

QUEEN
KE
1369
.D472
1977



DOSSIERS DE CCC
CCA FILES

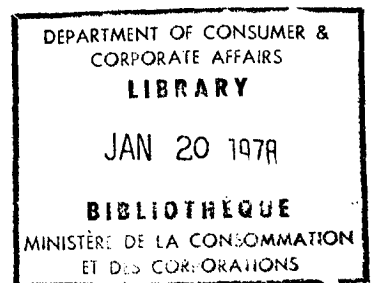
**Detailed
background
paper
for an
Act to amend the
CANADA
BUSINESS
CORPORATIONS
ACT**



Consumer and
Corporate Affairs Canada

Consommation
et Corporations Canada

**Detailed
background
paper
for an
Act to amend the
CANADA
BUSINESS
CORPORATIONS
ACT**



DETAILED BACKGROUND PAPER

For an *Act to Amend the Canada Business Corporations Act*

Table of Contents

	<i>Page</i>
Introduction	5
Concordance	7
Summary of Proposed Amendments	9

CBCA DETAILED BACKGROUND PAPER

INTRODUCTION

The *Canada Business Corporations Act* came into force on 15 December 1975. Since that date some 10,000 corporations have been incorporated and 2000 corporations have been continued under the *Act*, resulting in a total of about 40,000 federal corporations in the overall Canadian universe of an estimated 400,000 corporations. Although the aggregate number is relatively small, because 150 of the 200 largest Canadian corporations are incorporated at the federal level, the federal *Act* has a far more significant impact than is indicated by these aggregate numbers.

The *Act* has two express objectives: first, to provide a federal law that permits efficient administration and that balances equitably the competing interests of management, the shareholders and creditors of federal corporations; and second, to serve as a model business corporation law that advances the cause of uniformity in Canada. The *Act* also has a third objective that is only implied in these first two, that is, to provide a substantive law and a fair, efficient administrative system which induces large corporations that carry on business across Canada to incorporate at the federal level, giving them a Canadian character as distinct from a mere provincial character, and thus creating institutions that have an important catalytic function in binding together the diverse and widely separated activities of the Canadian economy.

Judging from the number of applications for incorporation under the *Act*, which have increased from an average of about 2000 per year under the predecessor *Canada Corporations Act* to a rate of 7000 a year in 1977, the *Canada Business Corporations Act* is achieving its first objective. It has also made substantial progress toward meeting its second objective. Both Manitoba and Saskatchewan have now enacted business corporation laws based on the *Act*, and several other provinces are considering revision of their corporation laws with a view to achieving greater uniformity.

That is not to say, however, that the *Act* contains no flaws. But given the sweeping substantive and adminis-

trative changes effected by the *Act*, it is surprising how few serious problems have arisen during its first two years of operation. Inevitably, however, experience with the statute in practice has brought to light a number of drafting anomalies, some logical inconsistencies, and several substantive problems.

By far the most important purpose of the Bill is the complete revision of the French version, which is set out in an Annex to the Bill and which constitutes most of its bulk. This revision was made in response to a complaint of the Quebec Bar, made when the *Act* was being considered by the House Committee on Justice and Legal Affairs, that the present French version of the *Act* is a mere translation of the English version and not a statement of the law in French. The new French version set out in the Bill attempts to meet that criticism.

The proposed amendments set out in clauses 2 to 74 of the Bill are largely minor technical changes. The following Summary attempts to state briefly each amendment, to relate it to the *Act*, and to explain its specific purpose.

The one major substantive change set out in the Bill is clause 55 (proposed section 185.1 of the *Act*), which concerns making a fundamental change by way of an arrangement. This institution had been consciously omitted from the *Act* on the grounds that it was superfluous and that it could be invoked to squeeze-out minority shareholders unfairly. Experience has demonstrated that complicated situations do arise where no one and no combination of the fundamental change institutions (amendment, amalgamation, continuance, dissolution, etc.) set out in the *Act* can be invoked to resolve all the problems in a practical manner. It is clear, therefore, that it is desirable to have an arrangement provision in the *Act*. The quandary is to design a provision that will give management and majority shareholders great flexibility to manage a corporation's internal affairs, and, at the same time, will adequately protect the interests of minority shareholders. To achieve these ends the Bill, characteristically, grants

broad powers to a court to consider and approve an arrangement and, if the court thinks it necessary to protect minority shareholders, to confer on shareholders who dissent from a proposed arrangement the right to require that the corporation pay them fair value for any shares they tender. Thus the Bill seeks to achieve a fair balance between flexible management and equitable treatment of minority shareholders in a manner that is consonant with the other fundamental change institutions set out in Part XIV.

On first introducing the *Act* in Parliament, the Minister of Consumer and Corporate Affairs described it as a statute that attempts to be clear, equitable, imaginative and, above all, practical. If it does achieve these goals, it is in large part due to the private sector lawyers and accountants who have taken the trouble to point out the problems, and who have generously contributed their time to respond to the many questions that have arisen during the drafting process. To them the Department is most grateful.

TABLE OF CONTENTS — CONCORDANCE WITH CBCA

Bill Clause No.	CBCA Sec. No.	Topic
1.		French version
2.	2(1), (3), (8)	Definitions
3.	6(2), (3)	Articles of incorporation
4.	10(1), (3), (4)	Name of corporation
5.	15	Capacity of a corporation
6.	21(6), (9)	Access to lists of shareholders
7.	22(2), (3)	Preservation of records
8.	24(4)	Rights attached to shares
9.	25(1)	Issue of shares
10.	26	Stated capital account
11.	30	Corporation holding its own shares
12.	36(1), (3)	Reduction of stated capital
13.	37(1), (4), (7)	Adjustment of stated capital account
14.	39	Commission for sale of shares
15.	42	Prohibited loans and guarantees
16.	44	Interpretation — securities transfers
17.	45(5), (8)	Security certificates
18.	46(7)	Destruction of security certificates
19.	47(1)	Dealings with registered owner
20.	49(d)	Burden of proof
21.	51	Sub-headings
22.	70.1	No conversion by broker
23.	94	Receiver's duty of care
24.	97(2)	Number of directors
25.	98(5)	Shareholders proposal
26.	99	Organization meeting
27.	117(3)	No exculpation of directors
28.	119(3), (4)	Indemnity of directors and officers
29.	121(1), (2), (3)	Definitions — insider reporting
30.	122	First insider reports
31.	122.1	Notice of corporation's purchase of own shares
32.	123	Publication of insider trades
33.	124(2)	Puts and calls
34.	125(1), (2), (3), (6)	Definitions — insider liability
35.	128(3), (4)	Fixing record date
36.	133(1)	Quorum of shareholders
37.	140(2.1), (4)	Unanimous shareholder agreement
38.	146(1.1)	Right of proxyholder
39.	151(1)	Consolidated financial statements

Bill Clause No.	CBCA Sec. No.	Topic
40.	154(4)	Disclosure of financial statements
41.	155(2)	Independence of auditor
42.	156(1)	Appointment of auditor
43.	157(4)	Dispensing with auditor
44.	163(2)	Reliance on other auditor
45.	164(2)	Auditor's right to information
46.	167	Amendment of number name
47.	168(1), (5)	Constraints on share transfers
48.	169(1)	Proposal to amend articles
49.	170(1)	Class vote of shareholders
50.	171(3)	Deemed reduction of capital
51.	181(1.1), (10), (11)	Continuance (import)
52.	182(7.1)	Continuance (export)
53.	183(1), (1.1)	Directors borrowing powers
54.	184(1), (3), (11)	Shareholders right to dissent
55.	185.1	Arrangements
56.	187	Definitions — take-over bids
57.	199(1), (10.1)	Compulsory acquisition of shares
58.	202(1), (4)	Revival of dissolved corporation
59.	204(1)	Proposal to liquidate and dissolve
60.	213(1)	Appointment of liquidator
61.	219(2), (4)	Continuation of actions
62.	220(1)	Property of unknown claimants
63.	221(1)	Vesting of unclaimed property in Crown
64.	222(1), (3)	Standing to initiate investigation
65.	223(1)	Powers of court re investigation
66.	234(3)	Powers of court — oppression action
67.	236(3)	Powers of court — rectification of records
68.	239	Appeal from Director's decision
69.	246(2)	Notice to directors and shareholders
70.	247, 248	Notice to corporation
71.	250(3)	Entry in securities register as proof
72.	254(1)	Regulation making powers
73.	255(2), (4), (3)	Filing articles — formalities
74.	261	Continuance of a federal corporation
75.		Coming into force of amending act

CANADA BUSINESS CORPORATIONS ACT

SUMMARY OF PROPOSED AMENDMENTS

Bill Clause No.	CBCA Sec. No.	Topic	Proposed Amendment
1	New	French version	Complete restatement of the law in French to replace the present translation.
2(1)	2(1)	Definition of “beneficial interest” and “beneficial ownership”	Division of these two terms to make clear that “beneficial interest” is purely a statutory concept and not the embodiment in the statute of the related concept in equity.
2(2)	2(1)	Definition of “security interest”	Generalization of this concept that avoids unnecessary reference to specific institutions such as mortgage and hypothec and that permits its use also in the proposed bankruptcy law.
2(3)	2(1)	Definition of unanimous shareholder agreement	Addition of a reference to the proposed ss. 140(2.1), which empowers a person who owns all the issued shares of a corporation to cast a unanimous shareholder agreement as a unilateral declaration, obviating the otherwise essential formality of issuing shares in trust to a nominee to act as the other party to a bilateral agreement.
2(4)	2(3)	Concept of control	Expansion of the concept to encompass voting securities and not just shares; express declaration of the minimum 50 percent requirement; clarification that in addition the votes attached to the securities must be sufficient to elect a majority of directors, which may not be true where the voting of some shares is constrained under s. 168.
2(5)	2(8)	Director’s power to exempt corporation from status of having distributed shares to the public	Addition of phrase “or was not” to make the Director’s exemption power correspond to the language of the sections affected e.g., proposed ss. 45(8.1) and ss. 97(2).
3	6(2), (3), (4)	Articles of incorporation	Deletion of reference to unanimous shareholder agreement, which implies that a shareholder control provision can be embodied in the articles and then amended under s. 167 without unanimous consent; and addition of express constraint on any qualification of the shareholders’ power to remove a director at any time by ordinary resolution under s. 104.
4	10(1), (3), (4)	Name of corporation	Restructuring of ss. (1) to remove wooden constraints on position of <i>Corporation</i> , etc. in a name to permit names such as <i>Corporation Dupont Frères, S.C.C. Dupont Frères, Potash Corporation of Canada</i> ; and modification of ss. (3) and (4) to parallel the language of ss. (1).
5	15(1.1) New	Capacity of a corporation	Addition of new subsection to ensure any federal business corporation has the capacity to carry on business

Bill Clause No.	CBCA Sec. No.	Topic	Proposed Amendment
			throughout Canada, which obviates setting out a like declaration in each certificate of incorporation.
6	21(6)	Access to list of shareholders	Addition of reference to — “supplemental list” to make ss. (6) consistent with ss. (4).
7	22(2), (3)	Duty to safeguard records	Inclusion of corporate records other than registers (which implies only s. 46 securities registers); and addition of the “without reasonable cause” defence to ss. (2) to make it correspond to the other penal provisions in the <i>Act</i> .
8	24(3), (4)	Classes of shares	Redraft of these provisions to state unambiguously that the rights referred to in ss. (3) must be attached, where a corporation has one class of shares, to that class of shares, but where a corporation has more than one class of shares any one or more of those rights may be attached, at the corporation’s discretion, to one or more classes.
9	25(1)	Issue of shares	Addition of reference to articles, by-laws or a unanimous shareholder agreement, which in effect means a corporation may under ss. 25(1) constrain the directors general powers under ss. 97(1) in respect of <i>share</i> issues just as it can constrain the directors borrowing powers under ss. 183(1).
10	26(1.1), (6), (7) New	Stated capital account	Express declaration of what the <i>Act</i> now assumes, i.e., that a corporation may credit to a stated capital account any amount received in respect of a share it issued before being continued; and exception of an open-end mutual fund from application of the stated capital account rules.
11	30	Corporation holding its own shares	Recasting of provision to permit gradual divestiture of shares where the corporation acquires a subsidiary that holds some of its shares or where a corporation is continued from a jurisdiction that permits a subsidiary to hold shares in its parent, thus avoiding a forced sale or a sudden realization of taxable income.
12	36(1), (2)	Reduction of stated capital	Modifies ss. (1) and (3) to continue the policy of <i>Canada Corporations Act</i> , par. 52(1)(c), which expressly permits a corporation to return capital paid for a share. There are three alternative means to reduce capital under the <i>CBCA</i> : (1) acquisition of a corporation’s own shares under ss. 32-34 (transaction); (2) shareholder action under s. 36 (special resolution); and (3) shareholder action under ss. 168 and 171 (amendment).

Bill Clause No.	CBCA Sec. No.	Topic	Proposed Amendment
13	37(4), (4.1), (7) New	Adjustment of stated capital account	Amendments to refer expressly to share conversions; and addition of ss. (4.1) to permit aggregation of the stated capital accounts of interconvertible shares which have come into common use because of distinctions in the <i>Income Tax Act</i> based on the kind of surplus account to which a dividend is charged.
14	39	Payment of a commission for the sale of shares	Substitution of a “reasonable” standard for the present “good faith” standard, which overlaps and is confusing with the general duty of care and fiduciary standards set out in s. 117.
15	42	Prohibited loans and guarantees	Recasting of the section to state its meaning without any change of policy. The provision continues to give the directors very broad discretion, subject to the personal liability sanction set out in s. 113 and the general duty of care and fiduciary duty standards set out in s. 117 that apply where the s. 42 standards are contravened. Subsection (2) has also been amended to permit both upstream and downstream loans between a parent and subsidiary free of the solvency constraint of ss. (1).
16(1)-(4)	44(2), (3), (4.1)	Part VI definitions relating to securities transfers	Amended to exclude the superfluous reference to the <i>Bills of Exchange Act</i> in Part VI, which is in any event a closed system; and to legitimate expressly the issue of debt obligations in order form, a form that is commonly used in European markets.
17(1)-(3)	45(5), (8), (8.1)	Rights of a security holder	Modification of ss. (5) to obviate the need for a manual signature on a promissory note; and addition of ss. (8.1) to preclude any restriction of the transfer of shares distributed to the public other than by means of a constraint imposed under s. 168.
18	46(7)	Retention by a corporation of its own security certificate that it acquires	Recasting of ss. (7) to distinguish among these classes of security certificates that renders the retention rules more flexible but still protects security holders who may need to have access to a security certificate presented to a corporation for transfer to prove the transfer was wrongful because based on a forged endorsement. Subsection (7) now distinguishes among three kinds of security certificates: (1) registered form; (2) bearer form; and (3) limited term irrespective of form.
19	47(1)	Duty of corporation dealing with a holder of its securities	Generalization of the right of a corporation to rely on its securities register, a policy that continues the pre-CBCA law and that removes overlap with ss. 47(4), 47(2), and 73(3).

Bill Clause No.	CBCA Sec. No.	Topic	Proposed Amendment
20	49(d)	Burden of proof in case concerning an impugned securities transfer	Substitution of the word "exists" for the phrase "going to the validity of the security", to parallel the <i>Uniform Commercial Code</i> §8-207 and the Ontario <i>Business Corporations Act</i> , ss. 75(1), and to avoid use of the term "validity" which has a specific meaning under Part VI, particularly in s. 51.
21	51, 56	Subheadings	Addition of subheadings before ss. 44, 51, 56 and 71 to distinguish the discrete sub-parts of Part VI, corresponding to the subdivision of the <i>Uniform Commercial Code</i> .
22	70.1	Immunity of agent in respect of good faith conversion of a security certificate	Addition of counterpart of <i>Uniform Commercial Code</i> §8-318 and Ontario <i>BCA</i> s. 89 to maintain uniformity, so that a broker who deals in shares of a federal corporation has the same immunity from a claim based on conversion in each common law province.
23	94	Fiduciary duty and duty of care of a receiver	Generalization of the standards to delete the anomolous "special consideration" qualification and to adapt wording that can also be employed in the proposed bankruptcy law. In addition, this modified version distinguishes expressly between the duties of a director and the duties of a receiver and states impliedly the relative nature of these duties.
24	97(2)	Number of directors	Addition of a clear exemption for a corporation that once had distributed securities to the public but has since become a wholly-owned subsidiary, thus obviating an application to the Director under ss. 2(8). This exemption, by virtue of a cross reference in ss. 165(1), also applies to the audit committee requirements of s. 165.
25	98(5)	Shareholder proposal	Modification to limit to voting shareholders the right to make a proposal to make, amend or repeal a by-law, paralleling ss. 131(1), the basic proposal provision.
26	99(1.1) New	Exception from organization meeting requirements	Addition of exception in cases of amalgamation and continuance, where an organization meeting would be an empty formality.
27	117(3)	No exculpation from directors' and officers' duties	Addition of a reference to ss. 140(4), the unanimous shareholder provision that enables shareholders to assume direct control of a corporation, to reconcile an implied conflict between the two provisions.

Bill Clause No.	CBCA Sec. No.	Topic	Proposed Amendment
28	119(3), (4)	Directors' and officers' indemnity	Addition to ss. (3) of standards that narrow considerably a directors' or officers' claim to indemnity as of right, particularly to bar a claim where the director or officer acted improperly but has some technical defence to an action against him; and an extension of the power of a corporation to purchase D&O insurance under ss. (4) to cover a director or officer of one corporation who acts at that corporations' request as director or officer of another corporation (e.g., of a subsidiary or of a corporation in which the first corporation has a substantial investment).
29	121(1), (3)	Reports of trades by insiders	Clarification of wording.
30	122(1)	First insider report	Addition of regulation making power to permit exemption from filing Nil returns with a view to maintaining uniformity with provincial law.
31	122.1 New	Notice of corporation's requisition of its own shares	Addition of regulation making power to require a corporation to disclose to the Director any proposed acquisition of its own shares, which acquisition, whether by way of an ordinary take-over bid, a stock exchange bid, or market purchases is defined as a "take-over bid" under s. 187. This notice will enable the Director to check the transaction to verify that the corporation is complying with the <i>Act</i> and the <i>Regulations</i> .
32	123	Publication of insider reports	Consequential change to reflect the addition of the new s. 122.1.
33	124(2)	Prohibition of leveraged trades by insiders	Addition of "or sell" to clear up an obvious anomaly.
34	125(1), (2), (5), (6)	Liability for improper insider trading	Consolidation of ss. (1) and (2) to clarify the difference between this broad liability provision and the designedly narrow insider reporting requirements under s. 122, and to eliminate the overlap between the present ss. (1) and (2) which arises because par. (1)(f) already subsumes the persons referred to in ss. (2).
35	128(3)(b), (4)	Fixing record date for meeting of shareholders	Specific exclusion from par. (3)(b) of the right to receive notice of a meeting and to vote, in order to reconcile this provision with ss. 132(3), which expressly confers a right to vote on a shareholder named in a list prepared under par. 132(1)(b). The time period of 14 days set out in ss. 132(4) is abridged to 7 days to allow a corporation more time to complete other formalities, particularly with respect to the payment of quarterly dividends by a public distributing corporation that must within the three-month period give notice to a stock exchange and also publish notice in several newspapers of any proposed dividend.

Bill Clause No.	CBCA Sec. No.	Topic	Proposed Amendment
36	133(1)	Quorum of shareholders	Recasting of this provision to make clear that the shareholders present and the shareholders represented by a proxyholder are all counted for the purpose of determining whether a quorum exists at a meeting of shareholders.
37	140(2.1) New	Declaration of a unanimous shareholder agreement by a unique shareholder	Addition of a new provision to legitimate a unilateral declaration by a holding corporation in respect of a wholly-owned subsidiary that it seeks to control directly rather than indirectly through nominee directors, thus obviating the useless formality of issuing a share to a nominee in trust to create a party with capacity to enter a bilateral agreement.
38	146(1.1) New	Rights of a proxyholder at a meeting of shareholders	Addition of a new provision, analogous to ss. 174(2) of the B.C. <i>Companies Act</i> , designed to make clear that a proxyholder may vote by show of hands rather than demand a ballot on each motion; but a proxyholder who has conflicting instructions from different shareholders must demand a ballot and vote as instructed in compliance with s. 146.
39	151(1)	Financial statements of corporation and its affiliates	Generalization of this provision to delete the reference to "combined statements" (which usually connotes a combination of the accounts of all Canadian affiliates but excluding the accounts of the foreign holding corporation that is not technically a "consolidated" statement) and to require maintenance in a corporation's head office of discrete financial statements relating to each body corporate the accounts of which are consolidated with the corporation's accounts, whether the body corporate is a subsidiary, some other affiliate, or a partner in a joint venture.
40	154(4)(b)	Mandatory disclosure to the Director of documents filed with other authorities	Deletion of the term "recognized", which is superfluous in this <i>Act</i> .
41.	155(2)(b)(i)	Qualification of an auditor	Rewording of this provision to make clear that the phrase "business partner" relates to the corporation and its affiliates as well as to the directors and officers of the corporation and its affiliates.
42	156(1)	Appointment of auditor	Addition of "annual" to reconcile this provision with par. 99(1)(e), which empowers the directors to appoint the first auditor of a new corporation.
43	157(4) New	Exemption from appointing an auditor	Addition of regulation making powers to enable the Director to exempt a corporation from appointing an auditor, particularly a relatively small corporation that is a wholly-owned subsidiary of a foreign body corporate and to require, instead, the filing of unaudited state-

Bill Clause No.	CBCA Sec. No.	Topic	Proposed Amendment
			ments or audited statements of the parent. Otherwise the wholly-owned subsidiary is caught in the affiliation net of ss. 154(2), 156 and 157.
44	163(2)	Reliance by one auditor on another auditor	Generalization to expand the application of this section to encompass a subsidiary or any interest in a joint venture, and to reconcile this section with <i>CICA Handbook</i> , Sec. 5530.
45	164(2)	Right of auditor to require production of information	Minor revision of ss. (2) to clarify the duty of directors, officers and other employees to cooperate with the auditor.
46	167(3)	Amendment of number name	Addition of new ss. (3) to empower the directors alone to authorize an amendment to a corporation's articles to change its name from a number name to a verbal name, thus minimizing the formalities and, at the same time, furnishing an incentive to adopt promptly a verbal name.
47	168(1), (5)(d)	Constraints on share transfers	<p>Rewrite of ss. (1) to narrow its scope from a constraint "for any purpose" to a constraint to limit foreign control or a constraint required to comply with a regulatory law, a policy that precludes management from using this technique to insulate a corporation—and its management—from the threat of a takeover bid.</p> <p>Expansion of regulation making powers to enable granting of immunity to corporate directors or officers who rely on disclosure made by a registered owner of shares.</p>
48	169(1)	Shareholder proposal to amend articles	Restriction to voting shareholders to accord with the basic proposal provision, ss. 131(1).
49	170(1)	Separate vote of class or series of shareholders on amendment to articles	Modification to permit a corporation, by a provision in its articles, to deny a class vote with respect to the changes referred to in pars (1)(a) and (b), i.e., any change of the number of authorized shares of a class or a prior class, or any exchange, reclassification or cancellation of all shares of a class. The effect is to give a corporation greater flexibility to meet current market conditions when raising capital or refinancing.
50	171(3) Repeat	Deemed reduction of capital	Repeal of this provision, which is, strictly speaking, redundant. This provision makes an anticipated reduction of capital by redeeming shares subject to the solvency standards set out in ss. 36(2); but the ss. 34(2) standards that apply to all share redemptions are stricter anyway.

Bill Clause No.	CBCA Sec. No.	Topic	Proposed Amendment
51(1)	181(1.1) New	Amendments embodied in articles of continuance	Addition of new ss. (1.1) to set out in the <i>Act</i> the Department's policy of permitting a continuing corporation to embody in its articles of continuance any provision it could set out in articles of amendment were it subject to this <i>Act</i> . The provision presupposes the approval of the exporting jurisdiction. It parallels in principle the proposed par. 261(1.1)(b), which applies to federal corporations.
51(2)	181(10), (11) New	Continued reference to par value shares	Addition of provisions giving the Director discretion to permit a corporation to continue to refer in its articles to authorized par value shares, particularly a public distributing corporation having a complicated share structure. This takes much of the pressure off directors who resolve, without any shareholder vote, to continue under the proposed ss. 261(1.3).
52	182(7.1) New	Articles of discontinuance	Addition of provision deeming a ss. (7) notice to be articles in order to make the formalities of s. 182 compatible with the procedures stipulated in ss. 255(2).
53	183(1), (1.1)	Borrowing powers	Modification of ss. (1) to add deeming clause that avoids setting out the statutory borrowing powers in the articles, in particular to meet the requirements of the Quebec <i>Special Corporate Powers Act</i> , s. 22, and also addition of par. (1)(c) to clarify guarantee powers. Addition of ss. (1.1) clearly to authorize sub-delegation by directors to a director, a sub-committee of directors or an officer and so reconcile s. 183 with ss. 110(3) and 116(a).
54(1)	184(1)	Right to dissent	Consequential change to add a reference to the arrangement provision, that is, the proposed ss. 185.1(4), which empowers a court to order a corporation to grant a right to dissent to shareholders affected as a condition of approval of an arrangement.
54(2)	184(3)	Evaluation of shares held by a dissenter	Deletion of the final "but..." clause to give a court broader discretion to evaluate a dissenter's shares, including discretion to consider the future benefits to the remaining shareholders that result from the fundamental change. This policy accords with recent decisions considering analogous issues under provincial statutes: see <i>Re Wall & Redekop Corp.</i> (1974) 50 D.L.R. (3d) 733, 739 (B.C.S.C.); <i>Re Ripley International</i> (1977) 1 B.L.R. 269, 274 (Ont. S.C.).
54(3)	184(11) New	Suspension of rights of a dissenting shareholder	Modification of ss. (11) to state expressly the effects of withdrawal from or abandonment of a proposed fundamental change, which effects are now only implied.

Bill Clause No.	CBCA Sec. No.	Topic	Proposed Amendment
55	185.1 New	Arrangements	<p>Addition of an arrangement provision that had been omitted from the <i>Act</i> on the assumption that a corporation could effect any change by invoking the discrete fundamental change institutions (amendment, amalgamation, continuance, etc.) set out in Part XIV. Experience has proved this assumption wrong, particularly in respect of the unwinding of an unsuccessful amalgamation or a complicated interjurisdictional transfer.</p> <p>Section 185.1 empowers a court to make a fundamental change by way of an arrangement under that section if it is not practicable to effect the change otherwise. Shareholder approval is advisable but not mandatory. Responsibility focuses on the court to approve an arrangement, irrespective of intracorporate formalities.</p>
56	187	Definition of “exempt offer”	Modification to delete the redundant reference to a “recognized” stock exchange.
57(1)	199(1)	Expropriation of shares held out in a take-over bid	Addition of reference to a non-voting share, thus expanding the scope of the compulsory acquisition right.
57(2)	199(10.1) New	Effect of dissenter’s failure to apply to court	Addition of ss. (10.1) to fill an obvious gap, declaring expressly the effect of a dissenter’s failure to apply to a court under ss. 199(10).
58	202(1), (4)	Revival of a dissolved corporation	Amendment of ss. (1) to substitute “body corporate” for “corporation” to expand its application to non- <i>CBCA</i> , federal corporations deemed dissolved under s. 261; and similar amendments to ss. (4) coupled with the addition of a “reasonable” standard to confine the Director’s discretion and to make review under par. 239(e) relate to a general but explicit standard.
59	204(1)	Shareholder’s right to propose liquidation and dissolution	Limitation of right to a voting shareholder to reconcile this provision with the basic proposal provision, ss. 131(1).
60	213(1)	Appointment of a liquidator of a corporation	Addition of “body corporate” to make clear a court may appoint “any person”, which includes a federally or provincially incorporated trustee in bankruptcy or, if the court prefers to impose responsibility on an individual, a director or officer of a federal or provincial body corporate.
61(1), (2)	219(2), (4)	Continuation of actions concerning a dissolved corporation	Substitution of “body corporate” for “corporation” to encompass a non- <i>CBCA</i> corporation deemed dissolved under s. 261.
62	220(1)	Payment of claims of unknown persons	Same as ss. 219(2), (4).
63	221(1), (2)	Vesting of property not disposed of in liquidation	Same as ss. 219(2), (4).

Bill Clause No.	CBCA Sec. No.	Topic	Proposed Amendment
64	222(1), (2)	Standing to initiate an investigation	Substitution of "security holder" for "shareholder" to confer standing on a debenture holder as well as a shareholder.
65	223(1)	Powers of court in relation to an investigation order	Addition of par. (1) to express clearly what is now only implied, i.e. that a court may impose investigation costs on a corporation, particularly where the investigation is clearly justified. This new provision is an analogue of s. 170 of the U.K. <i>Companies Act, 1948</i> .
66	234(3)(e)	Powers of a court to remove directors in relation to an oppression action	Recasting of par. (e) to remove the ambiguous reference to ss. 185(3) and to state expressly a court's power to replace directors.
67	236(3)(a)	Powers of a court to rectify records of a corporation	Addition of "other" to distinguish clearly between securities registers referred to in s. 46 and other corporate records, paralleling the language of ss. 22(2) and 236(1).
68	239(c), (c.1)	Appeal from any decision of Director made in the exercise of his administrative discretion	Addition of references to proposed amendments expressly to confer standing on an aggrieved person to seek judicial review of the Director's refusal to grant an exemption from appointing an auditor under ss. 157(4) or to permit a continued reference to par value shares under ss. 181(10).
69	246(2)	Effect of notice of registered office or of directors	Substitution of "presumed" for "deemed", which connotes an irrebuttable presumption, to ensure a director who has resigned before the impugned act may absolve himself from liability.
70	247,248	Notice to and service upon a corporation	Correction of technical errors.
71	250(3)	Security certificate or entry in securities register as proof	Substitution of "owner" for "holder" to distinguish clearly between a person named in a securities register and a person who merely holds a security certificate that is endorsed or in bearer form, and also to reconcile this provision with ss. 47(1) as proposed to be amended.
72	254(1)	Regulation making powers	Addition of par. (e) to permit incorporation by reference in the <i>CBCA Regulations</i> of accounting standards set out in a professional manual—in particular the <i>CICA Handbook</i> —as amended from time to time, thus obviating continued amendments to the <i>Regulations</i> to reflect amendments to any such manual.
73(1)	255(2)(a)	Formalities relating to the filing of articles	Addition of "an incorporator" to clearly reconcile this provision with the wording of Form I (Articles of Incorporation) set out in the <i>CBCA Regulations</i> .

Bill Clause No.	CBCA Sec. No.	Topic	Proposed Amendment
73(2)	255(4), (5) New	Same	Addition of ss. (4) to enable the Director, like a corporate director or officer acting under s. 45, to print facsimile signatures on a certificate he issues; and addition of ss. (5), which is in effect an exception to ss. (3), and which enables the Director to backdate a certificate of discontinuance to preclude any overlap between the laws applicable to a corporation that is continued in another jurisdiction.
74(1)	261(1), (1.1), (1.2), (1.3), (2) New	Continuance of a federal corporation	Revision of ss. 261(1)-(2) to clarify the policy expressed in the present ss. (1) and (2) and to empower the directors alone to authorize continuance where no substantive amendment is made on continuance other than an amendment required to make the charter comply with the <i>CBCA</i> .
74(2)	261(4), (5)	Same	Change of wording to make clear that the Governor-in-Council may act by order-in-council alone and not by regulation, which impliedly requires compliance with the pre-notice provisions of s. 254.
75	New	Coming into force of amendments	The new French version comes into force at once after the <i>Act</i> receives Royal assent, whereas the amendments come into force on a date fixed by proclamation, which may be the same date the new French version becomes effective or another date.

