

Fourth Session - Thirty-Eighth Legislature
of the
Legislative Assembly of Manitoba
Standing Committee
on
Justice

Chairperson
Ms. Marilyn Brick
Constituency of St. Norbert

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MANITOBA LEGISLATIVE ASSEMBLY
Thirty-Eighth Legislature

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**LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON JUSTICE**

Wednesday, March 1, 2006

TIME – 6 p.m.

LOCATION – Winnipeg, Manitoba

CHAIRPERSON – Ms. Marilyn Brick (St. Norbert)

VICE-CHAIRPERSON – Mr. Harry Schellenberg (Rossmere)

ATTENDANCE - 11 QUORUM - 6

Members of the Committee present:

Hon. Mr. Selinger

Ms. Brick, Messrs. Dewar, Dyck, Faurichou, Goertzen, Ms. Korzeniowski, Messrs. Maloway, Santos, Schellenberg, Mrs. Taillieu

APPEARING:

Mr. Kevin Lamoureux, MLA for Inkster

WITNESSES:

Mr. Bruce King, Private Citizen

Mr. Dave Angus, President and Chief Executive Officer, Winnipeg Chamber of Commerce

WRITTEN SUBMISSIONS:

Mr. Daniel J. Sherbo, Partner, Tapper Cuddy LLP

MATTERS UNDER CONSIDERATION:

Bill 16–The Corporations Amendment Act

* * *

Madam Chairperson: Good evening. Will the Standing Committee on Justice please come to order.

This evening, this committee will be considering the following bill: Bill 16, The Corporations Amendment Act. We do have presenters registered to speak to this bill. It is the custom to hear public presentations before consideration of bills. Is it the will of the committee to hear public presentations on this bill? *[Agreed]*

I will read out the names of presenters registered to speak to Bill 16: Bruce King, private citizen, and Dave Angus, Winnipeg Chamber of Commerce.

Those are the persons and organizations that have registered so far. If there is anyone else in the audience who would like to register or has not yet registered and would like to make a presentation, would you please register at the back of the room.

Just a reminder that 20 copies of your presentations are required. If you require assistance with photocopying, please see the clerk of this committee.

I would also like to inform the committee that a written submission has been received from Dan Sherbo, Business Law Section, the Manitoba branch of the Canadian Bar Association. A copy of this brief was made for committee members and was distributed at the start of the meeting. Does the committee grant its consent to have this written submission appear in the committee transcript for this meeting? *[Agreed]*

I would like to inform presenters that in accordance with our rules a time limit of 10 minutes has been allotted for presentations and five minutes for questions from committee members. As well, in accordance with our rules, if a presenter is not in attendance, their name will be dropped to the bottom of the presenters' list. If the presenter is not in attendance when their name is called a second time, their name will be removed from the presenters' list. We will now begin the public presentations.

The first individual is Mr. Bruce King, private citizen.

Mr. Bruce King (Private Citizen): Good evening.

Madam Chairperson: Mr. King, did you have copies of a presentation you wanted circulated?

Mr. King: Because my presentation is relatively informal, although I have got speaking notes, I do not think it is something that people will necessarily want to keep for posterity. So, no, I do not have copies.

Madam Chairperson: Thank you very much. You can proceed, Mr. King.

Mr. King: I have saved a tree and your binders.

Madam Chairperson: Yes, you have.

Mr. King: Good evening, I do not know the formalities of presenting to a committee. So, Madam Chair, Mr. Minister and committee members, how is that?

Madam Chairperson: Perfect.

Mr. King: My name is Bruce King. I am a corporate commercial lawyer with the law firm, Pitblado LLP. I am also the past chair of the Business Law Section of the Manitoba branch of the Canadian Bar Association. I have just heard, and Mr. Sherbo advised me today that, although he was registered to speak and could not make it, he would be filing a letter in support.

I am, in fact, here to speak in support of passage of Bill 16, The Corporations Amendment Act. Just by way of background, the Business Law Section of the Bar Association has been lobbying for some time for amendments to be made to The Corporations Act. As committee members will, I presume, know there is concurrent jurisdiction between the federal government and individual provincial governments allowing for the incorporation of companies. Accordingly, both the federal government and the Manitoba government have the ability to allow corporations to become incorporated for the purposes of carrying on business here in Manitoba.

The federal statute which provides for incorporation is called the Canada Business Corporations Act. We, generally, as lawyers, refer to it as the CBCA. Both the CBCA and The Manitoba Corporations Act were passed back in 1976. The Manitoba Corporations Act was modelled after the CBCA, and so, in fact, there was effectively uniform legislation federally and provincially.

Now when you incorporate under a particular statute, the provisions of that statute then establish the rules that you have to comply with. For example, corporate governance, if you incorporate federally, its rules apply to corporate governance. If you incorporate provincially, The Manitoba Corporations Act establishes the rules.

For a number of years, from '76 on, there was no particular advantage to incorporating under the federal statute at least in terms of the statutory framework. The two statutes were uniform. This was a good thing. Until recently, frankly, because of the lower fees charged by the Manitoba Corporations Branch for incorporating in Manitoba, it was actually somewhat of an advantage to incorporate provincially.

In 2001, things changed. After a number of years of consultation, I think about five years of consultation across the country, the CBCA was amended by the federal government. The effect of those amendments in 2001 was to give certain advantages if you chose to incorporate federally. Those advantages then were not available to companies that happened to be incorporated in Manitoba.

For example, after the 2001 amendments to the CBCA, the related-party financial assistance restrictions found in section 42 of our statute no longer applied in the federal statute with section 44, but they repealed section 44 and those restrictions disappeared. Those restrictions remain in Manitoba, and those restrictions cause problems when somebody is attempting to do financing within a group of companies. Frankly, one of my colleagues who heard I was coming to speak tonight said tell the committee that the only people who will be hurt by the repeal of section 42 are the lawyers. Now we are going to lose a lot of legal fees because frankly overcoming the problems of section 42 cost Manitoba business.

Additionally, the CBCA in 2001 reduced the residency requirements for members of the board of directors. Those are just two examples of changes made to the CBCA in 2001 that have not yet been made to The Manitoba Corporations Act. Now, as long as the difference exists, there is a real incentive to incorporate federally as opposed to provincially. That adds to the cost of carrying on business in Manitoba. It also has the potential to create disadvantage to the legal profession and other professions in Manitoba.

Now as a result, I hope, in part, of the lobbying of the Bar Association and also frankly the initiative of the director of the Companies Office, a committee was formed to undertake consultation. I want to commend the department and the minister for the consultation, frankly. The department has a good record of consulting with the legal profession when it considers or proposes changes.

As a result, a committee was formed and back on June 15, 2004, we had a day-long consultation session. At that meeting, there was a broad representation from the legal and business community. We provided our recommendations in response to a consultation paper published by the department. This bill that you have in front of you adopts most of the recommendations made by the

consultation committee. While the bill does not adopt all of the recommendations, we recognize that obviously policy choices need to be made by the government. Frankly, we are in support of the passage of the bill in its present form.

* (18:10)

If I can, I would like to also step away for just a moment from the passage of this particular bill and talk about timing. Timing is important. I encourage this committee not just to recommend the passage of the bill, but to recommend the prompt passage and implementation of this bill. As indicated above, the CBCA was amended in 2001. The amendments that were made to the CBCA should have and could have been made to our statute at an earlier date.

Now, I recognize there is competition for time on the legislative agenda and there are significant areas of public policy which you must deal with all the time. I hope to take this opportunity to tell you, though, there are certain business-related statutes that form the basic legal structure which allows business and organizations to operate in Manitoba. These statutes include The Corporations Act and other statutes like The Personal Property Security Act, The Real Property Act. These are not sort of the sexy statutes that make the front page of the paper. But these laws provide the infrastructure that allows business to operate in Manitoba. These statutes are every bit as important as the physical infrastructure such as highways and rail lines.

Now, unlike the physical infrastructure, such as highways, it is relatively inexpensive and uncontroversial for this legal infrastructure to be maintained at a state-of-the-art level. Unfortunately, these statutes rarely get your attention. This bill gives me the opportunity to raise this point. I do so, quite frankly, not in the self-interest of the legal profession, but in the interest of business. Frankly, to the extent that you have modern, uniform commercial statutes in place in Manitoba, it is going to reduce the administrative and legal burden and the expense associated with carrying on business in Manitoba.

I would encourage the government, the opposition, the ministries that are involved to set aside regular time on your legislative agenda to keep our commercial infrastructure up to date. I know that members of the Department of Justice participate regularly in the Uniform Law Conference of Canada. They, together primarily with other government lawyers and policy makers across the country, design

uniform statutes. One, for example, that you may have heard of is the Uniform Cost of Credit Disclosure Act. Another is something called the Uniform Securities Transfer Act.

These your constituents are not going to know about and they are not going to mind if you pass them. Frankly, it would facilitate the conduct of Manitoba business and make Manitoba an attractive place to carry on business if Manitoba were to choose to take a leadership role in ensuring that its commercial infrastructure was up to date and, where possible, uniform with other common law jurisdictions.

Back to my original message, please pass Bill 16 and please pass it as soon as possible. Thank you.

Now, I do not know if I am supposed to wait for questions.

Madam Chairperson: Yes, please just stay there. Thank you very much. Are there questions for the presenter?

Hon. Greg Selinger (Minister of Finance): Yes, first of all, thanks for the presentation and I do actually hope you make a copy of it available. All of your remarks are put on Hansard. Sometimes, if there is any misunderstanding of what you said, the written record will help clarify that. So, even though you do not have copies, I think it was a good presentation.

My question to you is, were you one of the individuals involved in the consultation process with the Companies Office on this matter?

Mr. King: Yes.

Mr. Selinger: Thank you for confirming that. Other questions?

Madam Chairperson: Other questions?

Mr. David Faurichou (Portage la Prairie): In regard to implementation, as stated in the bill, it will come into force on the date of Royal Assent. As has been experienced within the House, bills are essentially gathered after third reading, and Royal Assent is given in bulk if you will. Is there a timing issue in this respect? Should we be looking at this first opportunity to garner Royal Assent earlier than later in the session?

Mr. King: I am reminded, finally, of when I was about 17 years old, I was here for Youth Parliament acting for two or three years, so this is coming back now. I should tell you who the other people were

who were in Youth Parliament back in those days. Some of them have gone on to real political careers.

In answer to your question, I cannot tell you that there is a specific, you know, timetable or deadline. I can tell you that—and I am but one commercial lawyer; I have a client who is in active consideration of continuing federally—once you are incorporated under a particular statute, you can change. You can move to another province or you could become federal, and that is called continuance. I know of at least one significant, it is a publicly traded company that is currently a Manitoba company, that may cease to be a Manitoba company if this bill is not enacted as promptly as possible.

Now, I cannot tell you the deadline, and I do not know whether that is important enough to change because I do not know what is involved with the Royal Assent process. But I will go back to my original message. Yes, I encourage you to enact and bring this into force as soon as possible.

Mr. Faurichou: I appreciate your candidness in your response. The other points that you mention in your presentation alluded to some recommendations that are not mentioned in this bill. Are you now then as a participant in this process, resulting in this bill, looking to start the process again to potentially address some of the not-mentioned issues?

Mr. King: The department, as I have indicated, has always been good about consulting. You know, frankly, none of the recommendations that were not implemented or were not implemented exactly as made are probably significant enough that there is going to be a big human cry from the legal profession. However, if the department initiates, as I suspect they may, sort of in an ongoing consultation process, then certainly I think that would be useful.

You will have seen, and I do not know whether this is the practice with provincial commercial statutes. But at least two federal statutes, one was the Bankruptcy and Insolvency Act, when it was passed about five years ago, they had a particular horizon, a five-year horizon, where they mandated a review, and a report had to be tabled to the federal government. Similarly, with the CBCA, when they amended that in 2001, they also put a five-year horizon and said that there will be a review process. So we are anticipating that there will be some element of review. In terms of keeping our statutes up to date, that type of mechanism might be something you would consider, or the government would consider.

Madam Chairperson: Mr. Faurichou, just before we go on, you have 10 seconds.

Mr. Faurichou: I just will then conclude by thanking the presenter for a very thoughtful and insightful presentation this evening. I know that the minister is interested in making certain that Manitoba does remain modern with the regulations so that we are competitive in the global market place. Thank you.

Mr. Kevin Lamoureux (Inkster): I would just like to ask for leave to pose one or two short questions.

Madam Chairperson: Is there leave? *[Agreed]*

Would you stay at the mike, please, Mr. King?

Mr. Lamoureux: Mr. King, the member from Portage la Prairie just made reference to the consultation committee. Could you indicate how many recommendations actually were made to the government, and if you could give a sense of how many were not included, and those consultation recommendations, are those public as far as you know? Could a member of the opposition party get a copy of those recommendations that were not brought forward?

* (18:20)

Mr. King: The short answer is no, no and no. The more detailed answer is, I kept personally brief notes. This was government representatives who were asking for consultation. They specifically indicated that what we were doing was being consulted, and government would make the ultimate policy decisions, as they have. I do not have a record. Going through my own personal notes, I know there were a couple instances where we made different recommendations that have come forward in the bill. Let me say that I, again, repeat that I am completely in support of the bill as it is presently promulgated, if that is the correct verb.

Mr. Lamoureux: Very shortly, can you indicate when it is the government would have been provided those recommendations from the consultation committee?

Mr. King: I cannot. I do not know. The recommendations would have been compiled by the department officials. I have not seen those, and I knew that I would not be privy to their final notes because they were recommendations, I believe, to the minister.

Madam Chairperson: Thank you very much, Mr. King.

The committee calls Dave Angus from the Winnipeg Chamber of Commerce.

Mr. Angus, do you have copies for the committee?

Mr. Dave Angus (President and Chief Executive Officer, Winnipeg Chamber of Commerce): I do not; I am saving trees as well.

Madam Chairperson: Good, good. I am glad to hear everybody is environmentally conscious. You can proceed, Mr. Angus.

Mr. Angus: Absolutely, the Chamber is fully supportive of sustainable development.

Thank you, Madam Chairperson. I am Dave Angus. I am the president of the Winnipeg Chamber of Commerce. Our organization is the largest business organization in the city of Winnipeg, close to 1,700 companies that employ close to 80,000 employees. The Chamber currently has more members than at any time in its 133-year history.

Obviously, it is our marketing department that wrote these notes for me here, but we fully support the changes articulated in Bill 16, The Corporations Amendment Act, and would echo the previous speaker's comments about expeditiously moving forward with this adoption.

There are five quick points that I want to make related from our perspective in terms of the business community. It is very important, we believe, for us to be in step with federal legislation. The previous speaker spoke about the changes and amendments that were made to the Canadian business corporation act back in 2001.

Sometimes you think only five years ago seems a quick time, but, in the business world with things changing so quickly, that is a long, long time for us to be out of step with federal legislation, so it is very important for us to bring consistency back with our provincial act to be consistent with the federal act.

Secondly, we always get concerned about a level playing field, so we are concerned about the rules of the game here in Manitoba versus rules of the game in other jurisdictions. So we do not want to put Manitoba companies at a disadvantage. We believe that the changes to the particular act that have been proposed in Bill 16 will help bring us in step with other jurisdictions.

Thirdly, updating is important. Business changes all the time. One point I would like to make is that, when there is an act that really defines the rules of the game and the playing field that business and Manitoba business play on, it is critically important for us to review that on a regular basis.

We would recommend that this particular act be reviewed on probably a five-year schedule so that it can make sure that it reflects the changes that are constantly happening within the business community. Whether it has to do with the latest business practices, whether it has to do with the use of technology, whether it has to do with some of the global aspects of business today, it is very important for us to update and review legislation that defines the rules of the game when it comes to the business community.

Finally, I think what the changes represent is the kind of flexibility that is required in today's business world. Businesses in Manitoba do compete on a global scale. It is important for the legislation to reflect that.

So, in closing, we fully support the changes that are identified through Bill 16. We believe it is important modernization of the bill, brings it in step with the federal legislation, provides uniformity and, what is most important to us, it provides certainty. That is what businesses thrive on.

They need certainty in terms of the rules of the game, and they also require a competitive environment and a level playing field. We believe those objectives are represented by the changes that are part of Bill 16, so we support fully the prompt passage of this particular bill.

Madam Chairperson: Thank you very much, Mr. Angus. Are there questions for the presenter?

Mr. Selinger: Yes, thanks for the presentation, Dave. Were there any members of your organization that were involved in the consultation process?

Mr. Angus: Members of our organization for sure were part of it; representatives of the Chamber from our Board of Directors, no.

Mr. Faurshou: Thank you very much, Mr. Angus, for coming out this evening and braving what apparently is a fair amount of snow falling outside.

The review process that you suggested here, perhaps, should it be then part of the legislation that as is included in the federal legislation, that provincial legislation should be harmonized in its

same review timing, as a suggestion as you alluded to in your presentation?

Mr. Angus: Madam Chair, through you to the previous speaker, I believe that not just this act or this bill, but I think that whenever we take a look at amendments to bills or new bills coming forward, defining the rules of the game, that thought should be and discussion should be brought forward in terms of when that should be reviewed. When is the sunset for this particular legislation because it is easy to put it off and, so, I would suggest as just a matter of course, certainly from my perspective, that if it defines the rules of the game for companies within Manitoba, a regular review process should be discussed and determined as part of the bill.

Mr. Faurchou: Thank you for your comments in that regard because I personally believe that it is very important that we have a level playing field. We do have the competitive nature with our legislation, especially in this respect. I know that throughout the room there are department personnel and that it is their responsibility to make sure that that occurs, so I thank you for your comments this evening and appreciate it.

Madam Chairperson: Are there any other questions for the presenter? Seeing no other questions, we thank you very much for your presentation.

That concludes the list of presenters before us this evening. Is there anyone else in the audience that would like to present to Bill 16? Seeing no one, is it the will of the committee to proceed with clause-by-clause consideration of this bill? *[Agreed]*

Does the minister responsible for Bill 16 have an opening statement? Minister Selinger?

Mr. Selinger: Yes, thank you, Madam Chairperson. I appreciate the presentations of the two presenters. The bill does a number of things to modernize The Corporations Act.

The bill does the following. It allows electronic participation in shareholders' and directors' meetings which allows for more participation for people who are not necessarily on site. It also allows for corporate recordkeeping and inspection by electronic means, which I think is a very modern approach. It allows for a greater proportion of a corporation's board of directors to reside outside of Canada in recognition of a more global economy. It provides for more effective means of accountability enforcement in situations where a corporation is left without any directors. It, as was indicated in the

presentations, proposes to give loans or loan guarantees in situations like that.

It removes the obstacles in the legislation which the legal profession has advised us are unnecessary and have become moot. It also clarifies, and this is a greater measure of protection for shareholders, the standard of diligence that a corporate director must meet, failing which he or she will be financially responsible for certain obligations of the corporation. It also modernizes a number of filing and technical requirements.

So, with those brief comments, I propose we move through the clause by clause of what is on the bill.

Madam Chairperson: We thank the minister.

Does the critic from the official opposition have an opening statement?

Mr. Faurchou: My comments will be brief because I believe there is unanimous support for the passage of this bill in perhaps an expedited fashion as was mentioned by both presenters.

* (18:30)

I do want to take this opportunity, though, to first off thank the minister for the co-operation in both briefing and discussions that could see further amendment to The Corporations Act here in Manitoba. I believe the suggestions that were brought forward by both presenters that we need to do this in a more timely fashion so as to make certain that Manitoba business is not handicapped in any fashion with its ability to compete with other jurisdictions in Canada and globally.

So, with that, Madam Chairperson, I would like to see if we would move forward clause by clause.

Madam Chairperson: We thank the member. During the consideration of a bill, the enacting clause and the title are postponed until all other clauses have been considered in their proper order. Also, if there is agreement from the committee, the Chair will call clauses in blocks that conform to pages, with the understanding that we will stop at any particular clause or clauses where members may have comments, questions or amendments to propose. Is that agreed? *[Agreed]*

Clauses 1 through 3—pass; clauses 4 and 5—pass; clauses 6 and 7—pass; clauses 8 through 11—pass; clauses 12 and 13—pass; clauses 14 and 15—pass; clauses 16 through 19—pass; clauses 20 and 21—pass;

clauses 22 through 27—pass; clauses 28 through 34—pass; clauses 35 and 36—pass; clauses 37 and 38—pass; clauses 39 and 40—pass; clauses 41 and 42—pass; clauses 43 and 44—pass.

Shall clauses 45 through 47 pass?

Mr. Faurshou: Just in light of clause 47 coming into force upon the day of receiving Royal Assent, I think that we have heard from presenters tonight that we should recommend to the House speedy passage to Royal Assent, if at all possible, in consultation with our House leaders.

Mr. Selinger: Yes. With your support, I think we can persuade our various House leaders to come together and move it forward. I will be happy to work with you on that.

Mr. Lamoureux: Madam Chair, I just have two brief questions for the minister at this time, or I can wait until we get to the title of the bill, whichever you prefer.

Madam Chairperson: Can we just pass these clauses first?

Mr. Lamoureux: Yes.

Madam Chairperson: Clauses 45 through 47—pass; enacting clause—pass.

Shall the title pass?

Mr. Lamoureux: I would ask the minister if he could give indication, the consultation committee had a number of recommendations in which the government, I understand, incorporated what sounds like a good majority of those recommendations. I am wondering if he can indicate whether or not it is public information as to which recommendations were not accepted by the department.

Mr. Selinger: The Member for Inkster (Mr. Lamoureux) will be surprised to know that one of the recommendations from the consultative committee was to give the director more discretionary powers. The director, in his discretion, declined to have those additional powers. So there was not a consensus, and the government decided to support the director in his desire not to become more powerful.

Mr. Lamoureux: That is good that we know one of the recommendations that was not accepted, and I trust that there is likely more than one recommendation. If, in fact, the minister's office can provide a list of those recommendations, it would be beneficial.

The second question that I have is in regard to the timing. When were the recommendations first brought to the minister's attention?

Mr. Selinger: The recommendations were brought to my attention last summer for the fall session. We brought them forward, as you know, in a timely fashion, and now, with the co-operation of the members of the opposition, I am sure we will pass them in a timely fashion and proclaim them as soon as possible.

Mr. Lamoureux: I concur with the member from Steinbach. I think timely is likely past. It probably could have been done last fall if, in fact, that is what the government wanted to see happen, but I will conclude my remarks, Madam Chairperson, by just reminding the minister that he was going to get back to me in terms of the gas tax issue with the example of a one dollar. He has staff. I am sure he can kind of review it, or in Hansard in our last committee meeting. If he could get me that example, I would appreciate it. Thank you.

Madam Chairperson: Title-pass. Bill be reported.

That concludes the business before this committee. What is the will of the committee?

Some Honourable Members: Rise.

Madam Chairperson: The hour being 6:37, committee rise.

COMMITTEE ROSE AT: 6:37 p.m.

WRITTEN SUBMISSIONS PRESENTED BUT NOT READ

Re: Bill 16—The Corporations Amendment Act

Further to the matter, please accept this correspondence as my support for the proposed amendments under Bill 16 and my desire that this Bill be passed. This support is given both in my capacity as a corporate commercial lawyer who practices extensively in this area of law and as well, Chair of the Business Law Section of the Manitoba Bar Association.

Should you require anything further, please do not hesitate to contact me.

Yours truly,

TAPPER CUDDY LLP

Per: DANIEL J. SHERBO, Partner

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are also available on the Internet at the following address:

<http://www.gov.mb.ca/legislature/hansard/index.html>