

Book Review: Corporate Structure, Finance and Operations, by Lazar Sarna (ed)

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Book Review

CORPORATE STRUCTURE, FINANCE AND OPERATIONS. Edited by LAZAR SARNA. Toronto: Carswell, 1980. Pp. viii + 496.

Company law is one of the neglected fields of Canadian academic literature. Despite its importance in law schools and law offices there is no satisfactory modern text on Canadian company law. Wegenast's *The Law of Canadian Companies*,¹ published in 1931, was a valuable work in its time but is long out of date. *Fraser's Handbook on Canadian Company Law*² (1975) is more up to date, but since it is an uncritical exposition of the various statutes in force, with no mention of any caselaw, it, too, is of limited value. *Canadian Business Corporations*³ by Iacobucci, Pilkington and Pritchard is of more recent vintage (1977) and contains an elaborate comparative evaluation of the various statutes in force in Canada without, however, the detailed analysis of the relevant caselaw that one normally expects to find in a textbook. In short, the focus of the book reveals its origins: it was intended as a research study commissioned by Alberta for the purpose of revising its own legislation rather than as a textbook on company law. There is also the valuable two volume series of *Studies in Canadian Company Law*,⁴ edited by Jacob Ziegel, published in 1967 and 1973 respectively, and various articles and comments in law reviews. But given the importance of company law and the major overhaul of the federal legislation and that of several provinces since 1971, there are many gaps in the scholarly literature. The appearance of a new collection of essays should therefore be a noteworthy event but to this reviewer, at least, *Corporate Structure, Finance and Operations* is a rather disappointing book.

In the first place, the essays are not all new. Two of them—and two of the major contributions in terms of their length and comprehensiveness—were published in virtually identical form in recent issues of the *Ottawa Law Review*. These are, "Directors' Negligent Misstatement Liability in the New Scheme of Securities Regulation in Ontario"⁵ by Ralph Simmonds and "The 'Going Private' Transaction—Some Income Tax and Corporate Aspects of a Public Company Becoming Private"⁶ by Edwin Kroft.⁷ Two other studies are

¹ Wegenast, *The Law of Canadian Companies* (Toronto: Burroughs, 1931).

² Fraser, *Fraser's Handbook on Canadian Company Law* (6th ed. Toronto: Carswell, 1975).

³ Iacobucci, Pilkington and Pritchard, *Canadian Business Corporations: An Analysis of Recent Legal Developments* (Agincourt, Ont.: Canada Law Book, 1977).

⁴ Ziegel, ed., *Studies in Canadian Company Law* 2 Vols. (Toronto: Butterworths, 1967 and 1973).

⁵ In Sarna, ed., *Corporate Structure, Finance and Operations* (Toronto: Carswell, 1980) at 291-346.

⁶ *Id.* at 211-289.

⁷ See Simmonds, *Directors' Negligent Mis-Statement Liability in a Scheme of Securities Regulation* (1979), 11 *Ottawa L. Rev.* 633; Kroft, *The "Going Private" Transaction – Some Income Tax and Corporate Aspects of a Public Company Becoming Private* (1980), 12 *Ottawa L. Rev.* 49.

reworked excerpts from longer articles on share transfers⁸ and appraisal rights⁹ published in recent issues of the *Revue Générale du Droit*.¹⁰ Another essay on corporate share repurchase plans is an updated and extended version of an article first published in the *Canadian Tax Journal*.¹¹

The fact that five of the thirteen studies in this volume have appeared in one form or other elsewhere is not, of itself, any reflection upon their quality. Each has its place in the existing academic literature on point¹² but, in this reviewer's opinion, none is so outstanding as to warrant republication (even with revisions) in a new volume of essays. When they comprise over half the printed pages of this book, one is bound to wonder whether at \$67 one is getting value for money.

Second, the essays that make up the remainder of this book vary greatly in quality and depth. Some, such as "Statutory Elimination of Minority Shareholders in Canada"¹³ by Steven Halperin, are fairly detailed analytical studies. Mr. Halperin's essay is a lucid analysis of the operation of the compulsory acquisition provisions in section 199 of the *Canada Business Corporations Act*¹⁴ and its provincial equivalents which will be valuable to students and practitioners. In a similar vein, but less successful, is the essay entitled "Statutory Protection Against Oppression"¹⁵ by Carl Ravinsky, which examines the role and effect of section 234 of the *Canada Business Corporations Act*.¹⁶ But the analysis is rather shallow and the selection of cases somewhat thin and one is left with the impression that the author has not really come to grips with the ramifications of section 234. Unfortunately, both of these, and a number of other essays, are also marred by weaknesses attributable more to the timing of their publication than to the efforts of the authors.

In the first place, the law of Ontario, which figures prominently in this book, will soon be changed and be much improved when the new *Business Corporations Act*,¹⁷ which brings the Ontario provisions into line with those

⁸ Théberge, "Le droit de dissidence en vertu de l'article 184 de la Loi sur les sociétés commerciales canadiennes: soupe ou pis-aller?" in Sarna, *supra* note 5, at 85-104.

⁹ Pépin, "Certificats de valeurs mobilières, corporatives, registres et transferts," in Sarna, *id.* at 133-210.

¹⁰ See Théberge, *L'exercice du droit de dissidence en vertu de l'article 184 de la nouvelle loi sur les corporations commerciales canadiennes* (1977), 8 R.G.D. 35; Pépin, *Le transfert des valeurs mobilières des corporations commerciales* (1978), 9 R.G.D. 243.

¹¹ Kellough, "Corporate Share Repurchase Plans: An Alternative to Shareholders Buy-Sell Arrangements," in Sarna, *supra* note 5, at 365-405. See Kellough and Zien, *Corporate Share Repurchase Plans: An Alternative to Shareholders Buy-Sell Arrangements* (1977), 25 Can. Tax J. 475.

¹² Which in some areas, such as "going private" transactions, is already quite abundant: see Alain, *Le droit des valeurs mobilières et le retour des compagnies publiques au statut de compagnie privée* (1979), 20 C. de D. 539; Glover and Schwartz, *Going Private in Canada* (1978-79), 3 Can. Bus. L.J. 3.

¹³ In Sarna, *supra* note 5, at 1-49.

¹⁴ S.C. 1974-75-76, c. 33 as am. by S.C. 1978-79, c. 9, ss. 1(F), 63.

¹⁵ In Sarna, *supra* note 5, at 51-84.

¹⁶ S.C. 1974-75-76, c. 33, as am. by S.C. 1978-79, c. 9, ss. 1(F), 74.

¹⁷ Bill 229, 1980 (31st Leg. Ont., 4th sess.) received First Reading on Dec. 12, 1980.

of the *Canada Business Corporations Act*, is passed. A comprehensive Bill was introduced during the last session of the Legislature, but did not proceed beyond First Reading before an election was called and the Legislature was dissolved. The same Bill (now Bill 6) has been reintroduced in the current Session.¹⁸ The authors do refer in footnotes to the Draft Bill circulated for comment by the Ontario Government, but it is more than likely that its numbering, if not its content, will change in the course of its expected passage through the Ontario Legislature this session. Ontario is not the only province to have new legislation in hand. Alberta,¹⁹ New Brunswick²⁰ and Quebec²¹ all have comprehensive reform projects in various stages of completion with the result that some of the comparative aspects of the essays in this volume will soon be out of date, if they are not so already. Another flaw related to the inauspicious timing of this volume is that the *Canada Corporations Act*²² is occasionally treated as if it still applies to business corporations.²³ The five-year transition period ended on December 15, 1980, and all business corporations with federal charters are now governed by the new *Act*. For the benefit of the reader the status and narrow scope left to the old *Act* should have been made clearer.

Other essays in this volume are essentially descriptive in nature. These include "Directors' Dissent"²⁴ by the editor, Lazar Sarna, in which the author describes various ways that a director can effectively dissent and dissociate himself for legal purposes from the action of the Board. The essay covers the provisions in force in various jurisdictions, an exercise which has already been undertaken, albeit more summarily, by Iacobucci, Pilkington and Pritchard. Here too, statutory changes have overtaken the author in Quebec under Bill 5, which received First Reading after this book had gone to press,²⁵ and which is therefore not mentioned. Other essays falling within this group are "Description du capital-actions de la société commerciale canadienne"²⁶ by Robert

¹⁸ Bill 6, 1981 (32nd Leg. Ont., 1st sess.).

¹⁹ See Institute of Law Research and Reform, *Proposed Alberta Business Corporations Act* (Edmonton: Univ. of Alta., 1980) now *The Business Corporations Act*, R.S.A. 1981, c. B-15, in force 1 February 1982.

²⁰ Law Reform Div., *Report on Company Law* (Fredericton: N.B. Dept. of Justice, 1975). See now *Business Corporations Act*, R.S.N.B. 1981, c. B-9.1, Parts I, XVI, XVII, in force 1 October 1981, Parts II to XV, in force 1 January 1982.

²¹ Part IA of the Quebec *Companies Act*, R.S.Q. 1964, c. 271 as am. by S.Q. 1979, c. 31 is the first stage of a project to reform the *Companies Act*. P.E.I. and Newfoundland have also announced projects to revamp their corporation laws.

²² R.S.C. 1970, c. C-33.

²³ E.g., Halperin, *supra* note 13, at 12-13, 45-47, but see p. 4n. 6, and Sarna, "Directors' Dissent," in Sarna, *supra* note 5, at 350-51.

²⁴ In Sarna, *supra* note 5, at 347-63.

²⁵ See Bill 5, *An Act to Amend the Companies Act and the Companies and Partnership Declaration Act*, art. 14 affecting companies incorporated under Part IA of the *Companies Act*, R.S.Q. 1977, c. C-38, as am. and, in particular, arts. 123.85 and 123.86. Bill 5 received First Reading on Nov. 22, 1980, Royal Assent on Dec. 18, 1980 and was proclaimed in force (with the exception of arts. 1 and 2) on Feb. 16, 1981 and is now S.Q. 1980, c. 28.

²⁶ In Sarna, *supra* note 5, at 105-32.

Demers, which examines the provisions in the *Canada Business Corporations Act* dealing with the capital structure of a company, and "Dissolution Under the Canada Business Corporations Act"²⁷ by William Ross which, true to its title, deals with Part XVIII of the *Canada Business Corporations Act*.

A third group of essays would appear to be written primarily for practitioners, since they are brief commentaries on particular areas of the law and are a pragmatic guide through some of the tax and insurance problems that may be encountered in certain corporate transactions. Included in this group are "The Use of Nominee Corporations in Business Transactions"²⁸ by Hartley Nathan and Clifford Goldfarb, "Non-Tax Aspects of Buy-Sell Agreements"²⁹ by Harry Campbell, and "Corporate Share Repurchase Plans: An Alternative to Shareholders Buy-Sell Arrangements" by Howard Kellough.³⁰

One of the usual features distinguishing a volume of essays from a bound collection of disparate law review articles is that the contributions are linked to a common theme and integrated by cross-referencing. This, surely, is the role of the editor. But beneath the general title of this volume, *Corporate Structure, Finance and Operations*, one finds no such theme and if one sticks closely to the general title at least one of the studies, "The Law of Anti-Dumping in Canada"³¹ by Michael Flavell, a short essay that adds little to a study paper published by the Law Reform Commission in 1979,³² seems out of place. There is little cross-referencing among essays with related themes, even where the same caselaw is discussed in different contexts. Indeed, one would be hard-pressed to discover if and where a particular case has been cited, for there is in this volume no table of cases and no index of subjects! Such lamentable omissions reinforce the impression that it would have been just as well if the (new) essays collected in this volume had instead been published separately as articles in various law reviews. The volume is also defective in other technical respects. Misprints are numerous, both in English and in French, and one study has even been given two titles.³³ Cases are cited sometimes using one series of reports and sometimes using others and some of the studies would have benefited from stylistic editing.

In sum, this volume is both disappointing and overpriced.

By Saul Schwartz*

²⁷ *Id.* at 481-96.

²⁸ *Id.* at 465-79.

²⁹ *Id.* at 407-30.

³⁰ *Supra* note 11.

³¹ In Sarna, *supra* note 5, at 431-64.

³² Slayton, *The Anti-dumping Tribunal: A study prepared for the Law Reform Commission* (December, 1978) (Ottawa: Min. of Supply and Services, 1979).

³³ In the table of contents, the study by Demers has the same title as the law review article on which it is based: *Le transfert des valeurs mobilières des corporations commerciales*, however, in the text, it is called *Certificats de valeurs mobilières, corporatives, registres et transferts*.

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