

8:35 a.m.

[Ms Graham in the chair]

THE CHAIRMAN: Good morning, colleagues. I'd like to call this regular meeting of the Standing Committee on Private Bills to order. As our first matter of business, I would look for a motion approving the contents of our agenda. Before taking that motion, I would just bring to your attention that under item 5, Other Business, it is my intention to raise with you an issue that you will find in a letter that was circulated to you. It was directed to me by the law firm of Burstall Ward and deals with a potential petition which has not yet been filed. So I'd just bring that to your attention, and unless there are any changes to the agenda, I would look for a motion.

MR. LANGEVIN: I'll move that we accept the agenda as circulated.

THE CHAIRMAN: Thank you, Mr. Langevin. All in favour, please say aye.

HON. MEMBERS: Aye.

THE CHAIRMAN: All opposed, say no. The motion is carried.

You have also received in your package the committee meeting minutes of March 23, 1999, and unless there are any errors or omissions or changes to those minutes, I would look for a motion to approve the minutes as circulated.

MR. ZWOZDESKY: So moved, to approve the minutes as circulated, Madam Chairman.

THE CHAIRMAN: Thank you, Mr. Zwozdesky. All in favour, please say aye.

HON. MEMBERS: Aye.

THE CHAIRMAN: All opposed, say no. That motion is carried.

I would just like to put on the record for the benefit of members, in particular Mrs. Sloan, the Member for Edmonton-Riverview -- I received a memo dated March 29, 1999, from Mrs. Sloan yesterday regarding the issue she raised at the end of our hearing last week in terms of further information that might be forthcoming from the superintendent of insurance on Bill Pr. 1 and Bill Pr. 3. She wrote to me just ensuring that the superintendent would in fact provide additional material if any came to his attention. Members will recall that Mr. Rodrigues, the superintendent, did undertake to provide any additional information relative to the proposed bill. In particular, I think that undertaking was given on Bill Pr. 1 and is found at page 6.99 of the minutes and also found at page 8 of the *Hansard* transcript for March 23, 1999. But out of abundant caution, I will follow up with Mr. Rodrigues, superintendent of insurance, with a letter confirming his undertaking.

Mrs. Sloan, you're now present. Is that satisfactory to you?

MRS. SLOAN: Yes, thank you.

THE CHAIRMAN: All right.

Moving along to our main item of business today, which is to conduct a hearing on Bill Pr. 2, Shaw Communications Inc. Amendment Act, 1999. The purpose of the proposed bill is to amend the current definition of par value shares in the Shaw Communications Inc. Act to include existing class B nonvoting participating shares and shares into which those class B nonvoting participating shares are converted or exchanged.

Before going any further into this hearing, I would just like to bring to the attention of all members the caution provided to us by Parliamentary Counsel pursuant to the Conflicts of Interest Act, that being if anyone has a pecuniary interest in Shaw Communications Inc. or if a direct associate of any member has such an interest, those individuals should declare their interest and withdraw from the hearing. I take it that does not apply to any of us here today. Thank you.

I'm now going to call on Parliamentary Counsel to just review with you the rather voluminous material we have on this matter and highlight the history leading up to this amending bill.

MS DEAN: Thank you, Madam Chairman. Briefly, the purpose of Bill Pr. 2 is to amend the 1994 private act, the Shaw Communications Inc. Act, to broaden the definition of par value shares to include not only the existing class B shares but also shares into which the existing class B shares are converted or exchanged.

The petitioner has provided a briefing memorandum and also a revised briefing memorandum which provides some background with respect to the company itself and also the reason for this particular amendment. As pointed out in the briefing memorandum, Shaw has announced plans to divide itself into two different entities. This amendment is part and parcel of that restructuring. In connection with this bill, I have circulated to committee members a copy of the 1994 private act, together with briefing material that was provided by the petitioner at that time. I've also circulated the transcripts, and I have provided Parliamentary Counsel reports dated March 18 and March 26.

Briefly, some of the background with respect to par value shares in Alberta. Under the Alberta Business Corporations Act this concept was eliminated. However, companies which were originally incorporated under the Companies Act were entitled to retain par value shares provided that certain conditions were met. There was some uncertainty with respect to a 1987 resolution of Shaw that was passed by its shareholders, wherein the par value shares were defined as being unlimited in number. That created some concern for an underwriter, I believe in the early 1990s or late 1980s. The petition will have more information on that. Anyway, that's the background rationale for the original 1994 private act -- the purpose being to declare that that provision of the Alberta Business Corporations Act did not apply to Shaw Communications.

What I propose to do is just keep my comments very brief at this point, and we'll allow for the petitioner to explain the further rationale for this particular bill.

THE CHAIRMAN: Thank you, Ms Dean.

Unless there are any preliminary questions . . . Yes, Mrs. Sloan.

MRS. SLOAN: Thank you, Madam Chairman. Parliamentary Counsel in the correspondence has identified that comments on the bill have been requested from government officials, including Alberta Treasury, Registries. While those individuals will be in attendance at the hearing this morning, I would respectfully request that there be written counsel provided to the committee, which may encompass the things they say, but I would like to have those recommendations or directives in writing.

THE CHAIRMAN: Are you referring to responses to inquiries that Registries and Treasury may raise?

MRS. SLOAN: Yes.

MS DEAN: Madam Chairman, if I may. Mrs. Sloan, there was a letter that was circulated yesterday from Alberta Treasury outlining

their comments on the proposed bill. It was circulated to committee members. If you don't have a copy of it, we'll have one provided to you.

MRS. SLOAN: Is that letter intended to address all the concerns that were raised in the correspondence of March 26?

MS DEAN: That's the letter I'm referring to.

THE CHAIRMAN: If I understand you, Mrs. Sloan, it's more the responses from the petitioner to the inquiries as opposed to the inquiries themselves that you're concerned about.

MRS. SLOAN: From my perspective, I think the committee has to be clear on both sides what the areas of concern for addressment are from the Registries and Treasury area and then, subsequent to that, how the petitioner responds. I believe both of those should be in writing.

8:45

THE CHAIRMAN: Well, this is what I might suggest: that we proceed with the hearing, and then at the conclusion of the evidence, if that is still your view, I would invite you to make a motion to that effect, and we'll deal with it at the conclusion of the hearing. That would be my suggestion.

MRS. SLOAN: That's fine. Thanks.

THE CHAIRMAN: All right.

Then without further ado, I'll ask that the witnesses, including the petitioners, be brought in.

[Mr. Matthews, Ms Traxel, Ms Cebuliak, Mr. Turner, Mr. Rogers, Mr. Forrest, and Ms Patrick were sworn in]

THE CHAIRMAN: Well, good morning, ladies and gentlemen. It's my pleasure to welcome you to this meeting of the Standing Committee on Private Bills. I am your chairman. My name is Marlene Graham. I'm going to ask my colleagues on the committee to introduce themselves to you, but prior to doing that, I'm wondering if we could have you introduce yourselves and place your names on the record, perhaps starting from my immediate left.

MS PATRICK: I'm Carol Patrick with Alberta Treasury.

MR. FORREST: James Forrest, Alberta Treasury.

MR. ROGERS: Ron Rogers with Shaw Communications.

MR. TURNER: I'm Bob Turner with Fraser Milner, counsel for Shaw Communications.

MS CEBULIAK: Colleen Cebuliak with Fraser Milner.

MS TRAXEL: Bev Traxel, manager of corporate registry.

MR. MATTHEWS: Keith Matthews, Alberta Justice. I act for corporate registry.

THE CHAIRMAN: Thank you very much.

If we could now, colleagues, introduce ourselves to the petitioner and other witnesses, starting with Mrs. Sloan.

MRS. SLOAN: Good Morning. Linda Sloan, MLA for Edmonton-Riverview.

MR. MacDONALD: Good morning, everyone. My name is Hugh MacDonald, MLA, Edmonton-Gold Bar.

MR. BONNER: Good morning. Bill Bonner, Edmonton-Glengarry.

MRS. BURGNER: Jocelyn Burgener, MLA, Calgary-Currie.

MR. MARZ: Richard Marz, MLA, Olds-Didsbury-Three Hills.

MR. LANGEVIN: Paul Langevin, MLA for Lac La Biche-St. Paul.

MR. COUTTS: Good morning. Dave Coutts, MLA, Livingstone-Macleod.

MR. ZWOZDESKY: Good morning and welcome. My name is Gene Zwozdesky, MLA for Edmonton-Mill Creek.

MS KRYCZKA: Welcome. I'm Karen Kryczka, Calgary-West.

MR. STRANG: Good morning. Ivan Strang, West Yellowhead.

MR. CAO: Wayne Cao, Calgary-Fort.

MR. CARDINAL: Good morning. Mike Cardinal, MLA for Athabasca-Wabasca.

THE CHAIRMAN: All right. Last but not least, we have assisting us today Parliamentary Counsel, Ms Shannon Dean, and administrative assistant, Ms Florence Marston.

Without going on at great length, I'd just like to outline briefly the procedure on the hearings before this committee. The hearings are, of course, an opportunity for the petitioner and other witnesses to give evidence relative to the proposed bill, an opportunity for the petitioner to explain the purpose and content of the bill, and to allow members of the committee to question the witnesses.

As you may have determined, this is an all-party committee of the Legislature. We hear the evidence today. There is no determination of the outcome today; we will be meeting April 13 to do that, as things stand now, and if there is a need, depending on how the evidence goes today, it is possible that the hearing might be continued at another time or further information might be requested to assist committee members before deliberations.

Once we do meet to deliberate, we can make one of three recommendations: recommend to the Legislature that the bill either proceed as presented or proceed with amendments or not proceed. And of course these bills go through the same stages as any bill in the Legislature, being first reading, second reading, Committee of the Whole, third reading, and eventually Royal Assent.

Unless there are any questions from witnesses here today, I will call on Mr. Turner as counsel for the petitioner to commence the submissions.

MR. TURNER: Thank you, Madam Chairman. In 1966 when Shaw Communications Inc. was incorporated, it was incorporated under the then prevailing corporate legislation in Alberta called the Companies Act. The Companies Act allowed for a concept of par value shares. Shaw Communications availed itself of that par value share concept. That fit in very nicely with the other regime that Shaw Communications was governed by, that being the CRTC. At that time the CRTC required the concept of par value shares. In recent years the CRTC has amended its requirements. No longer does it require par value shares, and that's consistent with modern Business Corporations Act legislation, which has done away with the concept of par value shares.

In 1966 Shaw Communications commenced its business, and as I said, it had par value shares. In order to comply with Alberta legislation, it had to continue its organization under the Alberta Business Corporations Act. The Alberta Business Corporations Act does not contemplate par value shares, so Shaw Communications was caught in a difficult position. It asked by way of a private member's bill for an opportunity to keep its par value shares because it still needed them for the CRTC, and in order to come under the new legislation, there had to be a means of allowing Shaw to go forward with par value shares.

In today's application we are seeking a broadening of the definition of the par value shares which are enabled under the Shaw Communications Inc. Act. The amendment we're seeking results from a proposal of Shaw Communications to divide itself into two businesses. There will be the business of the cable provider. That business will stay in the entity now known as Shaw Communications Inc. So the existing corporation will stay in place, and its business will then only be the business of providing cable. It's going to parcel off its other assets in the media business into a new company.

8:55

This process is part of a very complicated income tax procedure often known as the butterfly provisions. We have made application to Revenue Canada for advanced income tax rulings in respect of those butterfly provisions, and in order for us to achieve the objective of that restructuring, we need to issue new shares in Shaw Communications Inc. So if I can for the purposes of my remarks describe the existing company as Shaw Communications and the media company yet to be established as the new company, my remarks really only have to do with Shaw Communications' old company.

There are par value shares in the old company. In order to meet the tax requirements under the butterfly provisions, we're going to have to issue new par value shares. These new par value shares will be identical in almost all respects to the old class B shares. The par value shares are class Bs. The new shares that we would envisage issuing will be class B par value shares. In fact, we won't even call in the old share certificates. The old share certificates will be deemed to be the share certificates of the new class of shares. The fact that they have to be new shares rather than the old shares is part of the requirement under the very complicated butterfly provisions of the Income Tax Act, but for virtually all purposes the old par value shares will look exactly like the new par value shares.

When we presented materials to this committee for consideration of this amendment, we asked the committee to consider some very specific language, which you have in front of you, as I understand. Yesterday we received comments from Alberta Treasury and from corporate registry in terms of the scope of the amendment we're looking for. We put in front of this committee suggested language that's as broad as it is in order that not only would the new par value shares that we issue in respect of this immediate transaction -- not only would the amendment be broad enough to include these new shares, but if we were to go through a corporate reorganization in the future which would include an amalgamation, we wouldn't have to come back before this committee. That's why the language in the proposed amendment is as broad as it is, which includes "successors to the Corporation."

I think it's that language that caused Alberta Treasury and corporate registry to be somewhat concerned, because it appeared we were trying to open the door for par value shares for a much broader purpose than indeed we are. We are in fact looking to preserve a totally unique situation in Alberta, a company that has par value shares. The dominant reason we need to keep these par value shares as par value shares going forward after our reorganization is

that our employees are participants in our employee stock option plan. The stock option plan is based entirely on the par value concept. So without the amendment we ask for, the par value concept would disappear from our shares and the employees that participate in our employee stock option would be put to a significant tax disadvantage. All we're trying to do is preserve that package of rights going forward into our reorganized structure.

I might just further my comments, Madam Chairman, and add that if my assessment of Treasury and corporate registry concerns are correct, I think we can address those concerns. I've told you why we made our amendment as broad as we have, but if that causes concern to the Legislative Assembly or to this committee, we can narrow this. We have some suggested language, which we worked on last night. We haven't shared it with anybody yet because we haven't had the time. We're prepared to take out that concept of successor corporations. It's a very easy amendment to make. I'd be glad to go through that if that would be your wish.

THE CHAIRMAN: Perhaps we should hear the representations from corporate registries and Treasury before we do that. I'll certainly give you an opportunity to respond to any other concerns that are raised, if that's agreeable.

MR. TURNER: Thank you; yes.

THE CHAIRMAN: That being the case, then, Mr. Matthews or Ms. Traxel, do you wish to make a submission?

MR. MATTHEWS: Thank you, Madam Chairman. I've no instructions to support or oppose the petitioner. We had a few questions. We verbally discussed those questions with the petitioner. I think Mr. Turner has answered the first question we had about the CRTC: why that was a factor in the 1994 amendments and why it isn't a factor today. I think he satisfactorily answered that, to my satisfaction anyway. Our second comment was: can they meet the concerns expressed by Treasury? We recognize that we don't have the expertise in the tax area. Treasury has that expertise, so we would leave it to Treasury to comment on that. The last item that we thought might be significant is: is this opening the floodgates? Can the petitioner satisfy us that this in fact is a unique situation and that there won't be other companies coming before this body seeking similar treatment? I think Mr. Turner has addressed it, to some extent at least.

THE CHAIRMAN: Perhaps I'll ask Mr. Turner to respond to that.

MR. TURNER: Back in 1994 it was a matter of record in front of this committee -- Mr. Desrochers and, I believe, confirmed by representation from the registrar of corporations -- that the Shaw Communications Inc. par value share situation is unique in the province of Alberta. It was required under the CRTC provisions when Shaw Communications was incorporated. It was acceptable under the old Companies Act, which we incorporated under, and because the business was built around that prevailing concept, when in 1994 we needed that amendment, it was recognized that no other corporation in Alberta was in that unique situation.

9:05

I must advise this committee that I have not conducted due diligence on that subject. I have not gone through the records of the registrar. I am relying upon the submissions that earlier were made to this committee and are part of this record.

THE CHAIRMAN: Thank you.

Anything further, Mr. Matthews?

MR. MATTHEWS: No, I don't think so, Madam Chairman.

THE CHAIRMAN: Ms Traxel? Did you have anything?

We'll move, then, to Alberta Treasury. Mr. Forrest?

MR. FORREST: I guess from Treasury's perspective, we received this information; we had some questions and some of them have been answered today. I think we would like to seek some more information from Shaw before we settle on a final recommendation or final advice or whatever to this committee as far as where we think the committee should go on this. We just don't have enough information in front of us at this time to really say much at this point, and I think that if we seek more information from Shaw, that would probably be the best thing for us.

THE CHAIRMAN: I'm wondering, Mr. Forrest, if you can be more specific as to what Alberta Treasury is looking for.

MR. FORREST: We'd like to look at the specific tax consequences that are involved in the transaction. We'd also like to look at the tax situation with the par value shares. I'd like to request some kind of information as to the details of the employee stock option plan just so we could have a better understanding of the ramifications if this were not to go forward, because it's still not clear in our minds what those are, what the negative tax consequences, quote, unquote, are. We had another question about the provisions allowing this to continue sort of in perpetuity, and I think that has been answered today.

THE CHAIRMAN: Insofar as the successor companies might well be removed from the amendment.

MR. FORREST: Yes.

THE CHAIRMAN: Mr. Cardinal?

MR. CARDINAL: Just a suggestion. If time allows, I think it's only fair for Treasury to clear up the issues they have at this time, because we may spend a whole morning here trying to get the same answers that Treasury is after. Would time allow us this spring to bring the group back after Treasury is cleared up with their questions?

THE CHAIRMAN: Are you suggesting we take an adjournment now?

MR. CARDINAL: No, I'm not suggesting we do that, but if Treasury is looking for a considerable amount of answers to some questions they have, I don't know what the time line would be to do that. That should have been done probably before we had this hearing today.

THE CHAIRMAN: Are you suggesting, then, that we adjourn the hearing to a subsequent date? Is that what you're suggesting?

MR. CARDINAL: Yeah, I'm suggesting that. If Treasury doesn't have all the answers they require, we may spend the whole morning here asking the same questions. The presenters may not have the answers today. Unless you're comfortable that you could answer all of Treasury's and our questions, then fine, we should go ahead, but . . .

THE CHAIRMAN: All right. Thank you for that.

I would be proposing that the petitioner be allowed to respond to the remarks of Alberta Treasury through Mr. Forrest at this time.

MS PATRICK: Can I add something first?

THE CHAIRMAN: Certainly.

MS PATRICK: Treasury has another concern. We recognize that this is a unique situation in terms of par value shares, but we grandfather different situations under the tax acts all the time. One of our concerns, based on the very limited information we have in your memo, is that to us you're not asking for the same shares to be grandfathered. You're asking for different shares to be grandfathered in a completely different company.

MR. TURNER: No.

MS PATRICK: Okay. Anyway, that's our concern. Our concern is that if we extend grandfathering in this situation, and recognizing that the par value shares are unique -- but it's extending the grandfathering that we're concerned about. Other people may come forward and ask for similar treatment, you know, and then we kind of lose the concept of grandfathering and grandfathering becomes much bigger than it was, certainly than it is at the current moment. So our issue is not just with the par value shares; it's with extending the grandfathering.

THE CHAIRMAN: To new shares.

MS PATRICK: To a new situation.

THE CHAIRMAN: All right. Does that pretty well cover the concerns of Treasury?

You know, Mr. Cardinal, I'm still certainly entertaining your suggestion, but I'm going to let Mr. Turner or other members of the petitioner's team respond.

MR. TURNER: Thank you, Madam Chairman. I did want to respond to the last comments of Alberta Treasury. We are not looking to grandfather the par value concept into other corporations. My remarks earlier stated that the only reason we spoke of successor corporations was in anticipation that we may at some time in the future amalgamate, and at least if we amalgamated, we wouldn't have to be back before the Legislature for another amendment. We'd have at least thought about it today.

We recognized that that caused problems for Alberta Treasury, because that's reflected in the letter we received yesterday from Alberta Treasury. So I volunteered that we would take out references to the successor corporations and it would only be par value shares of Shaw Communications. These are par value shares identical to the ones that are already there in virtually all respects. There are minor deviations, but I don't think that's going to cause any problems. The fact that they have to be new shares rather than the old par value shares is a requirement under the butterfly provisions of the Income Tax Act. That's the primary reason we're issuing new shares and the primary reason we have to be before this committee.

THE CHAIRMAN: So, Ms Patrick, does that answer your concerns?

MS PATRICK: Some of them. I have a question. What are the negative tax consequences on this employee stock sharing plan or stock saving plan, whatever it was?

AN HON. MEMBER: We can't hear you.

MS PATRICK: I was wondering what the negative tax consequences are on this employee -- was it a profit-sharing plan or a stock plan?

MR. ROGERS: It's a stock option plan. Essentially, Madam Chairman, the stock option plan is driven off par value so that the employee, as he exercises his stock option, only has to pay the par value of the share in order to receive the share. That doesn't provide him any exemption under the Income Tax Act from declaring the full amount of the benefit the employee does receive, but it essentially provides the employee with a financing of the purchase of his stock options.

MS PATRICK: What happened to other companies that had to go from the Companies Act to the Business Corporations Act when they had a similar kind of plan?

MR. ROGERS: I don't know. There are very, very few companies that I know of. This is the first one I've come across in my 25 years in the finance end of the industry -- of seeing a par value stock option plan. It is very unique. There's no question about that. I never saw it before until such time as I joined Shaw Communications.

The only other company I'm aware of that has it is Shaw Industries, which is an Ontario company. It's because of the Shaw relationship that the two companies have it. That's the only two companies I'm aware of.

THE CHAIRMAN: Did you want to add to that?

MR. TURNER: I do. The question from Alberta Treasury had to do with: what did other companies that were continued from the Companies Act to the Business Corporations Act do with their par value shares? Well, they did away with them. There were a number of different routes, but the fact was that nobody else in Alberta needed to have par value shares. That concept became antiquated with the new Business Corporations Act. It wasn't antiquated only for Shaw, because Shaw had the requirements under the CRTC provisions that required it, then, to keep its par value shares. Other corporations that were not under that regime and not incorporated in Alberta didn't have the same problem.

9:15

To answer the question of Alberta Treasury, how did everybody else deal with it? Everybody dealt with it in a different way depending on what their tax story was. The fact of the matter is that when those corporations were continued under the Business Corporations Act, their paid-up capital provision on their balance sheet would change in the most tax expedient way to most closely assemble what they had with par value shares.

The whole concept of par value shares is a very artificial concept that grew up as the whole law around incorporations grew up. Now accounting and taxation and corporate law have progressed beyond that artificial concept of par value shares, and we've gone into a stated value concept. When corporations were continued into the Business Corporations Act, they had to modernize. Shaw Communications didn't because of CRTC requirements, and now we've locked our employee stock option plan into this whole old story about par value shares.

Is it going to open the flood gates? Par value shares are going to be of no interest to anybody. This is not creating a tax opportunity for us. We're not building our tax concept around these par value shares. This is just a hurdle in our way. Our tax opportunities lie in the butterfly provisions of the Income Tax Act, which apply equally across the board. We're not asking for an unfair opportunity or an unfair advantage here. This is a hurdle in our way to take advantage of something that everybody else gets to take advantage of.

THE CHAIRMAN: All right.

I take it, Mr. Forrest, that you still would like more material before coming to a recommendation?

MR. FORREST: Yeah, I think so.

MS PATRICK: Treasury would like the opportunity to talk to them and to think about it. As Mr. Turner has said, it's a very technical area. We're sure it's one where he has a lot more experience than we do, but we have not yet had the opportunity to sort of sit down and think about it and ask them the questions we would like to ask or even to think about all the questions we want to ask. We would really appreciate that opportunity.

THE CHAIRMAN: I do hear you.

I'll look for direction from committee members. Mrs. Burgener.

MRS. BURGNER: Thank you, Madam Chairman. I guess in order to respond to my colleague's recommendation that we defer this to a certain extent while those discussions take place, if it's permissible I need a question of clarity from Mr. Turner, if that's possible, in order to be able to determine whether Mr. Cardinal's initiative is appropriate at this time. Is that appropriate?

THE CHAIRMAN: Oh, all right. Proceed then.

MRS. BURGNER: Just as a layman trying to get my head around what's happening, my understanding is that when these shares were initially issued, there was some direction under CRTC that limited or confined how the shares were issued and what transpired with them. Because their issues have changed and in addition to that there are similar acts that have transferred business relationships, this is almost a catch-up thing in order to move from an older model of operation to the current one that's accepted now under tax law. There is some sense that the employees who received the shares under the original process are now somewhat disadvantaged because you are forced legally to move into this new model, that they had their shares issued under older practice. So my concern is that there is a discriminatory factor to the original employee process because of changes that have come about in business and tax act. Is there some merit in my comments to understand what's important here?

MR. TURNER: Madam Chairman, may I respond to that?

THE CHAIRMAN: Please do.

MR. TURNER: There is some merit, but I want to try and recast what Mrs. Burgener has said. The par value concept is an old, outdated concept that we have preserved in our present company, and we want to preserve it going forward. So we're not getting rid of an old model. We're just allowing us to continue with the old model so the people that are affected by it, the employees in the stock option plan, are not put at a disadvantage. They won't have any advantage. They will just not be put at a disadvantage.

Shaw Communications Inc. is not compelled by law to divide itself into two organizations: Shaw Communications, the cable provider, and Shaw Media. It's not compelled to do that. It makes a whole lot of corporate sense to do that. They will both be publicly traded corporations. It makes a lot of sense to the shareholders to add to shareholder value. It makes a lot of sense to the CRTC. It makes a whole lot of sense to the overall administration of that bundle of assets, and because it makes sense, we're here to ask the Legislative Assembly of Alberta to let us get over this one small hurdle that will enable us to establish this more appropriate model for carrying on business with that package of assets.

MRS. BURGNER: Thank you, Madam Chairman. That provides some clarity. Thanks, Bob.

THE CHAIRMAN: Yes, Mrs. Sloan.

MRS. SLOAN: Thank you, Madam Chairman. I guess the question I have is for Treasury, or it may have to be directed to someone else. It seems to me that while the corporation act contemplates amalgamations, it doesn't contemplate the opposite of that, which is what Shaw appears to be wanting to do, to construct two corporations from its existing structure. Has the department contemplated whether or not legislative amendments are required to address these kinds of circumstances rather than the process of private bills having to be undertaken in order to address them, or is Shaw Communications such an exception that it's viewed as being something that is easier to do in this format rather than have the legislation guide that type of scenario?

THE CHAIRMAN: We'll interject, Mrs. Sloan. I believe Alberta Registries is the department that oversees the Alberta Business Corporations Act. Perhaps that question is better directed to our representatives from that department.

MS PATRICK: Can I interject first, Madam Chairman? The provisions they're using to separate the companies are actually in the federal Income Tax Act. As I understand them, they're provisions that are used all the time to reorganize corporations. So there's nothing unique about what they're trying to do, and there's nothing unique about the provisions they're using to do it.

THE CHAIRMAN: Anything further, Mr. Matthews?

MR. MATHEWS: No. I'll accept that.

THE CHAIRMAN: Okay.

MR. ROGERS: Madam Chairman, if I may. Treasury is quite right. The provisions are not unique, but they are very uncommon. A butterfly transaction is not something that happens every day, and I suspect you could probably count on one hand the number of Alberta corporations that have probably done a butterfly in the last little while. Even though the provisions are there, each case is unique. Each company doing a butterfly has its own unique set of circumstances. That's why it must prepare its own unique application to the federal tax department about its specific circumstances. Revenue Canada rules based on the individual circumstances in the way they affect the company and so on and so forth and its shareholders. So even though the broad concept is there, every situation is very unique and very specific to the specific set of circumstances.

9:25

THE CHAIRMAN: All right. Very good.

I'll recognize you, Mr. Cardinal, but at this point I'm cognizant of the need for Alberta Treasury to have more information before it can make a recommendation one way or the other. So I do think we're going to have to come up with some sort of process whereby that can be achieved, whether that can be achieved through perhaps a meeting with the petitioner and Alberta Treasury, who can then, as a result of that, provide documentary evidence to the committee members. It may or may not be necessary to reconvene the hearing. I think we need to determine that at this time, and I'm open to suggestions there.

I don't think it would be fair to conclude the hearing today. I think we will have to allow the opportunity for Treasury to satisfy

itself in the concerns that have been raised today.
Mr. Cardinal.

MR. CARDINAL: That's okay. You covered what I was going to suggest.

THE CHAIRMAN: If there were other questions by committee members that were perhaps not relevant to what Mr. Forrest raised, if there are other questions, we could certainly deal with those today and maybe should deal with them.

Mr. Zwozdesky.

MR. ZWOZDESKY: Thank you. I'm rather satisfied with the answers we've received, but I want to just get a comment from the gentlemen and Ms Cebuliak with respect to a decision taken at this level by our Legislature proceedings. How is that impacted on by the CRTC? In other words, do you still require some further approvals from the CRTC because of the uniqueness of your case, or are we able to handle this provincially and that's the end of it?

MR. ROGERS: Madam Chairperson, if I may. We have already received approval from the CRTC for the spin-off of Media Co. That application was filed, and it was approved by the CRTC.

MR. TURNER: May I just add to that? The income tax requirements are not really the enabling provisions. All of the tools we need to do the division of the company into two separate corporations are found within the Business Corporations Act of Alberta. They're all there, and we will avail ourselves of those tools.

The Income Tax Act is very relevant here because it only makes sense for us to proceed if we get certain income tax treatment of our activities. We have filed with Revenue Canada an application for an advanced tax ruling. That process allows us to state our entire story and ask Revenue Canada: if we proceed in specifically that way, will we get the tax treatment we anticipate? That application has been submitted, and we are working with Revenue Canada to that end.

MR. ZWOZDESKY: Just a quick supplementary if I could. I wanted to just get that on record. I'm aware of the CRTC side of it. So in essence with respect to the implications with respect to federal taxation, you're not really asking for a change. You're only asking for a ruling from Revenue Canada. Is that correct?

MR. TURNER: That's correct. We're not asking for any special treatment from Revenue Canada. We're just saying: if we do what we suggest we're going to do, will we get the tax treatment that's afforded under the act? Because the factual situation is so complicated in all these butterfly transactions, it's worth your while to put those facts in front of Revenue Canada and make sure they fall within their anticipation of what the parameters of the tax treatment will be.

MR. ZWOZDESKY: Thank you. I just wanted to have that re-emphasized for all committee members and other witnesses present.

THE CHAIRMAN: Thanks, Mr. Zwozdesky. I must say that I neglected to identify you as the sponsor of this bill, and I'll put that on the record at this time.

Before we determine how we're going to proceed to get further information, I know Parliamentary Counsel has a question or two. Do any other committee members have questions to do with matters unrelated to the tax consequences which Alberta Treasury is concerned about? There being no other questions, I'll now call on Parliamentary Counsel. Ms Dean?

MS DEAN: Thank you, Madam Chairman. This is just for my own clarification, and it relates to a statement Mr. Turner made in connection with the butterfly provisions in the Income Tax Act. Am I correct in understanding your statement that this private bill, this amendment to the definition of par value shares, is required in order for Shaw to take advantage of certain tax benefits that already exist for other corporations?

MR. TURNER: That is correct, and the only way this amendment impacts on what we're doing is that the butterfly provisions compel the corporation to issue new shares. They can look exactly like the old shares. They must issue new shares. As the present act stands, it only deals with the old shares. We're just saying: let us issue identical shares but they'll be new shares, and let the enabling legislation permit us to issue the new shares. They'll look the same with some very minor changes to accommodate the transaction. We're not looking for this to create opportunities for us to fabricate some tax savings. As you suggested, it would enable us to take advantage of provisions everybody else gets to take advantage of if they can bring themselves within the factual story.

MR. ROGERS: Madam Chairman, if I might just make a clarification. Ms Dean, I think you've really hit the essence of what we're all here for today: the fact that if we did not have to issue new shares, we would not be before this committee. The Income Tax Act compels us to issue new shares. We just want the same treatment for the shares we have today as for the new shares we're compelled to issue and nothing else. I think that really gets to the essence of why we're here.

THE CHAIRMAN: Thank you.
Ms Dean, any other questions?

MS DEAN: No.

THE CHAIRMAN: Mr. Cardinal.

MR. CARDINAL: Yeah, I'd like to make a motion that we move forward, because unless Treasury's satisfied with the process, it makes it complicated for us to make a decision on it. I'm not against what you're recommending. In fact, I tend to favour it, and I think we should move forward with it. Now if Treasury can be satisfied before the 13th of April, then I don't see why people have to come back. I think the main concern here from the members is that if Treasury is not comfortable, how are we to make decisions? We depend on the resources we have in our government to support us in determining the implications of such a process, and if they're not comfortable at this time, then I would say that if they can have their questions answered before the 13th of April, there's no reason why we can't move forward with it. I don't think there are any questions other than what Treasury has.

THE CHAIRMAN: That might well be a reasonable way to proceed. I do have one question before we deal with your motion. My question is: in the materials I've noticed that this tax transaction is subject to a number of approvals, one of which is shareholder approval. I take it the shareholders have not had an opportunity to vote on the proposal. Would that be correct? So all of this is being done in anticipation of that, and I suppose there's the possibility that the shareholders will not agree with the proposal. Could you comment on that?

9:35

MR. ROGERS: Madam Chairman, Shaw Communications has two

classes of shares. One is class A, which is voting, and that is controlled by the Shaw family. The other class is the B shares, which is the shares that we're addressing here, which are nonvoting. So in order for shareholder approval to be received, it will be a vote of the class A shares, and I don't think the Shaw family would be proceeding unless it were fully behind that. It has stated its intention that it does intend to approve this transaction.

THE CHAIRMAN: That answers that quite fully, I do believe.

Well, unless there are any other questions from committee members, then, Mr. Cardinal, do you want to just restate your motion for clarity?

MR. CARDINAL: Okay. I'll make a motion, although I know we can't approve the process right now. I'd just like to indicate that we should move forward and give it favourable consideration subject to Treasury being satisfied with their concerns in writing to us before the 13th of April. If everything is satisfactory, then there's no reason why we can't do the final review at the time, either reject or approve it.

THE CHAIRMAN: I'm wondering if we're not getting a bit ahead of ourselves to say "favourable."

MR. CARDINAL: I can take that out.

THE CHAIRMAN: That might be a little more appropriate.

Mr. Forrest and Ms Patrick, you still require the additional information.

All right. Any discussion?

MRS. SLOAN: Procedurally, Madam Chairman, would it not be more appropriate to make a motion to defer? That way there's no inference of the committee's decision either way. We're awaiting Treasury's recommendation and further information, and if my hon. colleague would accept it, I would propose that it should be a motion of deferral awaiting Treasury's response.

MR. CARDINAL: That's fine.

THE CHAIRMAN: Well, it's probably six of one, half a dozen of the other, but Mr. Cardinal, if you want to withdraw your motion.

MR. CARDINAL: Sure. Go ahead.

THE CHAIRMAN: Mrs. Sloan.

MRS. SLOAN: That's fine. I will make the motion to defer subject to Treasury's review and recommendations on this application in writing.

MR. TANNAS: I was going to just express my opinion that I was uncomfortable with a conditional vote, but I'm sorry; I was unable to hear the hon. Member for Edmonton-Riverview after "deferral." Then there were some additional things. We've got a deferral with some conditions?

THE CHAIRMAN: Deferral subject to Alberta Treasury obtaining the information it needs and making a recommendation to this committee.

MR. TANNAS: All right.

THE CHAIRMAN: Any other discussion? Does the petitioner want to speak to this at all?

MR. TURNER: No, Madam Chairman. We'll be pleased to respond to the inquiries of Alberta Treasury, and we'll put the information in their hands that they need. We would hope to hear from them promptly so we can proceed with this, because time continues to be of the essence for us.

THE CHAIRMAN: Yes. Ideally we are intending to meet on April 13 to deliberate on all of the bills. That's what we would be aiming for.

Well, if there's nothing further, then, all in favour of the motion to defer pending Treasury's recommendation, say aye.

HON. MEMBERS: Aye.

THE CHAIRMAN: All opposed, say no. The motion is carried.

I'd like to thank all of you for your attendance here today and your assistance. I must say, the submissions on a difficult matter were as clear as they could be, and we're happy that you're going to work with Alberta Treasury to provide them the information they need. Hopefully we won't require you to appear here again, but we will be in touch on that point.

MR. ROGERS: Thank you, Madam Chairman. On behalf of Shaw Communications, we thank you for your time today.

THE CHAIRMAN: It's our pleasure. Thank you very much.

MR. TURNER: Thank you all.

THE CHAIRMAN: Colleagues, if we could move on to Other Business, I'd mentioned earlier that I wanted to raise with you the matter outlined in the letter from Burstall Ward dated March 18, 1999, concerning a proposed private bill entitled the William Roper Hull Child and Family Services Amendment Act. I don't know if you've had an opportunity to read the contents of the letter, but basically Burstall Ward acts for William Roper Hull home, which was initially incorporated by private bill. They want to make some minor amendments by way of an amendment act to the original act and have missed the deadline for filing of the petition, advertising, et cetera, et cetera. The petition has not been filed, so this matter is not really before the committee, but Mr. Barber of Burstall Ward has written to me and requested a response from me as chairman as to whether there's an opportunity or a likelihood that the committee would look at a waiver in these circumstances.

I can tell you that back on October 27, 1998, Parliamentary Counsel did provide all of the documents outlining the procedure on private bill petitions to another lawyer in that firm by the name of Peter Andrekson and also talked of the deadline, although we didn't know when session would be at that time. I would suggest there certainly was information provided to prompt the firm as to what needed to be done. So I'm open to direction from committee members.

MRS. SLOAN: I'm wondering if the chair or Parliamentary Counsel can provide the committee with the previous precedents. What were the compelling factors in previous requests where the requirements of the committee were waived in order to consider a petition? Are there any?

THE CHAIRMAN: Yes, Ms Dean.

MS DEAN: Thank you, Madam Chairman. I'm not aware of any similar circumstance. I mean, there have been situations in recent years where the petitioner has provided all the documentation but

still hasn't completed the advertising, for example. We had that situation with respect to Shaw Communications. They were just a little late on their advertising. That was the only waiver that was required by the committee.

Certainly in the last almost 10 years there isn't an example that I'm aware of where a proposed petition has come forward this far into the spring sitting. I can certainly look into what's happened prior to the last 10 years and report back to the committee on that.

9:45

THE CHAIRMAN: Did you have another question?

MRS. SLOAN: Well, what I am attempting to do, Madam Chairman, is to determine -- in the correspondence that we've received from Mr. Darryl Barber, there do not appear to me to be compelling reasons why the committee should waive our normal rules and proceedings to consider this application. Basically, the proposed amendments relate to a change in name and the expansion of objects specifically to provide some reference to the treatment of adults, but it would seem to me that the operations of this entity are going to continue in the next fiscal year whether or not these amendments are made.

It's unfortunate that the deadline was missed, but to me there's not enough compelling evidence that suggests to me that the services of the agency are going to be hampered to any large degree by the committee not considering this application at this time but at the next available opportunity, which may be the fall sitting or the spring sitting of 2000.

THE CHAIRMAN: Next spring. Yes. You know, a fair comment, Mrs. Sloan.

Actually, this matter really isn't before us to make a decision on, but I would like to respond to Mr. Barber and I guess provide him with sort of the perceived will of the committee at this time.

MR. TANNAS: Madam Chairman, I wonder whether or not we have a set of guidelines that say how long you have to do the advertising and all of those details as opposed to the beginning of the session. We are going to perhaps have a fall session. It may not occur, but should it, if the applicant is serious about the proposal, why wouldn't they have all the time between now and whenever it would begin: September, October, or whatever? Of course, you couldn't give a guarantee that there is a fall session.

THE CHAIRMAN: I'll let Ms Dean respond to that.

MS DEAN: Thank you, Madam Chairman. As committee members may know, this process happens once a year. There's one deadline a year, and it is with respect to each session, not each sitting of the Assembly. So the deadline is 15 days after the opening of a session. This year I believe it was Wednesday, March 3.

If committee members need to look at the information that was provided to Burstall Ward in October 1998, it's the same petitioner's guide that's in the front of your binders, which outlines in detail the process and the deadlines.

THE CHAIRMAN: Thank you, Ms Dean. I believe all committee members were circulated a copy of the letter from Ms Dean back on October 27, 1998, to Burstall Ward, just for your information.

Mr. MacDonald, you had a question.

MR. MacDONALD: Yes. Thank you, Madam Chairman. I am concluding from the hon. member's questioning and the respective answer that if the deadline is 15 days after a session starts and if there is no fall session of the Legislative Assembly -- and the remarks

here are that it's highly unlikely -- that means this group will have to wait until next year to get their change. Is that correct?

THE CHAIRMAN: Well, unless the petition was filed and came before us, which isn't the case yet, and this committee agreed to waive the formal requirements for the filing of the petition, which deadline was March 3, and for advertising, then yes, the petitioner would have to wait until next spring, the next session. As Ms Dean explained, there's one deadline for the spring sitting and the fall sitting if there is one. It's the same deadline, which was March 3.

MR. MacDONALD: Thank you.

THE CHAIRMAN: Mr. Coutts.

MR. COUTTS: Thank you, Madam Chairman. I appreciate the problem that's before us, but I want to provide a perspective from an organization I know that has done the same thing. They have missed the deadline for this year and have taken it upon themselves to be prepared next year to go through the process. I'm afraid that if we were to allow this particular petitioner to sort of jump the procedure, we would open up some problems for ourselves in the future. It would be somewhat precedent setting. Therefore, I support the motion that this go through the regular channels for next year's petitioning.

MRS. BURGNER: Just one comment, Madam Chairman. As I recall, the announcement for when session starts is not necessarily -- there's no preceding time frame wherein it's announced it's to start and then it starts. We don't know whether that's going to be a two-week-ahead-of-time announcement or a five-month-ahead-of-time announcement. So I tend to disagree that we not proceed with this, because in order for the legal information to be appropriately filed and information circulated, et cetera -- we're talking about the notice, not so much about the details of the petition itself, and as we've seen today, there's need to have ongoing discussions and dialogue. I think the fact that you're 24 hours or 48 hours in terms of notification -- there's no established way of any legal organization knowing exactly when that session is going to start.

THE CHAIRMAN: Other than that it is advertised in all of the major newspapers in Alberta at considerable expense, I think, to the

Assembly. I mean, that is the way it is done, and other petitioners have clearly learned when the deadline was. If I might say, this is not an unsophisticated group.

MRS. BURGNER: Right. My only concern, Madam Chairman, is that if the actual material that is being prepared and presented meets criteria, then I find it somewhat difficult to delay business organizations and communities from proceeding given that we do not meet regularly as a Legislature. I just put that out for consideration.

THE CHAIRMAN: I do hear what you're saying, but as Mr. Coutts I think has ably described, there are lots of parties out there who missed the deadline and accepted the fact that they'd have to wait a year. I suppose they're being prejudiced to some extent because they didn't come forward and ask. I mean, it never hurts to ask. But I must say that this application is not before us formally, because there's no petition filed even to this day.

MRS. BURGNER: I appreciate that.

THE CHAIRMAN: I've listened to all of the comments of committee members, and I'm inclined to respond to Mr. Barber that with the exception of perhaps one member there's not a lot of warmth for entertaining waivers on this petition if it were to be filed. Would that be fair?

HON. MEMBERS: Agreed.

THE CHAIRMAN: Would someone like to move that we adjourn?

MR. COUTTS: I move that we adjourn, Madam Chairman.

THE CHAIRMAN: All in favour, say aye.

HON. MEMBERS: Aye.

THE CHAIRMAN: All opposed, say no. We're adjourned. We will convene again on April 13.

[The committee adjourned at 9:53 a.m.]

