LEGISLATIVE ASSEMBLY OF ALBERTA

Standing Committee

on

Private Bills

Wednesday, May 25, 1983

8:30 a.m.

TRANSCRIPT NO. 83-5

Chairman: Mr. Stiles *8:30 a.m.*

MR. CHAIRMAN: I'd like to call the committee to order. We have two Bills to deal with this morning, Bills Pr. 12 and Pr. 13. We propose to deal first with Bill Pr. 12, the Calgary Golf and Country Club Amendment Act, 1983. We have Mssrs. William Howard, John Rule, and Stephens Allan with us this morning.

Gentlemen, it's a very informal process. We will have your witnesses sworn, Mr. Howard. It's then a matter that if you have some opening remarks, the members will probably have some questions to ask of you, and you might wish to make closing remarks. That's the process we go through.

Mr. Clegg, if you would please swear the witnesses.

Messrs. Rule and Allan were sworn in

MR. CHAIRMAN: If we could have your report, Mr. Clegg, please.

MR. CLEGG: Mr. Chairman, pursuant to Standing Order 89, this is my report on Bill Pr. 12, Calgary Golf and Country Club Amendment Act, 1983. The purposes of the Bill are to change the constitution of the club, to amend its share structure, and to alter the membership provisions. There is no model Bill on this subject, and the Bill does not grant any powers which I consider to be exceptional.

MR. CHAIRMAN: Thank you, Mr. Clegg.

Mr. Howard, if you would like to just take us through the Bill and tell us the salient points.

MR. HOWARD: Mr. Chairman, is it appropriate to stand or sit?

MR. CHAIRMAN: It's perfectly appropriate if you'd like to sit.

MR. HOWARD: Mr. Chairman and members of the committee, I should identify the two gentlemen with me. Mr. John Rule on my left is the president of the Calgary Golf and Country Club. Further left is Mr. Steve Allan, the honorary secretary of the Calgary Golf and Country Club.

Mr. Chairman, I thought I'd first of all outline some of the history of why we're here today and briefly what we're trying to do with the Bill. Then I could briefly take you through the sections. The Calgary Golf and Country Club was incorporated in 1910, some 73 years ago. It was amended in 1957 to delete a provision that limited the value of the land that they could hold to $150,000. That was struck out. In 1961 some minor amendments were made.

However, the authorized share capital, namely, 1,000 shares of a par value of $50 each, was the share capital 73 years ago and still is. Historically and today, only those holding a share are entitled to be members of the corporation and, by the by-laws, only a playing shareholder has the right to vote. In fact, the statute itself did not and does not even mention voting rights, which is one of the problems we have, and the amendment would deal with that. The way that has been dealt with is that the voting rights have been dealt with by by-law, which creates some confusion.

The whole authorized issue of 1,000 shares were issued at least 40 years ago, so there are no unissued authorized shares in the corporation. In an effort to alleviate this problem, over the years the club has followed a practice of approaching persons who still hold a share but are no longer active or approaching their families or their estates, requesting that they sell the shares back to the club, which would then be reissued. However, a large number of these shares have been lost. For a variety of reasons, many holders have no desire to surrender the shares. As a result, a number of playing members have been without shares, and a growing number of shares are held outside the playing shareholder membership.

The number of playing shareholder members is limited to 400. Out of that 400, as of this date, there are 97 playing shareholder members who we can't even get a share to. Although the transfer of a share has been approved, there are no shares available. The result is an impossible situation.

In 1980, a shareholders' meeting was held which at that time approved increasing the authorized capital of the company from 1,000 to 2,000 shares and also would have provided that in winding up, the net assets would be distributed to a charity, the latter point being a not uncommon provision in incorporating statutes or enactments of golf clubs and other clubs.

However, as some members of the committee may be aware, subsequent to that application being made for a private Bill, an action was commenced in the Court of Queen's Bench on behalf of one member for an injunction against the club proceeding with those amendments. As a result, the application to the Legislative Assembly was withdrawn. Subsequently the action in the Court of Queen's Bench was discontinued, and further discussions were carried on with the one or two dissenting members, whose principal objection I think could be stated in the area of dilution of their interest. Since there is no provision in the statute for the assets going to a charity in the event of winding up, obviously there could be an equity interest in this club. The present application results from the discussions with those one or two dissentients.

In this application the reference to what would happen on winding up -- namely that it would go to a charity -- has been deleted. That is not contained in this present Bill. In summary, the changes in the capital are that of subdividing the present 1,000 shares, all of which are issued, into 100,000 shares on the basis of one Class A voting share and 99 Class B non-voting shares for each present share, and providing for an additional 5,000 Class A shares. I am informed by the officers of the club that this proposal resulted in fact from consultations with one or more of the dissenting members.

If all the 5,000 new shares were issued, this meets the would-be dilution problem, which we do not believe now exists. If all the 5,000 new shares were issued for nothing, the maximum dilution would be 4.75 per cent. I am sure the president of the club can respond and will advise you what the present fee structure is, so you could see that even that would be unlikely.

If this were enacted, every existing shareholder would end up with 99 non-voting shares and one voting share, where before he only had one voting share, if he had a voting share at all. The Act never did say whether he had one. The voting position remains exactly where it was prior to enactment, assuming that even under the present enactment he had a right to vote. The present Bill would give a right to vote to the Class A share specifically, except as it may be restrained or restricted by the by-laws. The present by-laws restrict voting to the playing shareholder, which has no effect on their interest in the equity of the club.

If you wish to look at the Bill itself, section 2 relates to what I think was probably an error in the drafting of an earlier amendment. The end of section 2(1) referred to "providing for the assessment" against a shareholder. There is no power of assessment in this corporation. It should have been

"purchase"; section 2 of the Bill does that. Section 3 lists the amendments I mentioned. They're really of an administrative nature, although I should point out that subsection (6) under this Bill would also enable us to have members of the club who are not shareholders. The amendment to section 4.1 just spells out the procedure by which each share was split in one A and 99 B and provides for the 5,000 additional.

Subsection (3) of 4.1 provides the mechanics of how we get the physical shares changed around. Section 4.2 replaces a corresponding section in the present Act to pick up the new sections of the Companies Act. If one looks at those new sections of the Companies Act, one may well ask, why aren't we using it, because it does provide for consolidation and subdivision of shares, with the shareholders resolution, and with that resolution getting a court order. The problem we are faced with because of the absence of voting rights specified in the Act is that we are not satisfied as to just who has voting rights. Our whole application to a court would be premised on a resolution. I'm not sure what lawyer would be giving an opinion saying what voting rights really are, if you don't say anything about voting in the Act. This particular Bill application was in fact passed at a meeting of the playing shareholders, which the secretary can speak to, in substantially this form, with some minor changes that have turned up in the final form.

Mr. Chairman, with that brief introduction, has anybody any questions?

MR. CHAIRMAN: Before we move to the questions of members, Mr. Clegg, I believe you have the documentation respecting the resolution?

MR. CLEGG: Yes, Mr. Chairman. I have three documents on file which support the petition. The first is a certified copy of the resolution which was passed on November 29, which approves the application for this Bill on behalf of all those members who were given a resolution passed by the playing members present at that meeting. The second document is a copy of a discontinuance of action which evidences the discontinuance of the action against the club by Mr. Benton McKidd. That has been signed by Mr. McKidd's solicitors, and was filed on November 30. The third document I have is a receipt for the required fee, payable to the Registrar of Companies, in the amount of $50.

MR. THOMPSON: Mr. Chairman, I just have a couple of questions to ask, and they're not very hard, Mr. Howard. Is this a non-profit organization, or do they declare dividends on your shares?

MR. HOWARD: You probably should ask either one of the two people on my . . .

MR. RULE: It is a non-profit organization, and there are no dividends declared on shares.

MR. THOMPSON: My second question. As I recall, you said that some of the original shares have been lost or you have no record of where they are at the present time. How do you propose to issue these new shares to those shares you have no record of?

MR. ALLAN: I can answer that. I think our plan would be to advise the shareholders at their last known address of the new proposal and that the new shares are available. That's really the only system we have. We have made exhaustive efforts over the past years, without much success, to try to find these shares.

MR. HOWARD: Mr. Thompson, in that area it would not be different from any other corporation which has lost shareholders and which has reorganized its share capital. Until the person surfaces, they're just held for them.

MR. THOMPSON: If four or five years down the road one of these shares shows up, then of course they would be issued. Or is there a time limit on it?

MR. HOWARD: No, if he presently has an equity share in the club, there's no suggestion here that there's any expropriation. He's still got it. If I may speak to that, the aim of the exercise is really not to monkey with anybody's equity. It's to get the system into a game where playing shareholders can get the club into a proper operating basis.

MR. HYLAND: To any of the gentlemen I guess, section 2 of the present part of your Act it reads "fixing the qualifications of persons who shall be competent to hold the same", referring to ability to hold and obtain a share. I guess that leads me to ask the question, is there any racial qualification related to those who are able to hold and obtain shares in the golf course, or is it just those able to pay the tariff?

MR. RULE: There are no racial or religious qualifications. It's an open membership to those that, I guess, can afford it. Other than the fact that it isn't as expensive as it might seem, I think the problem we have in Calgary is the short supply of golf courses. There's quite a demand to join our facility.

MR. HYLAND: So whatever the cost is, you pay it, pay your yearly membership, and you're off and running?

MR. RULE: That's correct.

MR. HYLAND: If you can obtain the shares you're trying to create from this Bill?

MR. RULE: That's correct. Presently, as Mr. Howard has mentioned, in view of the fact that there are no shares available, we have still deemed that people have the right to play, notwithstanding that there is not a physical share to transfer to them. They still become a playing shareholder member, but they are without share.

MR. CHAIRMAN: If there are no other questions, gentlemen, unless you have some remarks you'd like to make in closing, that concludes the hearing on your Bill.

Thank you very much.

The second Bill we have to deal with this morning is Bill Pr. 13, the Koney Island Sporting Company (Limited) Continuation Act. Mr. Matheson, since you are the only person here I think we shall swear you in.

Mr. Matheson was sworn in

MR. CHAIRMAN: Do you have your report on this Bill, Mr. Clegg?

MR. CLEGG: Mr. Chairman, pursuant to Standing Order 89, this is my report on Bill Pr. 13, Koney Island Sporting Company (Limited) Continuation Act.

The purpose of the Bill is to permit the company to continue under the Business Corporations Act using its present Memorandum and Articles of Association rather than using Articles of Continuance. There is no model Bill

on this subject. The Bill does not confer any powers which I consider to be exceptional.

MR. CHAIRMAN: Thank you, Mr. Clegg. Mr. Matheson if you'd like to take us through this now and give us the rationale for the Bill.

MR. MATHESON: Mr. Chairman and gentlemen, this is a rather unusual situation. It has only nostalgic and historic implications. This is a very small private company. There are only three shareholders that are active and alive. The company is not engaged in any active business operation. It owns an island on Cooking Lake. For those who have seen the Cooking Lake air base, you will note the island is about 200 yards immediately east of the airstrip at the Cooking Lake air base. That island was bought in 1894 from the federal government and has been owned and operated by this company since it was incorporated in October 1894.

As the Bill recites, the company is the oldest in Alberta. It was registered as number four when the province was created and has maintained that position, of course. I understand from the Registrar of Companies -- and I might say that Harold Thomas, the former Registrar of Companies and now deputy minister, and I have discussed this on a number of occasions. The fact remains that when the Business Corporations Act came into being -- and it does change the entire complexion of a company -- I suggested that for historic reasons it would be worth our while to continue this company with the existing structure just for that purpose.

I might point out that the shareholders were rather significant people in the city of Edmonton in 1894. One of the them, Kenny McLeod, built the McLeod Building and named it after himself. Frank Osborne -- there is a building in Edmonton named after him. Two of the original shareholders, Clarence Taylor and Mr. Short, became judges. By the way, J.H. Morris, who was one of the original shareholders, in 1899 had the first gasoline-driven motor boat in all of western Canada; it was out at the island. He bought the first automobile in Alberta in 1903. He had number one licence until about 1945. I don't know whether any of you ever saw that. This J.H. Morris was one of the original stockholders. His immediate descendents still live in the cottage he built there in 1902, although the first house was built on the island in 1898 by Kenny McLeod.

So there is a good deal of historic background and significance. The documents are all on the registrar's file. They show this goes back in antiquity, as far as western Canada is concerned; I'm not talking about Rome. In the *Northwest Territories Gazette* on August 16, 1894, the notice was published saying the company was going to be incorporated. I might say that it was to own and maintain club houses, hotels, and other structures and erections. At that time it was a small island, a long way away. It was a kind of wide power to have given this company at that time. That was part of their purpose at that time, but I assure you it certainly isn't now. It's just maintained with three families living on it. Actually the estate of Mr. Justice Cameron Steer is one-third owner, the Matheson family is one of the owners, and the J.H. Morris family, who go back to 1894, are the other owners.

I would like to just point out one small item in the letter of report written by Ernest W. Hubble when he surveyed the island on May 25, 1895, which was 88 years ago today. A very severe snow storm stopped him from moving east to do his surveying. I'm glad it isn't that way today. This is the letter of report covering his survey trip into that area at the time the island was surveyed. Then the sale was completed to the Koney Island Sporting Company, and that is all this company has done. We have no problem doing whatever the Registrar of Companies wants in the way of meeting the normal requirements. We just don't want to lose this continuity. It's the same as preserving a

building like Mr. Chapman's little old saddlery store on 82nd Avenue. It's in that same category.

If there are any questions I can certainly . . .

MR. CLEGG: Mr. Chairman, I just wish to confirm to the committee that I have here a memorandum from Mr. H.J. Thomas, assistant deputy minister in the Department of Consumer and Corporate Affairs, which is copied to the registrar of corporations and confirms that if the Bill is passed the registrar of corporations would issue a certificate of continuance, which in effect says that they do not see this Bill will give them any administrative problems. That's their way of saying that.

Thank you.

MR. CHAIRMAN: Any of the members have any questions? Thank you, Mr. Matheson, that completes our hearing on this Bill.

Now as we do have one matter to deal with in camera this morning, I'd appreciate a motion that we go in camera. The hon. Member for Cardston.

The committee moved in camera at 9:01 a.m.