consumer and Corporate Affairs in early 1971. This report was published in two volumes by Information Canada in June 1971 under the title "Proposals for a new Business Corporations Law for Canada". At that time the report was clearly stated to be a Task Force report and not a statement of government policy, distributed by the government for comment with a view to using the report and commentaries as the basis for the preparation of a Canada Business Corporations Bill.

Although a relatively long and frequently a very technical Bill, it does reflect a consistent approach that results from the original Task Force study design. As a backdrop for the more detailed discussion of the proposed Parts of the Bill, the approach of the Task Force is summarized below.

- The central objective of the Task Force was to recommend a business corporation law that would be clear, practical and comprehensive, reflecting the best synthesis of substantive and administrative concepts set out in contemporary corporation laws, having regard to the more important laws of Canada, the United Kingdom, the U. S. states, France and Germany. The recommendations should not be limited to plastering over the cracks in the present system. If necessary, an entirely new statute to abrogate the present Canada Corporations Act should be considered.

- Even if tempting as a device to seek to achieve overall reform of the structure and conduct of the economy, the real purpose of a corporation law is to create a practical balance of interests among shareholders, creditors, management, and the public, a balance that ensures both adequate investor protection and maximum management flexibility in the overall context of the public interest. The corporation law—and particularly the federal corporation law, which applies to only 23,000 of the approximately 270,000 corporations in Canada—is not a useful instrument that can be used to achieve indirectly overall social and economic reform.

- Although on the surface only a procedural problem, one of the key issues is to reduce the administrative discretion that is the foundation of the present Canada Corporations Act. Such discretion is unnecessary and undesirable and therefore should be superseded by a statutory system that is governed by clear rules or standards, subject to appeal to the courts where substantial rights are involved.

- Consistent with limiting administrative discretion, the corporation law should permit administration by exception wherever possible, thus reducing the need for continuous surveillance by government administrators. As a corollary the law should state clearly the rights—buttressed

by effective remedies—of each interested person, including the Registrar, who may want in exceptional cases to initiate action in the public interest or on behalf of investors who are too disorganized or too weak financially to initiate action themselves.

- Irrespective of the apparent legitimacy of many corporation law concepts, each provision of the law should be questioned and thoroughly scrutinized to determine whether it has substance or whether, in fact, it is only an artificial barrier to be circumvented in practice. If it is a desirable substantive rule but is evaded, the provision should be tightened accordingly. If it has no substance then it should be eliminated altogether in order to minimize unnecessary formalities. In addition, the formalities that are necessary should be clear, uniform, and where possible, evidenced by brief forms as prescribed by the regulations.

- A corporation law should avoid conceptual legal and linguistic subtleties and should, as far as possible, state the law in clear, unequivocal terms that can be understood by the investors and businessmen affected by it. In short, it should avoid legal or accounting jargon and state the issues in plain language within a clear framework that is, if not a complete code, at least a clear, comprehensive system.

- Given the amount of detail required to be set out in the law with respect to formalities, proxies, insider trading, financial disclosure, take-over bids, and constrained share corporations, wherever possible the details should be set out in regulations in order to avoid obscuring the substance of the statute rules. But the regulations should be made subject to strict rule-making powers that require any proposed regulations to be published at least sixty days before they become effective, so that interested persons may submit their comments and criticism to the Minister before the regulations become law.

- Finally, the proposed law should attempt as far as possible to present an exemplary act that can serve as a model to be followed both by administrators of other federal corporation laws and by provincial legislators. It should not sacrifice principle in order to attract more federal incorporations.

As a result of their study, the Working Group that prepared the final report concluded that to achieve the objectives stated above, it would be necessary to substitute for the present Canada Corporations Act an entirely new law that applies only to business corporations (thus excluding non-profit corporations), setting out the new concepts in a new, logical framework, but avoiding change for the sake of change, particularly in respect of those issues such as proxies, insider trading, and financial disclosure, where uniformity with provincial acts is highly desirable.

The report entitled Proposals for a New Business Corporations Law for Canada was published and widely distributed in 1971. Since that time thirty major briefs and a large number of letters have been received by the Department of Consumer and Corporate Affairs. While they recommended a large number of changes to the Proposals, and although there was rarely unanimity in respect of any one topic, most of the briefs and letters approved generally the philosophy, the substantive provisions, the administrative techniques, and the language of the proposed law. In preparing the Bill, account has been taken of the comments set out in those briefs and letters.

Bill C-213, the predecessor of the present Bill, which had been introduced into the House of Commons on 18 July 1973, died on the Order Paper at the end of the First Session of the 29th Parliament. In the meantime, officers of the Department and Department of Justice draftsmen have considered the comments received on Bill C-213 and have made a number of technical changes accordingly.

An overview of the effects of the proposed law can best be acquired by examining each of the twenty Parts of the Bill, one by one, considering with respect to each Part both the present law and the proposed law, along with a brief explanation of the reasons for any recommended changes.

PART I—INTERPRETATION AND APPLICATION

Present Law

The form of the present Canada Corporations Act causes two problems in this area. First, definition provisions have been added to the Act in different places, at different times, for different purposes and, as a result, they tend to be difficult to recall and inconsistent.

Second, the application provisions of the Act are unnecessarily complicated. Part I applies to corporations incorporated under the Act and its predecessors. It also applies to some special act corporations under the terms of the special acts. Part I does not apply to other special act corporations, but Part IV usually does. Generally—but not always—neither Part I nor Part IV applies to any financial intermediary such as a bank, trust company, insurance company or loan company. Other special rules in Part I relate to other regulated businesses. And finally, special provisions in the financial intermediary acts and the Railway Act permit the Department of Consumer and Corporate Affairs to issue formal documents in accordance with the substantive provisions of those acts. In sum, the application provisions are both obscure and complicated, making federal corporation law unnecessarily arcane.

Proposed Law

To permit compression of the statutory text, the Bill contains a large number of defined terms, some of which apply generally while others apply only to specified Parts. Great care has been taken to make them concise, clear, and internally consistent. Indeed, the role of each defined term is carefully verified through use of a computer generated KWIC index furnished by the Department of Justice.

The Proposals recommended that all federal corporations be brought under the aegis of one business corporation law. This was not practicable, however, with respect to the acts regulating financial intermediaries, first because it is so difficult to separate regulatory and corporate law provisions, second because it is very desirable to have both the regulatory and the corporate provisions set out in one comprehensive, internally consistent statute. The Bill therefore applies only to federal corporations other than the financial intermediaries. The technique to bring these corporations under the proposed new law is discussed in Part XX.

PART II—INCORPORATION

Present law

The letters patent system of the present Act, at least in theory, continues the concept of incorporation as an exercise of government prerogative. Moreover, the name granting function, probably the most problematical aspect of incorporation, is administered on a purely discretionary basis.

Proposed law

This Part introduces three of the recurrent themes of the Proposals that are reflected throughout the bill: (1) that incorporation should be a matter of right rather than a privilege; (2) that wherever possible administration should be in accordance with express rules or standards and not based on discretion; and (3) that empty formalities (e.g., three incorporators who are usually secretaries or students) should be eliminated.

Part II therefore 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 trade mark and trade name policies. The formalities are simple, straightforward, clear, and consistent here and throughout the Bill. Any one person—including a body corporate—may incorporate by sending the required forms, properly executed, to the Director. Much of the administrative system of the Bill parallels the system of the American Bar Foundation's Model Business Corporations Act, on which the Ontario Business Corporation of 1970 is also based.

Part II also introduces provisions relating to pre-incorporation contracts, technical provisions that are designed to clear up what are now murky and demonstrably unsatisfactory common law rules.

PART III—CAPACITY AND POWERS

Present law

There are at present two basic corporation law systems in Canada. The first is a letters patent system such as the present Canada Corporations Act

under which incorporation is viewed as a privilege accorded pursuant to government prerogative. The second is a registration system such as the U.K. Companies Act under which incorporation is characterized as a right. Although it is generally assumed that a letters patent corporation has all the capacity of a natural person and therefore that the ultra vires concept does not apply to such a corporation, because the law is unclear, the legislative draftsmen, out of an abundance of caution, structured the present Canada Corporations Act like a registration statute, requiring stated objects and setting out a long list of statutory powers that enable a corporation to achieve its objects. In addition to the uncertainty about corporate capacity and powers, there is considerable uncertainty under the present Act about the right of a third party who in good faith enters into a contract with a corporation represented by a director or officer who has no actual authority to execute contracts on behalf of the corporation.

Proposed law

Because objects and powers clauses have become meaningless to protect investors, they tend only to be a trap for the unwary, invoked in most cases only to permit a corporation to escape an onerous contract. The Bill therefore attempts to resolve the root problem instead of attacking symptoms such as excessively broad objects and powers clauses and third party prejudice. To preclude any inference, therefore, that the ultra vires doctrine might apply because the Bill is cast as a registration statute, the Bill states unequivocally that a corporation has the capacity and also the rights, powers and privileges of a natural person. As a result, a corporation may pursue any lawful object unless its business activities are restricted by its articles of incorporation.

In order even further to protect innocent third parties the Bill makes clear that even where a corporation has limited objects in its articles, an act contrary to its articles is not invalid. Reinforcing that concept, a further provision declares that a corporation may not assert against an innocent third party any restriction in the corporation's articles or by-laws that traditionally might have been invoked as proof that the corporation had no capacity or power to execute the contract. Thus such a restriction is effective only to govern the conduct of the shareholders, directors and officers of the corporation.

In addition, the Bill abrogates the doctrine of constructive notice, that is, a third party is deemed not to have notice of a corporate document filed in a public registry. And to complete this pattern the Bill sets out and expands on the Rule in Turquand's Case, underlining that a corporation can not invoke as a defence an argument that its constitution was contravened or that its representative was not properly authorized.

PART IV—REGISTERED OFFICE AND RECORDS

Present law

The present Canada Corporations Act requires a corporation to maintain an office in Canada and to maintain there a full set of records, including the corporate charter and by-laws, minutes of shareholder meetings, financial statements, and similar documents. The Act also places considerable emphasis on the use of the corporate seal.

Proposed law

Continuing the policies of the present Act, the Bill requires a corporation to maintain a registered office in Canada and also to notify the Director within 15 days of any change of that registered office. The corporation must maintain for inspection by interested persons at its registered office or any other office in Canada designated by the directors the corporate articles, certificates, by-laws and a number of other specified documents. In case the corporation keeps records outside of Canada, it must also keep duplicate records in Canada that contain adequate information to enable the directors to ascertain the financial position of the corporation on a quarterly basis. The Bill also continues, with a number of improvements, the provisions of the present Act relating to shareholder lists.

Consonant with the desire to eliminate unnecessary formality, the corporate seal is acknowledged but in effect relegated to the status of a decorative ornament that may be used when required to satisfy land registrars and other officials who administer acts requiring corporate documents to be under seal.

Finally Part IV contains a provision to legitimate the maintenance of records in paper, microfilm, or machine readable form, subject to the condition that the records may be reproduced in intelligible written form within a reasonable time.

PART V—CORPORATE FINANCE

Present law

Probably no provisions in the present Act are as unclear and as unsatisfactory as the sections relating to capital structure, shares, redemption of shares and dividends. Reflecting that the present law developed from several sources and on a piecemeal basis, the financial provisions are scattered throughout the Act, rendering difficult the resolution of even pedestrian problems. Some of the provisions such as those relating to bearer shares ("warrants") and series of shares are conceptually incomplete and thus engender much confusion. In addition, a number of concepts like partly paid shares and par value shares have simply become archaic, bearing little relation to contemporary market requirements and practices. Finally, there are those provisions that are altogether absent from the present law, such as rules relating to options and rights, acquisition by a corporation of its own shares, rules relating to accounting practices, and uniform insolvency criteria.

Proposed law

The provisions relating to the issue, redemption and reacquisition of securities by a corporation effect fundamental changes. The issue of shares subject to assessment and the issue of par value shares are both expressly proscribed, simplifying enormously the present law and reducing greatly the possibilities of misrepresentation, particularly in respect of par value shares. All consideration received for shares must be credited to a stated capital account. Any reference to concepts such as paid-in surplus or capital surplus is scrupulously avoided.

The provisions relating to shares in series, preemptive rights and options and rights, even if new, do not reflect any major change of policy, except that reference to warrants (bearer shares) is deliberately omitted. Rather, they purport to state briefly and clearly what is currently law or good practice. Similarly, the provisions relating to redemption or repurchase of redeemable shares and the payment of dividends are consolidated in one place, abridged and clarified. Aside from the fact that complete, continuous disclosure is required, very few constraints are placed on the rights, restrictions and conditions that may be attached to shares.

Completely new, however, is the right of a corporation to acquire its own shares, enabling a corporation better to adjust its financial structure to the needs of the business, parallel to the manner and for the purpose that corporations now acquire their own debentures in market transactions. Any reference to an acquisition "out of surplus" or "out of capital" is avoided. Instead, the terminology of the Income Tax Act is employed to determine whether a surplus exists; e.g., where assets would be more than aggregate liabilities and capital. In effect, if a surplus exists, a corporation may acquire its own shares up to the amount of that surplus, but subject to the same insolvency limitations that apply to dividend payments. Only in narrowly specified cases can a corporation without surplus acquire its own shares. And in either event, it must cancel the reacquired shares and reduce its surplus or capital accounts accordingly, thus eliminating the techniques of abuse that are commonly associated with a corporation's acquiring its own shares.

Two other provisions of Part V are particularly noteworthy. A number of commentators pointed out the impossibility of recalling, cancelling and reissuing all of the outstanding shares of existing corporations. A subsection was therefore added to s.24 to deem any par value shares to be no par value shares that comply with the law. A similar provision, subsection 181(7), further clarifies the status of outstanding shares.

The question of prohibited loans and guarantees as recommended by the Proposals also engendered considerable controversy. Several commentators pointed out that the Proposals, on the one hand, empowered a corporation to acquire its own shares, and then, on the other hand, continued very stringent rules about the corporation's lending money to persons on the security of its shares or for

the purpose of buying its shares. The prohibited loans provisions have therefore been recast to permit such financial assistance in narrowly specified cases irrespective of the corporation's financial position and to permit financial assistance in all other cases, but subject to strict solvency standards that parallel the share reacquisition standards.

PART VI—SECURITY CERTIFICATES, REGISTERS AND TRANSFERS

Present law

The provisions relating to shares, share transfers and share registers are spread throughout the present Canada Corporations Act. Although lengthy, the present provisions are both inadequate and archaic. Most important, they do not deal with the respective rights, liabilities and immunities of the parties to a share transfer or transmission, problems that can not be resolved by reference to the common law, which has not yet concluded what a share is, let alone the rights and liabilities incident to a transfer. Compounding the complexity of the problem is the choice of law problem. In the absence of statutory rules, a problem relating to the shares of a federal corporation may be resolved in accordance with the laws of any jurisdiction in Canada, depending upon the law the court decides is applicable to the transaction in question.

Proposed law

Part VI is largely new federal law and represents an ambitious attempt to achieve two goals: first, to consolidate in one Part all of the rules relating to security registers, dealings with security holders, and security transfers; second, to introduce the concept of Article 8 of the Uniform Commercial Code developed by the American Law Institute and the National Conference of Commissioners on Uniform State Laws, which in effect makes properly endorsed security certificates negotiable instruments between registration dates. Introduction of Article 8 was recommended by the 1967 Ontario Select Committee on Company Law, and therefore these U.C.C. provisions were incorporated in the Ontario Business Corporations Act, 1970, which will make Ontario law and the federal law almost uniform with the similar laws of the U.S. states.

More specifically, what these provisions achieve is a synthesis of two concepts, negotiability and registration. The first, negotiability between registration dates, makes it clear that a security certificate is not just evidence of legal rights and privileges but is, like a promissory note, the very embodiment of those rights and privileges, which are therefore transferred when the security certificate is transferred. The second, registration, gives assurance to a bona fide purchaser that the registered holder is the owner of the security, giving assurance to him, when registered, that his ownership of the security can not be impugned.

The general effect of the system, for two reasons, is to favor the bona fide purchaser instead of the original owner as does the common law. First, there is no doubt that the original owner is in a far better position to protect himself—for example—from parting with the certificate because of mistake or misrepresentation—than is the purchaser for value with no notice of a defect of title. But even more important the system is designed to permit fast, reliable securities transactions with a minimum of title investigation, conditions essential to maintaining liquid securities markets.

Under s. 168 the Governor in Council may prescribe rules to enable a corporation to place constraints on the ownership of its shares if required to do so by law or if its shareholders amend the articles, for example, to restrict transfers of its shares to persons other than resident Canadians.

PART VII—TRUST INDENTURES

Present law

There are at present no provisions in the Canada Corporations Act relating to trust indentures. There has, however, been a United States federal law regulating trust indentures since 1939. The 1967 Ontario Select Committee on Company Law recommended that rules similar to those of the United States statute be enacted in Ontario and, accordingly, variations of United States rules were set out in Ontario Business Corporations Act, 1970.

Proposed law

Adopting provisions similar to those included in the Ontario Business Corporations Act, 1970 (as

amended in 1972), which are based in theory on the U.S. Trust Indenture Act of 1939, the proposed law sets out specific rules relating to trust indentures under which corporations issue securities, and relating to the qualifications of trustees appointed under those indentures. Although the Proposals were at one time quite different from the Ontario law, now that the Ontario Act has been amended, the Proposals too have been amended with a view to achieving uniformity in substance with Ontario law.

Although influenced by the U.S. Trust Indenture Act, this Part, like the Ontario law, is quite different in its approach. Whereas the United States law requires that both trustees and trust indentures be qualified by the Securities Exchange Commission, these provisions only require compliance with the expressed statutory standards. These standards relate to trustee qualifications, conflict of interest, rights of debenture holders to obtain information, the rights of the trustee to demand information from the corporation, and the duties of a trustee. Being statutory standards, they apply irrespective of any contradictory or exculpatory clauses in the trust indenture.

PART VIII—RECEIVERS AND RECEIVER-MANAGERS

Present law

There are no provisions in the present Canada Corporations Act relating to receivers. As in the case of securities transfers and trust indentures, in the absence of provisions in the federal corporation act, the law applicable to the appointment functions, powers, and duties of a receiver is the law of one of the jurisdictions where the corporation carries on business, depending upon the choice of law by the court hearing the case.

Proposed law

Although drawing upon the corresponding provisions of the U.K. Companies Act, this Part is much less detailed because many of the provisions of the U.K. Act are set out, in Canada, in the Bankruptcy Act. This Part sets out statutory standards or delegates to a court discretion concerning the qualifications, functions, rights, powers, and duties of a receiver, including his standing with respect to the directors, a liquidator, or a trustee in bankruptcy. It also assures that only one legal system applies to a receiver of a federal corporation, irrespective of the number of jurisdictions in which it carries on business. This Part also aims to achieve one other seemingly small but significant goal: to require receivers to submit financial statements in the form that the directors would have been required to submit to shareholders, reflecting correctly that a receiver in effect assumes management of the business and affairs of a corporation.

PART IX—DIRECTORS AND OFFICERS

Present law

The present law confers sweeping powers on the directors to manage the business and affairs of a corporation. The common law has reinforced this concept to the point where a shareholder may not even propose a by-law change unless either the by-laws permit it or the directors agree to process it.

The Canada Corporations Act presently contains no provisions relating to the fiduciary duties and the duties of care, diligence and skill of officers and directors other than provisions relating to indemnification for costs incurred by directors. Indeed, close analysis of the present law discloses that the current standards are even less stringent than the standards of the U.K. Companies Act, 1929, which was the model for the present Act, and which has been amended several times since to clarify directors and officers duties and, what is the obverse side of the coin, the right of a corporation to indemnify a director or officer in respect of a loss incurred in connection with a transaction in breach of those duties.

Proposed law

Continuing the policy of the Canada Corporations Act, the proposed law vests unequivocally in the directors the power to manage the business (as distinct from the affairs—i.e., relations with and among shareholders) of the corporation. The residual powers of shareholders to control indirectly the management of the corporation are, however, substantially increased. For example, shareholders have the power to initiate by-laws, to submit general

proposals to shareholder meetings, to remove directors, to vote on fundamental changes, and even to require the corporation to purchase their shares where some of them disagree with a proposed fundamental change.

Some structural changes are effected too. Cumulative voting is expressly legitimated but is not rendered mandatory. And to eliminate the ritualistic meetings that are now associated with the incorporation process, the first directors of a corporation are given broad authority to organize the corporation's affairs. Also, the one man corporation is legitimated.

The most difficult conceptual problem introduced by this Part is s. 117, which imposes on a director or officer the duty to " . . . (a) act honestly and in good faith with a view to the best interests of the corporation *and* (b) exercise the care, diligence and skill of a reasonably prudent person". The concept of fiduciary duty set out in (a) is largely declaratory of the common law but also attempts to clarify existing law by underlining that a director or officer must act in the best interests of the corporation and not his own interests. He can not exculpate himself by employment contracts, broad indemnity clauses, or shareholder ratification, particularly where he is also a majority shareholder. The duty of care, diligence and skill set out in (b) above is largely new law. Although such duties are presumed to exist at common law, in fact in the corporation law context those duties have been qualified to the point where they are now almost meaningless.

Like the Ontario Business Corporations Act, 1970, which is based on the New York Business Corporation Law, the proposed law expressly sets out a standard of fiduciary duty and a standard of care of officers and directors. The substance parallels closely the Ontario model, except that the corporation and its directors and officers have greater rights to obtain insurance in respect of claims against the directors and officers alleging a lack of care, diligence or skill. But the corporation can not insure directors and officers against claims based on a breach of fiduciary duty. Direct indemnification of directors and officers of the corporation in relation to legal claims is permitted if the indemnity is approved by the corporation or by a court, and then only if the impugned act was undertaken honestly, in good faith and in the best interests of the corporation. The only exception is where the director or officer succeeds in the litigation, in which case he is entitled to indemnity as of right.

In this Part, there is also the proposal requiring that a majority of the directors of a corporation be resident Canadians. Some of the major initiatives of the government in this area in recent years have been the introduction of the Foreign Investment Review Act and the revision of the acts regulating financial intermediaries and some resource corporations to restrict foreign ownership and control. Nevertheless, it was decided that the corporation law could usefully buttress these provisions by ensuring that the Canadian viewpoint would be expressed in all meetings of directors and committees of directors of corporations controlled by persons who are not resident Canadians. To achieve this goal the Bill requires that:

- A majority of the directors of a corporation must be "resident Canadians", defined to include both Canadian citizens and landed immigrants who have resided in Canada less than six years.
- Where a holding corporation earns less than 5% of its consolidated revenue in Canada, only one-third of its directors are required to be resident Canadians.
- The rules that apply to the board of directors also apply to a quorum of the board and to any committee of directors, except in respect of a holding corporation earning less than 5% of its revenue in Canada.

The Bill does not set out any specific rules relating to foreign controlled corporations, therefore employee-directors of a corporation may be included to determine whether a corporation has a majority of resident Canadian directors.

PART X—INSIDER TRADING

Present law

When the Task Force was set up in 1967 it was instructed to consider as priority issues several topics recommended by the Kimber Report and introduced into Ontario law in 1966—insider trading, proxies, financial disclosure, take-over bids,

and investigations. These topics were therefore included in the interim recommendations of the Working Group, which were submitted in 1969, enacted into law as amendments to the Canada Corporations Act on 7 October 1970, and made effective by proclamation on 31 March 1971.

It was not found necessary to make many substantive changes between the interim report and the final report. But a major change in format policy is recommended: to set out many of the details of the rules required by the statute, particularly those concerning the contents of forms, in regulations instead of in the statute. For the sake of uniformity and continuity few substantive changes are proposed at this time.

In the light of a number of the comments it was decided, however, that the recommendation in the Proposals to remove the "double liability" provision of the present Act be rejected and that the present provision be retained, making an insider potentially liable to the injured buyer or seller or to the corporation. Several briefs pointed out that in most cases the only effective insider trading remedy is an action by the corporation to strip the profits of the transaction from the insider, because the injured person can not be traced and identified through the stock exchange clearing system. The present provision is accordingly continued in the Bill.

PART XI—SHAREHOLDERS

Present law

The provisions of this Part concern principally structural rules that ensure the possibility of shareholder participation in the management of the internal affairs—as distinct from the business—of the corporation. Although these provisions confer a number of substantive rights on shareholders, they are by no means the only such rights. Other rights such as the right to propose an amendment to the articles or by-laws, to solicit proxies, to remove directors or auditors, to compel the corporation to buy back its shares in certain cases, and to apply to the court for relief from oppression are also conferred on shareholders in other Parts of the Bill relating to those specific topics.

The present Act contains most of the usual structural rules concerning shareholders meetings and related topics, but these rules do require some expansion and redrafting.

Proposed law

The Bill therefore continues most of the substance of the present Act, reorganizing the sections for greater simplicity, adding a few minor rules to augment existing shareholder rights (e.g., court review of election), and redrafting a number of sections for the sake of clarity.

The only completely new provisions relate to unanimous shareholder agreements, which in effect permit the shareholders of a closely held corporation to predetermine who will be the directors or even to assume directly the functions and the responsibilities of the directors.

PART XII—PROXIES

Present law

Like the insider trading rules, the present proxy rules were adopted from Ontario law and added to the Canada Corporations Act in 1970.

Proposed law

Consonant with the general policy outlined in Part X in respect of Insider Trading, very few substantive changes are effected by the Bill. The main thrust of the Bill therefore is to continue the substance of the present Act and, at the same time, to improve the language and to shift a number of minor details to the regulations.

One significant change is made, however, with respect to shares held by registrants (mainly brokers) who hold shares on behalf of clients who are the beneficial owners of the shares. The present Act (s.108.7) entitles a registrant to vote his client's shares if he passes on to the client all documents relating to the meeting, and if the client either instructs him to vote the shares or fails to give such instructions more than 24 hours before the meeting. The Bill entitles a registrant to vote or to appoint a proxy to vote the shares of a client only if so instructed by the client.

PART XIII—FINANCIAL DISCLOSURE

Present law

Although amended in 1970 to render the sections concerning the contents of financial statements more uniform with Ontario law and to expand the disclosure requirements to include both public corporations and substantial private corporations (over $5 million assets or $10 million gross sales), the provisions of the present Act require further improvement. They are no longer uniform because of recent changes in provincial laws; they do not clarify sufficiently the relationship between the auditor and the shareholders; and they need to be refined better to reflect constantly changing—and generally improving—accounting principles and practices.

Proposed law

Again, consistent with the policy outlined in respect of Part X, the substantive rules concerning disclosure and, more specifically, the contents of financial statements adopted in the recent amendments to the Canada Corporations Act are largely continued. The Bill, however, provides that the very lengthy provisions relating to the contents of financial statements be set out in regulations instead of in the statute. Three arguments support this recommendation: first, that the changes will be made only after discussion with interested parties; second, that the regulations will in any case be subject to scrutiny under the Statutory Instruments Act; third, that it is impossible to amend a corporations act frequently enough to reflect changes in accounting principles. Indeed, certain rules set out in the present Canada Corporations Act conflict sharply with CICA Handbook regulations.

Several new provisions concerning auditors are set out in this Part. Explicit rules govern the qualifications of an auditor. Other rules attempt to strengthen the role of the auditor as an appointee of the shareholders, following the recommendations of the Lawrence Committee Report. And reinforcing this idea, at least in respect of public corporations, is the requirement of an audit committee, which can ensure that the auditor is responsive to the directors and not just to management.

Two other rules merit comment. One permits the shareholders of a closely held corporation—by unanimous agreement—to dispense altogether with an auditor; but no audit by an associated person is permitted. The other rule permits holding company auditors reasonably to rely on the report of an auditor of a subsidiary of the holding corporation. The purpose of this rule is to keep the law neutral. If the holding corporation auditor can not rely on the auditor of the subsidiary, he must make his own audit. The result, of course, would be further concentration of audit work in large firms.

PART XIV—FUNDAMENTAL CHANGES IN THE CORPORATION

Present law

As stated earlier, because the present Act was assembled brick by brick with little concern for overall symmetry or even internal consistency, it has become extraordinarily difficult to interpret or to comply with the law. Nowhere is this more clearly illustrated than in respect of fundamental changes. This can be more clearly shown by a brief summary.

Section	*Subject*	*Formalities*
5.4	Continuation of pipeline or small loan companies	¾ vote of shareholders plus approval of Minister at his discretion
20	Amendment of objects	¾ vote plus approval of Minister at his discretion
29	Change of name	¾ vote plus approval of Minister at his discretion
51	Alteration of capital	¾ vote plus approval of Minister at his discretion
52	Reduction of capital	¾ vote, no creditor objections and approval of Minister at his discretion
61	Redemption or conversion of shares	Approval of shareholders of class unless letters patent otherwise provides
134	Arrangements and compromises	¾ vote plus court approval
137	Amalgamations	¾ vote, plus approval of Minister at his discretion

Because of the amount of discretion exercised and the complicated inter-relations among these rules, working with the Act has become an arcane art that requires an insider's knowledge of the statute provisions, Departmental policies, and rules of practice. Even more serious, the present Act omits altogether a number of minority shareholder protection rules that have been embodied in the U.K. Companies Act or U.S. state corporation laws for at least a generation.

Proposed law

Part XIV introduces two new concepts to federal corporation law. First, it makes uniform all of the formalities relating to basic modifications of the corporation's constitution or business—amendment of articles, amalgamation, continuance of any other corporation under the proposed law, and sale or lease of assets of the corporation outside of the ordinary course of business—modifications that may be made as of right, free of any administrative discretion of public officials to intervene. Second, Part XIV confers an appraisal right on a shareholder who dissents from a proposed fundamental change and demands from the corporation payment of the appraised value of his shares determined as of the time when he made known his dissent. The object of this policy is two-fold: it permits management and majority shareholders to effect changes in the business or affairs of the corporations with a maximum of flexibility; and at the same time it permits dissenting shareholders to withdraw their investment from an enterprise that is substantially different from the enterprise they originally invested in. In sum, the rule makes it very difficult for a minority to veto a majority decision or for the majority simply to impose its will on the minority shareholders. Further protection of minority shareholders in the form of an oppression remedy is assured under Part XIX in cases where they cannot invoke the appraisal right.

All of the U.S. states except West Virginia have long accorded an appraisal right to shareholders in the cases where it is accorded in the Bill—change of any basic corporate objects, amendment of articles to detract from share rights, amalgamation, continuance in another jurisdiction (in the U.S. an interjurisdictional merger), or a sale, lease or exchange of substantially all the property of the corporation. This right has been restricted in only two states, Delaware and New Jersey, and then only in respect of corporations whose shares are widely traded in liquid markets. Seeing no intrinsic merit in these restrictions the Proposals recommended that the general norms be introduced in the federal law. The Bill has been drafted accordingly.

PART XV—PROSPECTUS QUALIFICATION

Present law

The Canada Corporations Act (ss. 74-84) appears to regulate the distribution of securities to the public by federal corporations. In reality, these provisions are only a hangover of the rules established by the U.K. Companies Act, 1929, which have been amended and supplemented from time to time in England, and which, in Canada, have been completely abrogated by the practical application of the provincial securities acts. The only meaningful provision in the Present Act is s. 78, which empowers the Department to accept a prospectus qualified in another jurisdiction. In fact, the Department is only a depository of prospectuses. No qualification is done at the federal level.

Proposed law

The Proposals had recommended that the prospectus qualification rules of the Ontario Securities Act be set out in the proposed new law. A number of commentators, while conceding that it would be highly desirable for the federal government to rationalize capital market regulation across Canada, argued that prospectus qualification rules in the federal corporation law could only aggravate current administrative problems by requiring qualification in respect of federal corporations in another jurisdiction in addition to those jurisdictions in which it proposes to distribute it securities. Many of the critics recommended, instead, that the federal government study the general problem with a view to developing a Canada-wide system of securities regulation.

The recommendation contained in the Proposals has therefore not been adopted at this time. Accordingly, the only provision in Part XV of the Bill is a "qualification by coordination" rule that

acknowledges the current reality in respect of prospectus filing at the federal level, that is, filing without any federal administrative qualification. Its sole purpose is to ensure full disclosure through the Director's file of the public securities distributions of a federal corporation in any jurisdiction, Canadian or foreign.

PART XVI—TAKE-OVER BIDS

Present Law

Like Part X (Insider Trading), this subject was treated as a priority issue and incorporated in the 1970 amendments to the Canada Corporations Act. That Act is similar to the Ontario law as it stood before 1972. Similar legislation was enacted by amendments in 1968 and 1970 to the United States Securities and Exchange Act of 1934.

Proposed Law

Since the Proposals were published by the Department in 1971, the take-over bid provisions of the Alberta, Manitoba and Ontario Securities Acts and the Australian state companies acts have been modified to effect a number of technical alterations and take-over bid acts have been enacted in several American states. In the last year the Ontario Select Committee on Company Law in its *Report on Mergers, Amalgamations and Certain Related Matters* made recommendations for improvements in the take-over bid sections of the Ontario Securities Act which have been incorporated into Bill 75 (the Ontario Securities Act, 1974) recently introduced in the Ontario Legislature. The Canada Business Corporations Bill has been reorganized and redrafted to clarify the present rules and to include the best rules recommended by commentators or adopted in the above mentioned laws.

PART XVII—LIQUIDATION AND DISSOLUTION

Present law

The liquidation and dissolution (winding up) provisions of the present law are procedurally complicated and conceptually unclear, constantly mixing together bankruptcy law and corporation law. See, for example, the provisions relating to compulsory winding-up by the Minister for non-compliance with the Act (s.5.6), arrangements and compromises (ss.134-35), and other grounds for compulsory winding-up (s.150).

Proposed Law

This Part engenders sweeping changes. It synthesizes and sets out in one place all of the liquidation and dissolution rules relating to solvent corporations, whether the process is voluntary or involuntary. It in effect abrogates the need for the provisions of the Winding-up Act and the Companies Creditors Arrangements Act that relate to solvent corporations. It leaves to the Bankruptcy Act the problem of dealing with solvent corporations. It stipulates clearly the rights, powers and duties of a liquidator. It sets out consistent formal requirements that parallel the incorporation and fundamental change formalities. Finally, it assures the revival and preservation of certain rights of action and deals with the custody of unclaimed moneys, filling up what are gaps in the present Act.

All of the rules relating to insolvent corporations are being consolidated in the current revision of the Bankruptcy Act, which, when completed, will propose repeal of the Winding-up Act and the Companies Creditors Arrangement Act.

PART XVIII—INVESTIGATIONS

Present law

The investigation provisions of the Canada Corporations Act (ss. 114-116) were substantially enlarged in 1970 to expand the scope of their application and to set out a number of detailed procedural rules, including substitution of the Restrictive Trade Practices Commission for the courts as the tribunal to consider applications for investigations.

Proposed law

The Proposals recommended that the proposed law limit reliance on the investigatory powers conferred by the recent amendments to the Canada Corporations Act and substitute, instead, definitive shareholder rights that may be enforced by effective remedies. The emphasis in this Part, therefore, is protection of the public interest as distinct from resolving individual grievances. Accordingly, the

scope of the present investigation provisions is continued, but the procedure is fundamentally changed. Under the Bill investigations must be authorized by a court instead of, as now, by the Restrictive Trade Practices Commission. In sum, the Proposals suggested and the Bill underlines that the law should be largely self-enforcing through ordinary judicial procedures, initiated by the shareholders or the Director, instead of through government tribunals.

PART XIX—REMEDIES, OFFENCES AND PENALTIES

Present law

The present statute does not deal with either of the two main questions raised in Part XIX, the derivative action and the oppression remedy. At present Canadian law is clearly deficient in its analysis of minority shareholder rights, focusing largely on nineteenth century structural rules such as ratification of directors misconduct by majority vote of the shareholders (even where the directors are shareholders) instead of on the substantive issue, that is, the breach of fiduciary duty or the duty of care diligence and skill that majority shareholders, directors and officers owe to the corporation and its shareholders. Much of the common law is derived from the leading case of *Foss* v. *Harbottle,* a case that has been criticized by at least a generation of scholars and practitioners, principally because the law in effect renders majority shareholders misconduct immune from minority shareholder action, either because the majority shareholders are held to owe no duty, because the majority shareholders have by ratification absolved themselves of a breach of duty, or simply because the minority shareholders could not overcome all the formal obstacles that have become encrusted on the common law.

Proposed law

No one part of the Bill proposes more sweeping changes than does Part XIX. In effect, it strips away the self-imposed judicial constraints imposed by *Foss* v. *Harbottle* Rule and compels the courts to adjudge on their merits complaints of minority shareholders against majority shareholders and management, applying a broad just and equitable standard. This it achieves in two ways.

First, like the Ontario Business Corporations Act, 1970, it legitimates derivative actions in the name of the corporation (but initiated by shareholders, the Director or other interested persons) to remedy a wrong to the corporation. The draft draws on the substantive rules of the New York Business Corporation Law—which also strongly influenced the Ontario statute—and the procedural rules of the Ontario Business Corporations Act, 1970.

Second, going beyond the Ontario law, the proposal adopts an amended version of s. 210 of the U.K. Companies Act, 1948, the so-called "oppression remedy", which permits an aggrieved person—particularly a disgruntled minority shareholders—to apply to the court to right the alleged wrong. The court is given very wide discretion, applying an "oppressive or unfairly prejudicial" standard to deal with these cases. Since this remedy only complements the basic appraisal remedy conferred under Part XIV and the derivative action, it is unlikely that it will be invoked except in rather gross "squeeze-out" cases that do not fall within the scope of the appraisal remedy and that cannot be clearly characterized as wrongs to the corporation.

Following the recommendations of the 1967 Ontario Select Committee on Company Law, which argued that the oppression remedy constituted judicial interference in the management of companies, the Ontario Business Corporations Act, 1970, did not include a counterpart of this remedy. In contrast, throughout this Bill, a clear distinction has been drawn between management of the external business activities and the internal affairs of a corporation. On the one hand, the directors are given sweeping control to manage the business, subject to the residual power of the shareholders to remove them from office. On the other hand, the shareholders are generally entitled to participate in and, in the case of crisis, to control the internal affairs of the corporation, for example, constitutional change or amalgamation. But in any event, under the Bill, directors and majority shareholders are required to conduct the business and affairs of the corporation in the best interests of the corporation—not in their own interests. The remedies contained in Part XIX reinforce this policy.

Finally, Part XIX sets out general provisions relating to restraining orders, offences and penalties, and appeals from decisions of the Director.

Consistent with the investigatory powers (Part XVIII) and rule making powers (s. 254), the Bill introduces a system of review of administrative action that reflects great sensitivity to administrative law principles. In general, investigatory powers are restricted to broad public issues and must be granted by a court. All proposed regulations must be pre-published to ensure that persons affected have an opportunity to comment on them. And all important decisions of the Directors are required to be made in accordance with express statutory standards and are subject to appeal to the courts, not just review by way of prerogative writ. In all cases, quick access to the courts is emphasized.

PART XX—GENERAL

Present Law

Two issues arising under Part XX are largely unconnected with the present Canada Corporations Act. The first concerns regulatory powers. The second concerns transition, that is, application of the proposed new law to existing federal corporations.

Since 1970 extensive regulations have been made under the present law relating to insider trading, proxies and take-over bids. The Proposals recommend continued use of regulations in these areas and also extended use of regulations in a great many other areas such as name availability, financial statement contents, Department returns contents, constrained share rules, and standard forms and procedures. The goal is to make more widely known to the public what are at present internal policies and procedures that are applied in the exercise of administrative discretion.

Proposed Law

In order to ensure that the rule making powers recommended by the Proposals are not exercised in an arbitrary manner, the Bill (s. 254) requires that all proposed regulations be published for public comment at least 60 days before being submitted to the Governor in Council for enactment, thus enabling interested persons to participate in the rule making process. Such explicit rule making is clearly a great improvement over the present system of discretionary administration.

Although the administrators of the proposed law will thus be compelled to administer more according to law and less under discretionary powers, that is not to say that they are rendered powerless. Indeed, although his discretion to decide cases is narrowly restricted, the Director is empowered in a number of provisions to initiate or intervene in legal actions in order to resolve specified problems: for example, in respect of restraining a false proxy instrument (s. 148); appointment of an auditor (s. 161); seeking relief in connection with a take-over bid (s. 198); dissolving a corporation (ss. 205, 210); initiating an investigation (s. 222); or invoking the Part XIX remedies—the derivative action and the oppression remedy (ss. 231—"complainant", 232, 234).

As explained in the comment on Part I, although the Proposals recommended the adoption of one law to govern all federal corporations, the Bill does not apply to financial intermediaries. In accordance with varying procedures all other federal corporations, unless excepted by the Governor in Council, are required to become continued under the proposed law. The pattern of continuance set out in s. 261 can best be explained by a brief summary.

- An ordinary business corporation subject to Part I of the Canada Corporations Act 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.
- A few special act corporation statutes contain a cross reference to Part I of the Canada Corporations Act. In case some provisions of the proposed law are not compatible with the special act, the Governor in Council may except it from the mandatory continuance rule.
- The Governor in Council may require any other special act corporation—other than a financial intermediary—to become continued under the proposed law.
- And finally, special act corporations other than those carrying on specified regulated businesses are granted the right to elect to become continued under the proposed law.

In addition to regulatory and transition provisions, this Part contains a number of non-controversial, technical provisions of general application in respect of notices, copies of documents, regulatory powers, formalities and retention of old records.

CANADA BUSINESS CORPORATIONS BILL

CONCORDANCE OF BILL C-213 AND BILL C-29

30th Parliament Bill C-29	*29th Parliament* Bill C-213	Change
PART I—INTERPRETATION AND APPLICATION		
1	1	
2	2	
2(1)	2(1)	In definition "associate" substitute "currently" for "presently" to clarify meaning.
2(1)	2(1)	In definition "associate" delete reference to residence in ¶ (d) to achieve greater uniformity with provincial laws.
2(1)	2(1)	Substitute "Director" for "Registrar" throughout the Bill to reflect actual departmental organization.
2(1)	2(1)	In definition "director" substitute "means" for "includes" to circumscribe scope.
2(1)	2(1)	Modify definition "resident Canadian" to correspond more closely to the Foreign Investment Review Act.
2(7)	2(7)	Modify the concept "distribution to the public" to include pre-securities act distributions and to encompass secondary distributions.
2(8)		New provision empowering the Director to exempt a security from being part of a distribution to the public to render certain provisions (e.g., ss. 165, 186) more flexible.
3	3	
3(3)		New provision to bar application of the general provisions of the present Canada Corporations Act and the Winding-up Act.
3(4)		New provision to prohibit a corporation from carrying on business as a financial intermediary.
4	4	Modified to clarify meaning.

30th Parliament Bill C-29	*29th Parliament* Bill C-213	Change
PART II—INCORPORATIONS		
5	5	
6	6	
7	7	
8	8	
9	9	
10	10	
10(1)		Permit corporate name to include "corporation" or "corp.".
11	11	
12	12	
12(1)		Abridge to reflect that the standards are to be set out in the regulations.
13	13	
14	14	
PART III—CAPACITY AND POWERS		
15	15	
15(1)		Recast to remove any implication of limits on a corporation's capacity.
16	16	
17	17	
18	18	Add "guarantor" to equate position of guarantor with that of corporation.
PART IV—REGISTERED OFFICE AND RECORDS		
19	19	
20	20	
20(3)		Add transition provision to recognize previous records.
21	21	
21(9)		Add ¶ (c) to parallel ss. 80(5).
22	22	
23	23	

30th Parliament Bill C-29	*29th Parliament* Bill C-213	Change
PART V—CORPORATE FINANCE		
24	24	
24(4)		Add exception clause in ¶ (a) to exclude class meetings.
25	25	
26	26	
26(2)		Add ss. (2) clearly to bar any retroactive application.
26(3)		Add ss. (3) to clarify treatment of partial payments for outstanding shares.
26(4)		Add ss. (4) to clarify that the statutory rules relating to stated capital must be complied with.
27	27	
28	28	
29	29	
30	30	Delete reference to void transfers to keep consistent with ss. 51(2).
31	31	
32	32	
33	33	
33(2)		Add new ss. (2) to clarify distinction between cases in ss. 33(1) and ss. 33(2).
34	34	
35		Add to clarify the status of donated shares.
36		Add to deal with partly paid shares outstanding at the time of transition.
37	35	Add new ss. (3) to refer to new partly paid share provision.
37(4)		Add reference to s. 234 and modify to refer to "any further consideration".
37(5)	35(4)	Add "or fractions thereof" to clarify meaning.
37(7)	35(6)	Add reference to s. 234 and "unless" clause to ensure this provision does not arbitrarily override articles.

30th Parliament Bill C-29	*29th Parliament* Bill C-213	Change
37(8)	35(7)	Modify clearly to legitimate the use of debt obligations to evidence liability in respect of fluctuating loans.
37(9)	35(8)	Modify to ensure no merger or confusion of obligation because debtor and creditor become one person and to encompass a guarantee as well as a debt.
38	36	
38(1)		Delete "redemption or other acquisitions" and delete reference to s. 34.
38(2)		Delete reference to s. 34.
39	37	
40	38	
41	39	
42	40	Completely recast and simplified to clarify meaning and to parallel more closely the form of ss. 32 to 40.
43	41	
43(1)	41(1)	Add phrase "except under subsection 140(4)" to refer to case of a unanimous shareholder agreement.
PART VI—SECURITY CERTIFICATES, REGISTERS AND TRANSFERS		
44	42	
44(2)	42(2)	Add definition of "purchaser" to include a person who takes a security as a secured creditor or donee.
44(2)	42(2)	Delete "subsequent purchaser" because redundant.
44(2)	42(2)	Add definition of "valid" to clarify its meaning in ss. 48, 49, 51 and 55 to distinguish "genuine".
45	43	
45(1)	43(1)	Delete final phrase ". . . and the by-laws . . ." to avoid redundancy.
45(3)	43(3)	Place "security" before "certificate" to clarify meaning.
45(10)	43(10)	Recast to clarify ¶ (10) (b).

30th Parliament Bill C-29	*29th Parliament* Bill C-213	Change
45(11)	43(11)	Recast to clarify.
45(14)	43(14)	Recast to clarify.
45(15)		Add new provision to state scrip certificate holder has no right to vote or to receive dividends.
46	44	Amend to clarify.
46(7)	44(7)	Amend to permit flexible security certificate retention policies.
47	45	
47(1)	45(1)	Change cross reference to ss. 72(7).
47(3)	45(3)	Delete "satisfactory to the corporation" to avoid granting unqualified discretion.
47(5)	45(5)	Recast to focus on act of an infant rather than of the corporation.
47(7), (8)	45(7), (8)	Add "applicable" before "law" to limit scope.
48	46	Add "reasonably" before "available" in ¶ (1) (b) to parallel ¶ (1) (a).
49	47	
49(d)	47(d)	Add "if the defendant establishes a defence or defect" to clarify who has the burden to adduce evidence.
50	48	
51	49	
52	50	
53	51	
54	52	
55	53	
56	54	
57	55	
58	56	
59	57	
60	58	Substitute "he may become" for "he becomes" to underline that the purchaser must act.
61	59	
62	60	
63	61	

30th Parliament Bill C-29	*29th Parliament* Bill C-213	Change
64	62	
65	63	
66	64	
67	65	
68	66	
68(2)	66(2)	Substitute "such purchaser" for "him" in the last line to remove ambiguity.
69	67	
69(1)	67(1)	From last line delete "transfer costs" and substitute "costs of the proof and transfer" to clarify meaning.
70	68	
71	69	
72	70	
73	71	
74	72	
74(1)	72(1)	Add "applicable" before "law" to limit scope.
75	73	
76	74	
PART VII—TRUST INDENTURES		
77	75	
77(1)	75(1)	Amend definition of "trust indenture" to clarify meaning and prospective application.
77(2)	75(2)	Recast to use "distribution to the public" as defined in ss. 2(7).
78	76	
78(3)	76(3)	Delete redundant phrase "or guaranteed".
78(4)	76(4)	Make applicable to ss. (1) and (2).
79	77	
80	78	
80(1)	78(1)	Recast preamble to clarify.
80(2)		Add new ss. (2) to state clearly the issuer's duty.

30th Parliament Bill C-29	*29th Parliament* Bill C-213	Change
81	79	
81(1)	79	Make mandatory the issuer's duty to furnish evidence of compliance in these cases.
81(2)		Add new ss. (2) to empower the trustee to require the issuer to furnish evidence in other cases.
82	80	
83	81	
84	82	
84(1)	82(1)	Delete redundant phrase "or guaranteed" and add "compliance with any term or" before "any action".
84(2)	82(2)	For "upon" substitute "At least once . . . trust indenture" and delete redundant phrase "or guaranteed".
85	83	Delete "registered" and delete redundant phrase "or guaranteed".
86	84	Delete "under a trust indenture" from preamble and delete "or guaranteed" from ¶(a).
87	85	
88	86	Delete "or guaranteed".
PART VIII—RECEIVERS AND RECEIVER—MANAGERS		
89	87	
90	88	
	89	Delete entirely s. 89 of Bill C-213.
91	90	
92	91	
93	92	
94	93	
95	94	
96	95	
PART IX—DIRECTORS AND OFFICERS		
97	96	
97(1)	96(1)	Recast in active voice.
97(2)	96(2)	Recast to refer to "distribution to the public" as defined in ss. 2(7) and to reconcile with audit committee requirements (s. 165).

30th Parliament Bill C-29	*29th Parliament* Bill C-213	Change
98	97	
98(1)	97(1)	Add "business or" in the last line.
99	98	
99(1)	98(1)	Delete reference to "first" directors to ensure that first directors are in the same position as subsequent directors.
99(2)	98(2)	Delete "first" and add "referred to in subsection (1)".
	98(3), (4), (5)	Delete because redundant after removal of reference to "first" directors.
100	99	
100(1)	99(1)	Amend ¶ (d) to parallel ¶ 5(1)(c).
100(3)	99(3)	Delete "of the first directors and a majority".
	99(4)	Delete provision prohibiting Canadian employees from being counted as Canadian resident directors of a foreign controlled corporation.
101	100	
101(1)	100(1)	Redraft to remove redundancy and clarify meaning.
101(2)		Add new ss. (2) to clarify term of office.
101(3)	100(2)	Add "at which an election of directors is required" to reflect the possibility of terms up to three years.
102	101	
103	102	
104	103	Add phrase "Subject to ¶102(g) . . .".
105	104	
105(3)		Add "or attached to" to permit attaching a director's statement to the proxy circular.
106	105	
106(3)		Amend to parallel ss. (1) and to ensure this provision does not overrule other safeguards.
107	106	
108	107	
109	108	
109(2)		Amend by adding a "notwithstanding" clause to ensure that a quorum has full power even where there is a vacancy in the board, continuing the policy of the present CCA, ss. 86(3).

30th Parliament Bill C-29	*29th Parliament* Bill C-213	Change
109(3)	108(3)	Add exemption concerning a corporation referred to in ss. 100(4).
110	109	
110(1)	109(1)	Add "who is a resident Canadian".
110(2)	109(2)	Add exemption concerning a corporation referred to in ss. 100(4).
110(3)	109(3)	Modify ¶ (b), recast ¶ (c), modify ¶ (d), delete ¶ (g), and modify ¶ (j) to ensure that rigid statutory rules do not render impossible what have long been standard administrative practices.
111		Add new section to ensure that formal error does not invalidate any act of a director or officer.
112	110	
113	111	
113(1)	111(1)	Add "on the date of the resolution" at end to specify when evaluation takes place.
114		Add new provision to continue the policy of the present CCA, s. 99 to make directors personally liable for arrears of wages in case of insolvency.
115	112	Generally, expand application to include officers and limit sanction to avoidance: directors and officers duties and liabilities are stated in s. 117.
115(1)	112(1)	Add "request to" and add "at meetings of the directors" in postamble to clarify meaning.
115(2)(d)		Add new ¶ (d) to include a missing case.
115(3)		Add new provision concerning time of disclosure of an officer.
115(4)	112(3)	Add "or request to have entered in the minutes".
	112(4)	Delete former ss. (4) concerning director liability, which is rendered redundant by s. 117.
115(4)	112(5)	Add ¶ (c) to legitimate the purchase of insurance, and add ¶ (d) to ensure that directors of affiliates are not precluded from voting.
115(6)	112(6)	Amend to clarify.
115(7)		Add new provision to clarify avoidance standards.
115(8)	112(7)	Amend to reflect new ss. (6).
116	113	
116(a)	113(a)	After "powers" substitute "to manage the business of the corporation".

30th Parliament Bill C-29	*29th Parliament* Bill C-213	Change
117	114	
	114(4)	Delete because redundant.
118	115	
118(1)	115(1)	Add "or committee of directors" and also "or action taken" to broaden the scope of the dissent provision.
118(4)	115(4)	Delete redundant phrase "to be correct or stated".
119	116	
119(4)	116(4)	Delete ¶ (4) (b), which relates to a director who is a nominee of a corporate shareholder. Such a director should resign rather than commit a breach of a fiduciary duty as instructed by the corporate shareholder.
120	117	
PART X—INSIDER TRADING		
121	118	
121(1)	118(1)	Delete ¶ (1) (b) from the definition of "distributing corporation", which is redundant in the light of the broadened concept of "distribution to the public" set out in ss. 2(7).
121(1)	118(1)	Delete "who controls directly or indirectly" from the definition of "insider", which is rendered redundant by the phrase "exercises control".
121(1)	118(1)	Say "means" instead of "includes" in the definition of "officer" to establish a definite boundary.
121(1)	118(1)	Recast definition of "share" to parallel s. 187.
121(2)	118(2)	Abridge ¶ (2) (e) to clarify meaning and to reconcile with ss. 124(2), which bars insiders from trading puts and calls.
121(4)	118(4)	Delete redundant phrase "or shares".
122	119	
122(5), (6), (7)	119(5), (6), (7)	Substitute "securities" for shares to broaden the application of the section.
123	120	
124	121	

30th Parliament Bill C-29	*29th Parliament* Bill C-213	Change
125	122	
125(1)	122(1)	Delete "directly or indirectly" from ¶ (1) (c) to parallel the definition of insider in ss. 121(1), and add ¶ (f) to expand application of the section to specified "tippees".
125(2)		New subsection, added to parallel ss. 121(2).
125(3)		New subsection, added to parallel ss. 121(3).
125(4)		New subsection, added to parallel ss. 121(4).
125(5)	122(2)	Substitute "security" for "share" to broaden the application of the section, continuing the policy of the present CCA, ss. 100.4(1).
125(6)	122(3)	
PART XI—SHAREHOLDERS		
126	123	
127	124	
128	125	
128(1)(c)	125(1)(c)	Add "or to vote at" to tie in with ss. 125(3) and ss. 132(2).
128(3)(b)	125(3)(b)	Recast to clarify that the directors may establish a definitive voters list 10 days before a meeting by giving notice of the meeting.
129	126	
129(1)(a)	126(1)(a)	Delete phrase "... at his latest address...", which is rendered redundant by s. 246.
129(3), (4)	126(3), (4)	Modify to place a maximum limit on adjournments without a new notice.
130	127	
131	128	
131(2)	128(2)	Add phrase "or attach the proposal thereto" to obviate having to incorporate a proposal in a printed proxy circular.
131(5)(a)	128(5)(a)	Delete because redundant. The real tests are set out in present paragraphs (b) to (e).
131(10)	128(10)	Delete ten days notice provision and rely instead on the rules of court or a court order under s. 241.
132	129	
132(1)	129(1)	Recast to impose duty on the corporation and to permit preparation of a definitive voters list ten days before a meeting.

30th Parliament Bill C-29	*29th Parliament* Bill C-213	Change
132(2)	129(2)	Amend to clarify right of a shareholder to vote and to link with ss. 125(2).
132(3)	129(3)	Amend to remove implication that an issuer is required to maintain duplicate central registers at branch register offices.
133	130	
134	131	
134(2)	131(2)	Amend to require authorization by a resolution of the directors.
135	132	
136	133	
137	134	
137(1)	134(1)	Substitute five percent for ten percent to parallel ss. 109(1) of Ont. B.C.A., 1970.
137(2), (3)	134(2), (3)	Substitute "business to be transferred at" for the phrase "for the purposes" to parallel ss. 129(5).
137(4)	134(4)	Substitute "twenty-one" for "thirty" to correspond to notice period under ss. 129(1).
138	135	
139	136	
139(2)	136(2)	Recast the preamble to make clear that the court may make any one of any combination of the listed orders.
140	137	
140(3)	137(3)	Add reference to ss. 45(8) to reconcile the two provisions and to clarify the meaning.
PART XII—PROXIES		
141	138	Substitute "securities broker or dealer" for "person registered" to limit application of the proxy pass-through rules to brokerage firms.
142	139	Amend clearly to legitimate the use of alternate proxyholders.
143	140	Delete phrase "at his latest address . . .", which is rendered redundant by ss. 246(1).
144	141	
144(2)	141(2)	Amend to require sending supplementary documents to the Director.

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145	142	
146	143	
146(1), (2)	143(1), (2)	Amend to refer to an alternate proxyholder, consistent with s. 142.
147	144	
147(1)(b)	144(1)(b)	Recast ¶ (b) to except broker who already has written voting instructions.
148	145	
148(1)	145(1)	Amend to extend the court's powers so that the court has greater discretion to resolve a problem.
148(2)	145(2)	Delete reference to ten days, paralleling ss. 131 (10).
PART XIII—FINANCIAL DISCLOSURE		
149	146	
150	147	Substitute the more objective standard "reasonably believes" for the phrase "is satisfied".
151	148	
151(1)	148(1)	Add phrase "or combined form as prescribed . . ." to legitimate the use of combined statements (combining subsidiaries carrying on a common business) and to authorize making regulations to clarify detail.
152	149	
153	150	
153(1)	150(1)	Substitute "before" for phrase "forthwith after" to ensure that a shareholder always sees the financial statements before voting to approve them.
154	151	
154(1)	151(1)	Amend to clarify that a disclosing corporation must send its financial statements to the Director independently of corporate meetings.
154(3)		Add to authorize making regulations to clarify policies that are now based on interpretation of broad statutory rules.
155	152	
155(1)	152(1)	Add "subject to ss. (5)" to tie in the exemption procedure.
155(3), (4), (5)	152(3), (4), (5)	Add provisions that had been set out in Bill C-213 as ss. 155(3), (4), (5) but that relate more closely to this section.

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156	153	
157	154	
158	155	
	155(3), (4), (5)	Moved to s. 155.
159	156	
160	157	
160(2)	157(2)	Amend to require calling a meeting to appoint an auditor within 21 days.
161	158	
162	159	
162(3)		Add new provision to require a person sending a notice to an auditor to send a copy of that notice to the corporation.
162(6)	159(5)	Add phrase "or attached to" to permit flexible proxy circular format, parallel to ss. 131(2).
163	160	
164	161	
164(1)	161(1)	Add reference to former directors, and add "reasonably able" standard.
164(2)	161(2)	Recast to clarify directors' duty to furnish information about subsidiaries to the auditor.
165	162	
165(1)	162(1)	Amend to refer expressly to ss. 97(2) and to clarify meaning.
165(2)		Add new provision empowering the Director to grant exemptions from the requirements to have an audit committee.
165(6)	162(5)	Impose duty to disclose a misstatement on an officer as well as a director, and amend the penalty provision in ss. (9) accordingly.
166	163	
PART XIV—FUNDAMENTAL CHANGE		
167	164	
167(1)		Amend ¶ (1) (c) and (f) to parallel the wording of ss. 184(1).
167(2)		Add new provision empowering the shareholders to permit the directors to revoke an amendment resolution before it is acted upon.

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168	251(c)	Add new section relating to constraints on the transfer of shares of a corporation that are part of a distribution to the public.
169	165	
169(2)	165(2)	Add "dissenting" before "shareholder" to clarify meaning.
170	166	
170(1)(g)		Add new provision to refer to s. 168.
171	167	
171(1)	167(1)	Add reference to new s. 168.
171(2)	167(2)	Recast entirely the reduction of capital procedures to make policy parallel to policy applicable to reacquisition by a corporation of its shares and cross refer to the substantive provision, s. 36.
	167(4), (5), (6)	Delete subsections made redundant by new ss. 167(2).
172	168	
173	169	
174	170	
174(1)	170(1)	Add "reasonably" standard.
175	171	
176	172	
177	173	
177(1)	173(1)	Amend to clarify the rights of class shareholders.
177(4)	173(4)	Amend to clarify class rights.
178	174	
178(2)(b) (iii)		Add new sub-¶ (iii) to ensure no forced reduction of capital that could result in a deemed repayment of capital under the Income Tax Act.
179	175	
179(2)(b)	175(2)(b), (c)	Recast to clarify meaning.
179(3)	175(3)	Add "known" to recognize that some creditors are anonymous, e.g., holders of bearer notes.
	175(4), (5)	Delete because made redundant by redraft of ¶ 179(2)(b).

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180	176	
	176(b)	Delete to emphasize the concept of continuance and thus to block any possible inference that the amalgamating corporations die and that a new amalgamated corporation is created.
180(e)	176(f)	Change "amalgamating" to "amalgamated".
181	177	
181(8)		Add new provision to ensure that the grandfather rule set out in ss. (7) includes options, rights, and bearer shares.
182	178	
182(2)		New provision prohibits export of an investment company except where the Minister of Finance consents.
182(6)		Add a new provision permitting the shareholders to authorize the directors in their discretion to abandon a continuance, paralleling ss. 167(2), 177(6).
183	179	
183(1)(b)	179(1)(b)	Add "reissue" to parallel ss. 37(9).
183(6)	179(6)	Redraft the "if" clause to clarify meaning.
184	180	
184(1)	180(1)	Amend ¶ (a) and (b) to parallel wording of ss. 167(1).
184(3)	180(3)	Add "but" clause at end to exclude consideration of value added by the proposal.
184(4)	180(4)	Recast to make clear that a nominee must dissent on all or nothing basis in respect of the shares he holds for one beneficial owner.
184(12)	180(12)	Redraft to clarify the time periods.
185	181	
185(1)(c)	181(1)(c)	Amend ¶ (c) to restrict its application to inter-corporate arrangements.
PART XV—PROSPECTUS QUALIFICATION		
186	182	

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PART XVI—TAKE-OVER BIDS		
187	183	Recast definition of "exempt offer" to make clear the "fewer than 15 shareholders" means the maximum number of offerees and not the number of persons party to an agreement. From the definition of "take-over bid" delete the redundant phrase "fifteen or more".
188	184	
189	185	
190	186	
190(f)	186(f)	Substitute the phrase "other than pursuant to the take-over bid" for the phrase "in the market" to make clear that purchases outside the bid trigger these rules even if not made in a formal market.
191	187	
192	188	
193	189	
194	190	
194(1)	190(1)	Recast to make a directors' circular mandatory in all bids.
194(3)		New provision to empower rule making re ss. (2) notice.
	190(4)	Offence provision deleted because now inapplicable.
194(5)		New provision added to permit director's dissent.
195	191	
196	192	
196(1)	192(1)	Add "and the take-over bid circular" to require the directors to review each document in respect of which they might incur personal liability under ss. 198(3), e.g., for misrepresentation.
197	193	
198	194	
198(3)	194(3)	Add ¶ (f), (g) and (h) to empower a court to apply post-bid remedies.
198(4)		Add new provision to clarify who has standing to invoke the ss. (3) remedies.

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199	195	
199(1)	195(1)	Add special definition of "take-over bid" to encompass all share acquisitions and not just bids within the definition set out in s. 187.
199(3)(c)	195(3)(c)	In sub-¶ (c) (ii) substitute "(17)" for "(18)".
199(6)	195(6)	Substitute "(3)(c)(i)" for "(3)(c)(ii)".
199(13)(a)	195(13)(a)	Add "referred to in sub-¶ (3)(c)(ii)" to clarify scope.
PART XVII—LIQUIDATION AND DISSOLUTION		
200	196	
201	197	
202	198	
202(4)	198(4)	Substitute "liable for the obligations" for the "subject to . . ." clause to make clear that a revived corporation is liable for all its obligations and not just balance sheet liabilities.
203	199	
204	200	
204(7)(c)	200(7)(c)	Substitute "obligations" for "liabilities", paralleling ss. 202(4).
205	201	
206	202	
207	203	
207(1)	203(1)	Add reference to "affiliates" in preamble to clarify meaning. And add "unfairly" standard in postamble to ¶ (a), paralleling ss. 222(2) and ss. 234(2).
208	204	
209	205	
209(3)(c)	205(3)(c)	Add "known" before "creditor" to recognize that some creditors are anonymous, paralleling ¶ 179(3)(a).
209(4)(b)	205(4)(b)	Delete reference to time limits and leave to rules of court under s. 241 as in ss. 131(10).
210	206	
211	207	

30th Parliament Bill C-29	*29th Parliament* Bill C-213	Change
212	208	
212(1)	208	Recast to clarify that the powers of the shareholders and directors vest in the liquidator.
212(2)		Add new ss. (2) to authorize the liquidator to delegate his powers.
213	209	
	210	Delete s. 210 of Bill C-213 because redundant and misleading. Section 208 empowers the liquidator to deal with corporate property and contracts, therefore there is no need of vesting of property or formal property transfers.
214	211	
215	212	
215(1)	212(1)	Amend ¶ (1)(a) to parallel ss. 118(4).
215(2)	212(2)	Amend ¶ (2)(b) to parallel ss. 118(4).
216	213	
216(4)	213(4)	Delete time limit and leave to rules of court under s. 241 as in ss. 131(10).
217	214	
218	215	
219	216	
219(2)(b)	216(2)(b)	Substitute "two years" for "one year" to extend the time for taking action against a corporation, paralleling ss. 252–253 of Ontario B.C.A., 1970.
219(4)	216(4)	Extend time for taking action to two years.
220	217	
221	218	
221(2)	218(2)	Redraft to clarify meaning.
PART XVIII—INVESTIGATION		
222	219	
222(2)(b)	219(2)(b)	Substitute the phrase "that unfairly disregards" for "in disregard of" to parallel the standard set out in ss. 207(1) and ss. 234(2).
223	220	
224	221	
225	222	

30th Parliament Bill C-29	*29th Parliament* Bill C-213	Change
226	223	Clarify reference to Criminal Code offences.
227	224	
228	225	
228(1)	225(1)	Add reference to the new constrained share provisions concerning rule making in s. 168.
229	226	
230	227	
PART XIX—REMEDIES, OFFENCES AND PENALTIES		
231	228	
232	229	
233	230	
234	231	
234(2)	231(2)	In the postamble add "that unfairly" to parallel the standard set out in ss. 207(1) and 222(2).
235	232	
236	233	
237	234	
238	235	
239	236	
239(b)	236(b)	Expand to cover all name decisions.
239(c)	236(c)	Expand to cover all exemption powers.
240	237	
241	238	
242	239	
243	240	
244	241	
245	242	Recast to avoid using the defined term "court", which includes only superior courts.
PART XX—GENERAL		
246	243	
246(2)		Add new ss. (2) to make clear the effect of the notice of directors referred to in s. 101 and s. 108.
246(3)	243(2)	Add "unless . . ." clause to contemplate mail strike or other interruption of service.
247	244	Amend to parallel ss. 246(3).

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248	245	
249	246	
249(2)	246(2)	Add "except . . ." clause and substitute "conclusive proof" for "evidence" to clarify meaning and to parallel the policy of present C.C.A., s. 4 and s. 142.
250	247	
250(3)	247(3)	Redraft to make clear that an entry in a securities register is prima facie proof.
251	248	
252	249	
253	250	
254	251	
254(1)(b)	251(1)(b)	Redraft to make clear the rule making powers relating to fees.
254(1)(e)	251(1)(e)	Delete former ¶ (e), which is now set out in greater detail in ss. 168(5), and substitute reference to exemption procedures applicable to exercise of exemptions referred to in ¶ 239(c).
255	252	
255(2)(b)	252(2)(b), (c)	Redraft to merge ¶ (b) and (c) and so clarify meaning. Also delete reference to verification, which may be required on an exception basis under s. 252.
255(3)	252(3)	Redraft to clarify that the Director may post-date (but not ante-date) a certificate.
256	253	
257	254	
258	255	
259	256	
260	257	
261	258	
261(1)		Add new provision to permit shareholders of a federal corporation to amend charter and authorize continuance at one meeting.
261(2)		Add provision to bar right to dissent re an amendment under ss. (1).
261(5)	258(3)	
261(6)	258(4)	Amend to clarify relation to ss. (5) and s. (3).

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261(7)	258(5)	
261(8)	258(6)	
261(10)		Add ss. (10) to state clearly that a nonprofit corporation is not entitled to be continued under this Act.
262	259	
263		Add new provision to effect change to Atomic Energy Control Act.
264		Add new provision to effect change to National Research Council Act.
265		Add new provision to refer to Schedule setting out consequential changes to other acts.
266	260	