

## BOOK REVIEWS

LAW OF CANADIAN CO-OPERATIVES. By Daniel Ish. Carswell, 1981. Pp. xxvi, 294. (\$24.95)

Dean Ish's *Law of Canadian Co-operatives* is a valuable co-operative and general corporate law text and should supplement traditional reference material for practitioners and law students. It provides an overview of the main features of co-operative law and has many footnotes referring to useful cases, statutes, textbooks and reports.

The legal principles which apply to Canadian co-operatives are analyzed by comparing the co-operative statutes of Saskatchewan, Manitoba, Ontario and Canada. Special attention is given to incorporation, the doctrine of *ultra vires*, financing, distribution of control between members and directors, duties and liabilities of directors and officers, members' rights, taxation, liquidation and dissolution.

One of the strengths of the book is that the discussion refers not only to the legislation itself, but also to situations when the legislation is silent in certain areas. In interpreting legislation, there is often a tendency to overlook the large body of applicable common law, usually because of a limited knowledge of the common law in this area. Inclusion of the relevant common law thus increases the reader's understanding of co-operative legislation.

The introduction identifies the role of investment capital, distribution of profits and voting rights as the main distinctions between business corporations and co-operatives. Nine original co-operative principles are discussed,<sup>1</sup> as well as the restatements of these principles made by the International Co-operative Alliance in 1937 and 1966.<sup>2</sup> These principles are discussed<sup>3</sup> under six headings which include the voluntary and democratic nature of co-operatives and how they should provide for the economic and democratic education of their members and of the general public. Marketing, purchasing, financial service and insurance activities are identified as the areas in which most co-operatives are engaged. The main discussion focuses on consumer, production and marketing co-operatives, and there is little discussion of the peculiar problems created by legislation for worker or farm co-operatives. The introduction concludes with an interesting historical review of federal and provincial legislation, including their recent reform.

The first new co-operative legislation, adopted in 1970, was the Canada Cooperative Associations Act.<sup>4</sup> The author is critical of the federal Act and notes that it did little to revise the law. Rather, it

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<sup>1</sup> P. 5.

<sup>2</sup> P. 6.

<sup>3</sup> *Id.*

<sup>4</sup> S.C. 1970-71-72, c. 6.

embodied outmoded principles, even though prior studies had been produced which led to revisions of ordinary business corporation laws.

Several jurisdictions have recently revised, or are in the process of revising, their co-operative statutes, recognizing some of the principles of modern business corporation law. For example, a co-operative corporation can traditionally exercise only the powers given to it in its constitution; now some statutes have provided that a co-operative has the power of a natural person, subject to restrictions set out in the constating documents. Of the four statutes compared, only the Manitoba Act<sup>5</sup> provides that a co-operative has the capacity of a natural person, thereby essentially abolishing the doctrine of *ultra vires*. Chapter three on *ultra vires*, constructive notice and the indoor management rule expands the discussion of this new concept.

Many statutory and common law principles of general corporate law apply to co-operatives. For example, in discussing the standard of care and skill expected of directors, it is noted that since the Saskatchewan<sup>6</sup> and Canada<sup>7</sup> Co-operative Acts contain no specific provisions, the common law governs. However, the Manitoba<sup>8</sup> and Ontario<sup>9</sup> Co-operative Acts contain provisions which are the same as those in the business corporation statutes of Ontario,<sup>10</sup> Manitoba<sup>11</sup> and Canada.<sup>12</sup> These require directors and officers to exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. This point is dealt with in chapter five on management which is the most comprehensive chapter in the book. There is a valuable comparative discussion at page 104 under the subheading "Duties of Directors and Officers". This discussion thoroughly reviews statutory provisions and the common law regarding duties of care and skill and fiduciary duties. The duty to act in the best interest of the co-operative, the proper purposes doctrine, the duty not to fetter discretion, conflict of duty and interest, loyalty and good faith, directors' contracts and insider trading are also dealt with in detail. This chapter is recommended reading not only for a study of co-operative law, but also for any study of this area of general corporate law.

Chapter six on membership, including members' rights on withdrawal, is rather appropriate at this time of severe recession. Under present economic conditions, certain co-operatives are experiencing financial difficulties in repaying the capital of members wishing to withdraw from the co-operative on retirement. Most of the co-operative acts in Canada will have to be revised in the light of the current experience in an effort to balance the protection of the rights of creditors, members who have withdrawn and the continuing co-operative members. Several

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<sup>5</sup> The Cooperatives Act, S.M. 1976, c. 47.

<sup>6</sup> The Co-Operative Associations Act, R.S.S. 1978, c. C-34.

<sup>7</sup> Canada Cooperative Associations Act, S.C. 1970-71-72, c. 6.

<sup>8</sup> The Cooperatives Act, S.M. 1976, c. 47.

<sup>9</sup> Co-operative Corporations Act, R.S.O. 1980, c. 91.

<sup>10</sup> Business Corporations Act, R.S.O. 1980, c. 54.

<sup>11</sup> The Corporations Act, S.M. 1976, c. 40.

<sup>12</sup> Canada Business Corporations Act, S.C. 1974-75-76, c. 33.

meetings of experts? Would they not precisely be the international lawyers presently serving on the Sixth Committee?

Despite numerous proposals which have been made over the years for improvements in the International Law Commission, such improvements have come basically in an incremental manner. The establishment of the planning commission was one such development. It is submitted that major or dramatic changes in the Commission may not be expected and that practical suggestions which are capable of enhancing the work of the Commission in its present form should be made instead. The need to have the Commission play a role in influencing the development of international law beyond the main branches of traditional international law is, indeed, a genuine one. Perhaps the most practical way of realizing this objective at the present juncture would be for the Secretariat, under the aegis of the outgoing Chairman of the Commission, to prepare an annual survey of law-creating activities within the international system, pointing to developments in new areas, new approaches to law-making, innovative methods or doctrines, and pointing out areas in which co-ordination would appear to be necessary. Such a report, submitted to the International Law Commission by its outgoing Chairman and under his responsibility, could provide the basis for a short general debate in the Commission. The report, together with the Commission's deliberations thereon, could be transmitted as part of the Annual Report of the Commission to the General Assembly where a similar debate could take place in the Sixth Committee. In this way an opportunity would be provided for the Commission, as well as for the Sixth Committee, to have a practical overview of the whole range of the codification and development of international law, and to be both stimulated by this review as well as to make comments or suggestions which could be helpful to other organs and bodies. This could facilitate the co-ordination of law-creating activities within the international system and could point the way for introducing some more dynamism into the activities of the Commission.

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