

Standing Committee on Private Bills

8:38 a.m.

[Chairman: Mr. Renner]

MR. CHAIRMAN: Good morning, members. I'd like to call this meeting to order. This is a meeting of the Standing Committee on Private Bills.

The first item this morning is to deal with the approval of the agenda. If everyone will turn to the agenda tab in your binder, I would like to change, with your permission, the order we hear the petitioners this morning. I would suggest that we hear from the Lethbridge Foundation first, Pr. 2, followed by Pr. 8. My reasoning for that is that Pr. 8, the Shaw Communications Inc. Act, is a somewhat complicated Act, and I don't want us to get heavily involved in discussion on that and then run out of time before we get to Lethbridge Foundation. So with your permission, then, with that amendment, could I have approval for the agenda? Mr. Sekulic. All in favour? Carried.

We have a set of minutes included with your notes this morning from our last meeting, Tuesday, March 15. I need a motion to approve those minutes.

MR. HERARD: So moved.

MR. CHAIRMAN: Mr. Herard moves. All in favour? Opposed? Carried.

With that then . . .

MR. REYNOLDS: Could I just make a few comments?

MR. CHAIRMAN: Sure.

MR. REYNOLDS: I just want to remind the committee members that if anyone hasn't picked it up, there's a memo down here from the registries office with respect to the petition of Shaw Communications. If anyone doesn't have it, it's right there. I am sure the chairman may wish to refer members to a memo I sent out last Friday with respect to anyone potentially owning shares in Shaw Communications, with respect to possible conflicts. That memo was dated March 18 and should have been sent to everyone.

The other point I'd like to make is that there was some additional briefing that was sent around yesterday. A big package of briefing on numerous Bills came around, and then there was a smaller package of briefing with respect to Shaw Communications. It was marked "Rush, Urgent" for everyone's attention. If anyone doesn't have that, perhaps they could speak to Florence.

Thank you. Those were my points, Mr. Chairman.

MR. CHAIRMAN: Thank you, Mr. Reynolds.

We'll ask the petitioner for the Lethbridge Foundation to come in and be sworn in then. This is Bill Pr. 2.

[Ms Smith was sworn in]

MR. CHAIRMAN: Thank you, and welcome to the committee this morning. Just a little bit of background before we get started. This is the Private Bills Committee. It's an all-party committee of the Legislature. You have petitioned the Legislature to pass a Bill on your behalf. That Bill has received first reading in the Legislature and it's referred to this committee. It's our job to review your petition, ask any questions committee members might have of you,

and then make a recommendation to the Legislature as to whether the Bill should proceed or not. So that's the process we're in today.

Just before we get started, I will have the committee members introduce themselves. This is basically an informal process. Certainly feel free to remain seated or stand, whichever you feel more comfortable with while you're speaking. With that, then, I'll ask Mr. Wickman: would you start the introductions?

MR. WICKMAN: Percy Wickman, Edmonton-Rutherford.

MR. JACQUES: Good morning. Wayne Jacques from Grande Prairie-Wapiti.

MR. BENIUK: Andrew Beniuk, Edmonton-Norwood.

MR. VAN BINSBERGEN: Duco Van Binsbergen, West Yellowhead.

MR. HERARD: Denis Herard, Calgary-Egmont. Welcome.

MRS. LAING: Bonnie Laing, Calgary-Bow.

MR. AMERY: Moe Amery, Calgary-East.

MR. SMITH: Murray Smith, Calgary-Varsity.

MR. SEKULIC: Peter Sekulic, Edmonton-Manning.

MR. HLADY: Mark Hlady, Calgary-Mountain View.

MR. CHAIRMAN: Thank you.

If you would like to give us a brief rundown on what it is your Bill will accomplish for you and maybe a little bit of background on why you feel it's necessary to make changes to your Act.

MS SMITH: Thank you, Mr. Chairman. The Lethbridge Foundation was founded in 1966 by a group of community oriented businessmen. With the passing of time, some of the objectives that were originally laid down have lessened our ability to be more broadly based in our giving to charitable organizations and groups needing our financial assistance within the community.

The first thing we would like to change is the name of the foundation, from the Lethbridge Foundation to the Lethbridge community foundation. Basically that's because we are serving the community, not only the city of Lethbridge but also southwestern Alberta.

We feel that in today's age it's more appropriate to call people that appoint directors to the foundation appointors rather than nominators.

There's a cosmetic change in the fact that there is no longer the senior justice of the district court; it's now been amalgamated into the Court of Queen's Bench.

We wish to include as an appointor the reeve of the county of Lethbridge, as we are serving the community and want to include community input.

At the present time we are limited to nine board members. Being more broadly based within the community, we want to have the opportunity to expand our board to include outlying areas.

We feel that under the previous Act we had to give out 90 percent of the income we had derived, and for preservation of capital, we want to capitalize a portion of the income so it's ongoing -- that's the idea that the money you give to a foundation keeps giving in

perpetuity -- and also to cover our overhead with costs that are associated in that area.

The last change we want to make is to section 25, and that is similar to other foundations that are governed by an Act of Parliament.

At the present time the foundation has approximately \$1.7 million that we administer. We anticipate, as a lot of our requests come from people's wills or life insurance policies, that over the next few years it will grow considerably.

Thank you.

MR. CHAIRMAN: Thank you.

Members of the committee, does anyone have questions?

MR. VAN BINSBERGEN: Mr. Chairman, I would like to ask Ms Smith if she could repeat what she said about the money. I didn't understand that. You said something about the money matters.

MS SMITH: That we currently administer?

MR. VAN BINSBERGEN: No, before that.

MS SMITH: At the present time, if you give, say, \$100,000 for us to administer, and if each year we give out 100 percent of the interest that is earned, with inflation over time the value of that money diminishes. So in essence what's happening is that it's being eroded and eventually we won't have the funds to give out.

MR. VAN BINSBERGEN: Therefore, you can only give out less.

8:48

MS SMITH: Well, at the present time we're considering capitalizing according to the Alberta cost of living index, which this year I believe is somewhere around 1.3 percent.

MRS. LAING: I would just like a little bit of information about some of the types of projects you fund. Do you do it every year, or is it one time and you can only come back in a period of time?

MS SMITH: No. What we do is disburse money twice a year, in the fall and in the spring. We advertise in the local newspapers requesting that people submit applications. How it works is that we review the application; we want confirmation of how the funds are being spent. Basically, if an association or a community project is getting funds from another source, we have to kind of weigh it. At the present time we find that we have more people asking for money than we have funds to give out. But no, we do not limit people to coming back only once. Some of the projects we have funded have been an adult day care for elderly people -- the caregivers are given a break for the day; they can drop them off at one of the local hospitals. Also in Lethbridge we have sponsored one of our school bands to attend national competitions. We've helped to establish a library. We've assisted the local handicapped riding association.

MRS. LAING: Good. Thank you very much. A good range.

MS SMITH: Thank you.

MR. CHAIRMAN: Mr. Herard.

MR. HERARD: Thank you. I have three questions. I notice the terms "nominators" and "appointors." Now, to me nominators sort of suggests there's another process after the nomination; in other words, to ratify the nominations and make them final. Appointors

doesn't necessarily mean that to me. Can you tell me what the process is for appointing people?

MS SMITH: Generally, the process is that the board looks for names of people that are willing to serve on the foundation. These people are spoken to by the executive, and then these names are submitted to the individuals. So in essence they're more or less appointing them; they're confirming our endorsement of these people to sit on the foundation. They are not directly coming up with names, although we do ask them for their input.

MR. HERARD: They are confirmed by the board at a meeting or whatever.

MS SMITH: Yes. The names are first selected by the executive of the foundation.

MR. HERARD: In section 13 I notice the word "individuals" -- in other words, "may deem proper for the assistance of such individuals, institutions, organizations" -- but if we look at the old Act, the word "individuals" isn't there. Do you have occasion to give out money to individuals?

MS SMITH: We have, basically for some people that are involved in the arts. It depends on the need. We have in the past. We feel that we don't want to limit ourselves by only giving out to organizations.

MR. HERARD: The last question is on "reasonable administrative expenses." Can you give me some idea of what percent that might be in terms of the past?

MS SMITH: At this point in time we don't directly manage the funds ourselves. They're managed by a management company. Because of the limited funds we have, the management fees are assessed on a pro rata basis. We feel that as we grow, our management fees will go down. I would say that after we pay our management fees, publish our annual return in the newspaper, and pay our audit fees, in most cases we are over the 10 percent.

MR. HERARD: Thank you very much, Ms Smith.

MS SMITH: Thank you.

MR. CHAIRMAN: Any further questions from the committee? Mr. Reynolds, do you have any points of clarification or anything you'd like to point out?

MR. REYNOLDS: Thank you, Mr. Chairman. I think everything was touched on by the committee.

MR. CHAIRMAN: Fine.

Seeing no further questions, then, I thank you for coming. The process we go through: the committee will reconvene shortly after Easter to review all the petitions we have heard so far, and then we'll be making the decision on what our recommendations will be and you'll be advised by Parliamentary Counsel as soon as that decision is made.

MS SMITH: Thank you very much, Mr. Chairman.

MR. CHAIRMAN: Thank you.

Committee members, we'll deal next with Bill Pr. 8, the Shaw Communications Inc. Act. Just to reiterate, Mr. Reynolds' comments

earlier suggested that any committee members who own shares or, in fact, have a direct associate who owns shares in Shaw Communications should excuse themselves from discussion on this.

Mr. Hlady.

MR. HLADY: Yes. I don't own shares. However, section 181 -- I didn't get that in the package here. I just got this this morning, Rob, but just looking at it, I go up to 180. I just wanted to review section 181, and I don't have that. Do you have it? This was a memo you sent out yesterday. It goes up to 180 in the package, but I don't have 181.

MR. CHAIRMAN: Well, in the material I sent out . . .

MR. HLADY: It just refers in your letter -- you've got 181.

MR. CHAIRMAN: Okay; 181. In the briefing note provided by Shaw, they ask that we go to the statute.

MR. HLADY: Do they?

MR. CHAIRMAN: Yes, because that's in here. That's why I didn't . . .

Anyone else? Okay.

Welcome, gentlemen. Mr. Reynolds will swear you in, and then we can get started.

[Mr. Shaw and Mr. Desrochers were sworn in]

8:58

MR. CHAIRMAN: We are hearing this morning the petition from Shaw Communications regarding the Shaw Communications Inc. Act.

Just a little bit of background before we get into it. The Private Bills Committee is a standing committee of the Legislature. It's an all-party committee. Both government and opposition members are on the committee, cross-sectioned from right across the entire province. I think just before we get started, I'll have the committee members introduce themselves.

A little bit about the process. Today we are here to hear your petition, hear your explanation of what you seek from the Legislature, and have an opportunity for members to question you, ask questions of clarification, so everyone understands exactly what it is you're asking for and what we're doing on this. Then the committee will get together in a couple of weeks' time to discuss all the Bills we will have dealt with so far, about eight of the proposed private Bills. We will be making a recommendation back to the Legislature and then your Bill will need to be passed through second and third reading here with the full Legislature.

With that, then, Mr. Wickman, would you start introductions?

MR. WICKMAN: Good morning. Percy Wickman, Edmonton-Rutherford.

MR. HLADY: Mark Hlady, Calgary-Mountain View.

MR. JACQUES: Good morning. Wayne Jacques, Grande Prairie-Wapiti.

MR. BENIUK: Andrew Beniuk, Edmonton-Norwood.

MR. VAN BINSBERGEN: Duco Van Binsbergen, West Yellowhead.

MR. HERARD: Denis Herard, Calgary-Egmont. Welcome.

MR. AMERY: Moe Amery, Calgary-East.

MRS. LAING: Bonnie Laing, Calgary-Bow.

MRS. FRITZ: Yvonne Fritz, Calgary-Cross.

MR. SMITH: Murray Smith, Calgary-Varsity.

MR. SEKULIC: Peter Sekulic, Edmonton-Manning. Good morning.

MR. CHAIRMAN: Thank you. I'm Rob Renner. I'm from Medicine Hat and chairman of the committee.

If you would like to take a few minutes, then, to give us a bit of a rundown on what the Bill proposes to do, what the ramifications to your company would be, ramifications to the public might be. If you wish to remain seated, that's fine; it's an informal process here. Then we'll turn the floor over to committee members for questions.

MR. DESROCHERS: Thank you, Mr. Chairman. Jim Shaw is the senior vice-president, operations. I'm secretary of the company and general counsel and have been for many, many years.

There was submitted to the committee, I believe, a briefing note which outlines the problem and outlines the solution that is proposed to the committee and to the House. It is a rather succinct document. It may be helpful to the committee, if the committee wishes, that I go over it paragraph by paragraph. I think because of the technical nature of this subject, it might be helpful. If I'm taking too much time, Mr. Chairman, just stop me.

MR. CHAIRMAN: We have until 10:30, so we just want to make sure we leave sufficient time for questions.

MR. DESROCHERS: The company, as you may know, is a very important company in Alberta. It was incorporated here in 1960 and has been in business in an expanding fashion ever since. It is Canada's third largest cable operator. It is regulated under the Broadcasting Act of Canada for licensing purposes. That means that under the Broadcasting Act of Canada it cannot have any more than 20 percent of its voting stock or any more than 20 percent of its paid-up capital held by noneligible persons; that is, by non-Canadians. Paid-up capital is a term of art in company or corporation law which means what the par value of a share may be at the time it is issued. It is a little artificial, very much artificial, as a matter of fact, and that's why the law has been changed, but the Broadcasting Act and the regulations thereunder deal with paid-up capital. That has to be remembered to understand this whole problem.

Prior to the Business Corporations Act of Alberta being enacted, we were under the Companies Act which allowed par value shares, and these par value shares allowed us to comply with the Broadcasting Act in a very convenient manner. When the Business Corporations Act was introduced, par value shares essentially were done away with, with a few exceptions that I will come to. That placed Shaw in a very, very awkward position. It really was, in a way, confiscatory; it was losing rights that it had under the old law. We looked into the matter at the time with help from the late Mr. George Field, who with Mr. Glen Acorn had been an author of the new Business Corporations Act. With their help, we came to the solution which was arrived at: having the corporation continued under the new corporations Act but keeping its rights under the old Companies Act for par value shares in the rather convoluted way the

Act provided for, and I'll come back to that. We thought that resolved all the problems, and at the time we all felt Shaw would have all the rights of an Alberta corporation, and that prevailed. I might point out that the registrar and we have been trying to find out if there is any other company in Alberta with the same setup as we have, and we have not found another one. We genuinely believe that Shaw is the only corporation with this particular setup that was permitted to continue with par value shares.

Now, we did this in 1984. In 1987 the company adopted a special resolution after informing all its shareholders of its intention to do so, and it changed its capitalization from 15 million to an unlimited number of shares. That was the authorized capital. That resolution was adopted by the shareholders. There was not one dissenting vote.

Later in 1987 there was another special resolution passed by all the shareholders again, this time splitting the stock 3 to 1. I then go on, Mr. Chairman and members of the committee, to describe what has happened to the stock since 1987. I don't think that's too important at this time, but I merely point out that at the top of page 3 of the briefing memo there are now some 21 million class B shares outstanding.

It was only in 1992 that we really came across any concern about this situation. In August 1992 the company issued shares on a bought-deal basis to some underwriting groups, and it was a substantial issue, some \$66 million. At the conclusion of the process, counsel for the underwriters said: we're concerned about section 181(12). I'll come back to that later on. We said: oh, but we don't read it the way you do. We read that section 181(12) says a non-Alberta company that is continued as an extraprovincial corporation in Alberta has these restrictions. That's for a foreign company registering in Alberta as an extraprovincial company. We said: we rely on the fact that under section 261(3), where that section is incorporated for an Alberta company, it says "with the necessary changes." When we discussed this matter at the very outset, we all read "the necessary changes" as meaning that an Alberta corporation, as opposed to an extraprovincial corporation, would have all the rights of an Alberta corporation, so that we wouldn't be treated any differently from another Alberta corporation. They said: well, we hear you; we will say that the issue is valid. They gave an opinion to their purchasing underwriters, which is of comfort to the committee, to the extent of some \$66 million. We said to them: we will seek to get a private Bill adopted to dispel this concern in view of the fact that it really doesn't hurt anybody. It was then decided that we would seek remedial action.

9:08

This matter has been discussed over the past several months with several officials. We discussed this with the hon. Dennis Anderson, with the Hon. Steven West. We have had a number of meetings with members of all the affected areas: the Attorney General, the Department of Justice, the department of registry.

I see there has been handed to you by the Parliamentary Counsel a confirmation from Mr. Hudson of the registry office to the effect that this Bill in its present form represents some compromise: "As administrators of the Business Corporations Act, we do not object to the Shaw Communications Inc. Act." So they have no problem with the form of the Act.

I then go on to explain at the bottom of page 3 and at the top of page 4 of the briefing that we're really not hurting anybody by doing this in the sense that the 2 million shares that were issued in May 1986 at \$17.30 -- which were then split, so the split would make them \$5.77 -- are now trading, I say in the memo, at \$27, but now it's \$28 or \$29. The 4 million shares that were issued in 1992 at \$17.30 are trading now at \$28, \$29, which is \$11 more over the last two years or year and a half. All shareholders throughout all these

proceedings have been fully apprised of all that was going on. The corporation is required by the TSE, the Alberta Stock Exchange, the commissions to give full disclosures all the time, and it has.

No one is being hurt by this, and we are asking the committee to remove the application of subsection (12) to this company in order to give it the meaning of "necessary changes" that we have relied on over the years. We are saying that this is of no consequence to anybody else, because as far as is known, this is the only corporation involved with this kind of problem, and it reintroduces with certainty the rights that we had prior to the adoption of the Business Corporations Act. We would very much like to have that flexibility, Mr. Chairman and members of the committee, and we therefore seek your indulgence in adopting the Bill.

MR. CHAIRMAN: Thank you very much.

Mr. Reynolds wants to make one clarification.

MR. REYNOLDS: Just for clarification, in your paragraph 3.5 on page 4, I believe you refer to paragraph 3 and paragraph 4 of the private Bill. I think that was based on a previous draft. We added a definition section to it. I imagine it should read paragraph 4 and then paragraph 5, shouldn't it?

MR. DESROCHERS: That's right. I'm sorry.

MR. REYNOLDS: Thank you.

MR. DESROCHERS: Yes, this was written quite some time ago.

MR. CHAIRMAN: Thank you.

Mr. Wickman.

MR. WICKMAN: Yeah. Just a question on the aspect of raising additional capital for Shaw. Does this proposed private member's Bill have any relationship to recent news articles about the injection of additional dollars and acquisition of additional assets for Shaw, or is that a totally separate kettle of fish?

MR. DESROCHERS: Mr. Chairman, Mr. Wickman, the issue is in a way a different kettle of fish, but it's all related. We are proposing to issue shares to this group of underwriters. The shares have over them the same cloud, the same concern that existed in 1992 when the 4 million shares were issued. We don't think the underwriting group is going to be prevented from proceeding, but it would be of great comfort to everybody and would be nice if we could have this dispelled at the earliest opportunity.

MR. CHAIRMAN: Does that answer your question?

MR. WICKMAN: Yeah, but everything is proceeding as . . .

MR. DESROCHERS: Yes.

MR. WICKMAN: Okay. Thanks.

MR. HERARD: I guess my question is along similar lines. This goes back to your briefing note -- this is on page 3 under your reasons -- and it says the Bill would remove "a cloud of uncertainty presently affecting Shaw." In your background briefing and as you spoke today, you referred specifically to the issue of 1987 and the expression of opinion by the underwriter's counsel at that time.

MR. DESROCHERS: In 1992, sir.

MR. HERARD: I'm sorry; 1992. Is that in essence the compelling reason why you're seeking this particular amendment, as it relates to future transactions?

MR. DESROCHERS: As it relates to all transactions, yes. We're going to face this uncertainty if we change underwriting groups or methods of issuing capital. We feel that once this has been raised, it will be raised again. We would like to dispel the problem and be able to give everybody the absolute comfort we feel we should have under the corporations Act as an Alberta corporation.

MR. SHAW: If I could add a little bit there. I guess if we take from '92 till the issue we're presently working on now -- you know, Shaw is raising somewhere in the neighbourhood of a quarter of a billion dollars to a little higher, and it plans to expand the Alberta corporation to a larger degree. We have this cloud. It enables us to maybe work with people that are familiar with this situation, but if we try to expand our capital any further, we're going to be limited quite severely. As everyone will say, we want this issue cleared up before anything can happen to the existing share structure Shaw operates under. As you know, in the communications field things are moving so quickly that companies want to be in a position to act on opportunities and work ahead to their advantage.

MR. HERARD: Thank you.

MR. DESROCHERS: Mr. Chairman, may I add something that I didn't cover?

MR. CHAIRMAN: Sure.

MR. DESROCHERS: The proposed Bill also protects the shareholders in the sense that toward the end of the Bill there are some sections that say that for certain portions of the Act all money paid for shares will be considered for the purposes of the corporations Act so that the corporation would not be in a position to play footsie with the corporations Act.

MR. SHAW: It would protect the shareholders and protect creditors.

MR. CHAIRMAN: Mr. Hlady.

MR. HLADY: I'm just checking. You have the class B shares. There were 15 million; there are 21 million now. Is that where we're at?

MR. DESROCHERS: Yes. And we will be issuing 9 million more . . .

MR. SHAW: We're going to move to approximately 60 million. They're going to split right away again; that's been announced.

MR. HLADY: So that at 42 million, you're going to bring another 20 million on to the market.

MR. SHAW: Yes.

MR. HLADY: So you're going to bring them out at around \$15 probably as you go.

MR. SHAW: That's correct.

MR. HLADY: Okay. Although the par value of 10 cents . . .

MR. DESROCHERS: It went down to 3.3 and under the proposed split will go down to 1.23.

MR. HLADY: Okay. It came down. That's pretty nominal. That's good. Thank you.

MR. CHAIRMAN: Mr. Beniuk.

MR. BENIUK: Thank you. In the letter referred to from David Hudson, there's a comment that negotiations were carried on for one and a half years, which does indicate some tough negotiating. It also refers to some changes made "to satisfy most of our concerns." My questions are basically these. What were the issues? What did you accept, what did you partially accept, and what did you reject?

9:18

MR. DESROCHERS: Mr. Chairman and Mr. Beniuk, the major difficulty was that when we started the negotiations, it was the expectation that we would have this amendment or this correction done under the Miscellaneous Statutes Amendment Act. We had many, many meetings with the civil servants of the registry and the Ministry of Justice on that issue. That was where most of the discussion took place. The original had different wording, but it was roughly achieving the same purpose. We accepted this wording.

The other major thing added because of concerns expressed, and that we thought we had covered sufficiently but had not, was what I just referred to in respect of protecting shareholders, creditors: making it abundantly clear that this amendment cannot be used by the corporation as a sword against shareholders or creditors. So the corporation is bound and the shareholders and creditors are protected by the Business Corporations Act in respect of all money paid for shares.

Does that answer your question?

MR. BENIUK: So what was not accepted? Some changes were not accepted. It says most changes were accepted; "Shaw has made changes to the Bill to satisfy most of our concerns." Obviously not all.

MR. DESROCHERS: I must confess, Mr. Beniuk, that I think we answered virtually all their concerns. It may be the wording, but the wording was done with them. As recently as three or four weeks ago we were in touch with them, and we have not had any further communication.

MR. CHAIRMAN: Thank you.
Mr. Herard.

MR. HERARD: Thank you, Mr. Chairman. Are there any income tax ramifications to doing this at all?

MR. DESROCHERS: Mr. Chairman and Mr. Herard, there are none that we know of.

MR. HERARD: Okay. So there are no shareholders that would have an undue advantage or disadvantage?

MR. DESROCHERS: No.

MR. HERARD: Thank you.

MR. CHAIRMAN: I have one question myself. I find it interesting that in your briefing notes you talk about the 20 percent because of the Broadcasting Act, and by having the par value of 10 cents it was

very easy for you to maintain that 20 percent. With this Bill it obviously won't be as easy. I'm wondering if there could be some potential downgrading of value of shares as a result of noneligible shareholders. By incorporating this Bill, you'll have to watch that a little bit more closely. Would it limit the scope or limit the number of potential buyers for your shares?

MR. DESROCHERS: Mr. Chairman, I may not have been clear, but I think the proposed Bill allows us to continue to monitor and to control as we have been doing now without having to change our controls. All the Treasury will have to reflect now is that instead of it being originally 10 cents and then 3 and a third, it's now 1 and two-thirds. But that's very mechanical and very easy, and they can track the number of shares. We just don't want to have to change to no par value shares and lose this great advantage that gives great flexibility to the corporation in the event that it wishes to expand further and tap other sources of funds, particularly in the United States, for example, if that became advantageous.

MR. CHAIRMAN: Okay. I was under the impression . . .

MR. DESROCHERS: No. I'm sorry, sir, if I gave that impression.

MR. CHAIRMAN: . . . that the result was going to be the no par value.

MR. DESROCHERS: It's going to remain par value. The shares remain par value and allow us to keep the control and the measure.

MR. CHAIRMAN: Okay. Thank you.

Any further questions from the committee? Mr. Reynolds.

MR. REYNOLDS: Yes, I have a few questions. Am I correct, just from the chairman's question, that you are going to maintain the par value shares?

MR. DESROCHERS: Yes.

MR. REYNOLDS: The reason you have to proceed this way is because you can't get an extension under what I might call the ABCA at this stage?

MR. DESROCHERS: We keep the par value shares. We have the par value shares now. We have the par value shares by virtue of the continuance that was granted in 1984. The continuance was at a time when the level was at 15 million shares; right? Subsection (12), what I call the obstacle section, says you can't increase the number of shares or change their par value. Our construction of the other section says that with the necessary changes, that should not apply to an Alberta corporation. This Bill permits us to continue having par value shares, which is most important to the corporation -- and I'll give you an example of another company afterwards -- gives us the opportunity of keeping these shares, and lifts this cloud of uncertainty as to whether or not what has been done in the past, which was sanctioned by the registrar by three certificates, is okay. That's really what we're doing.

To get back to the importance of it, one other major corporation in this country facing a similar problem moved province to go to Vancouver, where they still have par value shares, in order to retain this flexibility that is so important to a corporation controlled by the Broadcasting Act.

MR. REYNOLDS: With respect, then, to your reference to 181(12), if it is never applied to the corporation, would that in any way, in your view, affect the actions of the registrar today?

MR. DESROCHERS: What this Bill does is in effect cover what was done. The Bill says section 181(12) of the Business Corporations Act does not apply and has never applied to the corporation.

The registrar did issue three certificates that could be challenged under what I call the interpretation I don't agree with, namely that we are prevented from doing what we did. But the registrar issued three certificates of amendment confirming that what we had done was done: one to change the maximum from 15 million to an unlimited number, then the split, and then later on he gave us a certificate relating to restated articles of amendment.

MR. REYNOLDS: But obviously you're not going for an exclusion from 261(3), which is what allows the procedure to have taken place. I guess my question is: you don't view being exempted from 181(12) in any way as limiting or having any impact on what the registrar has done?

MR. DESROCHERS: No. It just confirms what he has done as being okay.

MR. REYNOLDS: I have another series of questions with respect to stated capital and paid up capital. Of course the logic of the ABCA, the Business Corporations Act, was to get away from the vagaries of par value shares and the impact it could have. Par value shares were done away with because of perhaps the misleading nature of the value. The ABCA adopted a stated capital account in section 26 so, as you indicated, creditors and subscribers would not be prejudiced or misled. With respect to your par value shares, how has that come into play with a stated capital account?

MR. DESROCHERS: Mr. Chairman and Mr. Reynolds, what we're doing to answer that question is contained in paragraph 5 of the Bill:

Notwithstanding section 4, for the purposes of sections 32(2), 36(3), 40, 42(1) and 179(2)(a) of the Business Corporations Act, the stated capital of the Par Value Shares is deemed to include the amount that would have been included in it if the Registrar of Corporations had not permitted the Corporation to continue.

As I said earlier, this section, which is the one about which we had some wording disagreements -- to come back to Mr. Beniuk's question -- is where we had legalese issues, but we are all satisfied this section protects the shareholders and the creditors against the vagaries you refer to in respect of par value shares.

9:28

MR. REYNOLDS: With respect, section 5 refers to deeming an inclusion in stated capital. My question is: what is the stated capital account since 1982?

MR. DESROCHERS: The stated capital of the class B par value shares once this Act is passed, if it is passed, will be to put all of the money -- there is no stated capital in respect of class B shares, of par value shares.

MR. REYNOLDS: There is none?

MR. DESROCHERS: No. It's paid-up capital, but for the purposes of protecting everybody, all the money that is paid is deemed stated capital. So this Bill permits the corporation to have the protection it seeks to have in respect of the advantages it had before the Act, and it also protects all parties against any abuse of that by limiting this limiting section.

MR. REYNOLDS: Well, my concern was that I don't know how you've operated to date. Shaw Communications is a very important player, a very respectable company. I was just wondering with respect to the stated capital, because the whole point, as I understood it, of bringing that into the ABCA was so, as I said, creditors wouldn't be misled; the solvency test could be met. If I may, Mr. Chairman, in the report you cited from the late Mr. Field and Mr. Acorn -- I believe this is it -- they have a commentary with respect to section 26 of the ABCA which deals with stated capital accounts. It says:

Under s. 26(6) a company or corporation that had issued par value shares before its continuation under the new Act, and had issued those shares at a price in excess of the par value, might include the excess in its stated capital and thus convert what was formerly a designated surplus to part of its stated capital. It will be noted that in applying the solvency test under ss. 32(2), 36, 40, 42 and 179, such a designated surplus, if not included as part of the stated capital, must nevertheless be treated as though it had been in order to meet the solvency test. My question is . . .

MR. DESROCHERS: That's exactly what we're doing here.

MR. REYNOLDS: My question is: what had happened to the surplus from the par value shares? Obviously the par value shares indicated that they were worth 10 cents or 3 and a third cents or whatever. Obviously there's a huge difference between that and what they were sold at.

MR. DESROCHERS: Yes.

MR. REYNOLDS: Under the ABCA the amount you receive in consideration goes into the stated capital account. Now, of course you can make reductions to the stated capital account, but there's a heck of a lot of difference between 3 cents and 20 bucks.

MR. DESROCHERS: Yes, you're quite right. By general accounting principles, since 1984 the difference between the par value of the share and the price which was paid for it was, for accounting reasons -- for accounting reasons -- treated as contributed surplus. What this Act does is protect the shareholders and the creditors by, just as was pointed out by Messrs. Field and Acorn in that memorandum -- that's exactly what we're trying to follow -- saying that what for general accounting practices was contributed surplus, for the purposes of these sections becomes stated capital or is treated as stated capital. So the corporation cannot adversely affect the rights of shareholders and creditors. We're following that. Does that satisfy you, Mr. Reynolds?

MR. REYNOLDS: It's up to the committee, I guess.

MR. HLADY: I wonder if you could state to the committee why you choose to continue with the par value shares rather than going to a nonpar value and letting the market -- which the market is, in essence, dictating anyway. Why do you want to maintain your par value? What's the . . .

MR. DESROCHERS: Because of the fact that it gives us a great advantage in having flexibility. If we issue a no par value share at \$29, and we issue this to many people, many of them non-Canadians, we come closer and closer to that danger point of having more than 20 percent of our paid-up capital -- because it will be treated as paid-up capital -- in American hands. By having par value shares, we keep the paid-up capital portion, which is the word they

use in the Broadcasting Act. We're caught between two jurisdictions here. By using that wording, we protect the company and give it a great deal of flexibility because only a small portion of what is paid for the share goes into the paid-up capital; do you see?

Does that answer your question?

MR. HLADY: Okay.

Mr. Herard's one question re the tax: just to clarify that re when you're purchasing the shares and you're looking at \$15 per share. I don't know if under the tax laws re a par value share you can claim the value on that share as the par value, or are you forced to go under the actual sale price? I don't know. I haven't had a chance to deal with par value shares.

MR. DESROCHERS: Mr. Chairman, your cost base is what you pay for it.

MR. HLADY: And that's how you declare it. I just wanted to check on that.

MR. BENIUK: Just one point of clarification on what Mr. Hlady was asking and your response. If there was no par value, are you over the 20 percent?

MR. DESROCHERS: At the moment I can't tell you that, Mr. Beniuk. I don't know.

MR. SHAW: But if we do go to that level, it puts the corporation in a very awkward position of trying to recall shares that are in U.S. hands and denying transfers of shares between parties. It puts you in a really awkward controlling situation that we're not in right now if we get close to that 20 percent level.

MR. CHAIRMAN: Committee members, any other questions?

I just want to check on something. I think it's important that I point this out to committee members because we've gotten ourselves into a line of questioning, and I'll take credit for starting it. I don't want committee members to be misled by the questioning we had. These class B shares -- and please correct me if I'm wrong -- are nonvoting class B shares. By having these class B shares in the hands of ineligible shareholders does not affect the Canadian identity of the corporation. The voting shares are all still held by eligible Canadian shareholders. Class B shares are nonvoting shares.

MR. DESROCHERS: But there are two facets to the Broadcasting Act requirement that there cannot be any more than 20 percent of the paid-up capital controlled . . .

MR. SHAW: So I imagine they're covered in that one.

MR. DESROCHERS: Yes.

MR. CHAIRMAN: Any further questions at all?

MR. DESROCHERS: Mr. Chairman, in closing, if I may. We have gone around this with experts in the Ministry of Justice and the Attorney General and registry. We've gone around this several, several times. I affirm -- at least in my view and I think in the view of these people who have not objected to the Act -- that nobody is being hurt by it. It will be a great, great convenience to the company. As has been pointed out, the company is an important Alberta corporation, one of the few doing very well. We would very much appreciate a favourable consideration from your committee and from the House.

9:38

MR. CHAIRMAN: Thank you very much, gentlemen. I see no further questions.

As I indicated earlier, we will be meeting in early April to make our decision, and Parliamentary Counsel will advise you of that decision as soon as it has been made. I will then be working with the Government House Leader as well as the Opposition House Leader to get my slate of private Bills on the Order Paper, and hopefully they'll be dealt with fairly soon in the Legislature. Unfortunately, I don't have a whole lot of control when that happens, but certainly we anticipate that all private Bills would be dealt with prior to this session of the Legislature adjourning sometime in late spring or early summer.

MR. DESROCHERS: Thank you.

MR. CHAIRMAN: All right. There is no further business before the committee this morning. If no one has any questions or comments, I would entertain a motion to adjourn. Mrs. Laing. All in favour? Opposed? Carried.

[The committee adjourned at 9:39 a.m.]