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## **A very special corporation** ~ Patrick Brown

The behaviour of BC Ferries is determined by the *Coastal Ferry Act (Bill 18)*, passed by the current legislature on March 26, 2003. The provisions of this Act are at the root of the current labour dispute.

The object of the *Coastal Ferry Act* is to create a 'private corporation' under the *Companies Act* that is uniquely exempt from BC labour law in dealing with its workforce and its unions.

- This 'created' company, defined as a 'service integrator,' is legally a private company under the provincial *Companies Act*. It was at first named BC Ferry Corporation, the same name as the previous Crown Corporation. The company now seems to have morphed into BCFS Inc, although there is no documentation of this and the *Act* uses BCFC.

- It was owned by the government through a proxy body (the BC Ferry Authority) but the government admits no responsibility or liability for its actions or duty of care for the actions of its corporate child. The Authority has a nine-person Board of Directors with many rules but apparently only one function—to buy, hold and possibly sell the single voting share—and no management responsibilities or authority. If and when it sells the share, the Authority is instantly dissolved without a trace, since it has no shares and no assets. It is thus firmly rooted in mid-air, and is not accountable to anyone.

- It borrows money to buy the marine assets of BC Ferries (the old Crown Corporation) from the government. The government can book \$428 million as revenue, while the Ferry Corporation is responsible for the debt.

- It leases ferry terminal property from the government for 60 years, paying for the lease in advance with the \$330million it received from selling the property to the government.

- It may create a 'maintenance subsidiary' before October 31, 2003. (This was done for the Deas dock operation.)

- If it has problems with acquiring private lands for its operations, the Minister of Transportation is authorized to help out

- The company is exempt from Freedom of Information laws, the Ombudsman Act, and anything to do with the Auditor General. (Again, it escapes accountability to the public.)

### **BCFS is a Service Provider**

- BC Ferry Services Inc. is also a 'service provider'; it must make continuing efforts to encourage competition with itself; in fact,

there are draconian penalties for not doing so. It is 'encouraged' to minimize costs, and is expected to eliminate cross-subsidization by 2008. (There is one other service provider, operating a small passenger ferry serving Keats and Gambier Islands.)

- The rates it may charge are initially set by the government, but it (and any competing operator) is also guaranteed a rate of return yet to be determined.

- The 'public interest' in ferry operations is represented by the BC Ferries Commissioner who must approve rates and service changes and whose costs must be paid for by the service provider(s). The Commissioner is appointed by Cabinet for 6-8 years but may not be fired by cabinet (presumably, again, to avoid any suggestion that the government might be responsible for anything that goes on). He might have to die in office to escape.

- The Commissioner may approve rate increases for practically any reason except for an increase in labour costs. In fact, rate increases are to be set according to increases in the Consumer Price Index minus a factor that is intended to relate to 'productivity increases'. (This factor may be plus or minus; presumably subtracting a minus factor leads to an increase.)

### **Government Control Without Responsibility**

All of this is contained in the almost unintelligible Bill (18) that clearly demonstrates the government's difficulties in setting up, capitalizing, and tightly controlling a private corporation while refusing political and legal responsibility for it.

According to this Bill, both a return on investment and attempts at competition are compulsory. Thus are the hallmarks of privatization made law, despite plenty of evidence that some routes will never be economic.

There are only minimal requirements for public consultation—only drastic changes in fares, or the threatened termination of a ferry service justify public notice from the Commissioner. Island residents' stakeholder groups of the nineties clearly have no place in the new privatized world.

The *Act*, like many others passed by the current legislature, brooks no interference by any other piece of legislation, particularly when it comes to accountability.

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### Commentary

It is inconceivable that 77 Liberal MLA's actually understood this Bill sufficiently to vote for it. It is an example of legislation intended to conceal its true purpose, which, to put it bluntly, is to create a company which can attempt to bully its employees into a labour contract unfettered not only by law, but also by any concept of social and economic responsibility.

This approach to employee relations could make it impossible to operate a complex service that depends so completely on employee discipline, loyalty and training.

The idea that it should be possible to legislate profits, cost reductions, and competition displays a preference for ideology

over common sense, and invites deception and fraud.

In fact, fraud is the very foundation of this Bill. The blatant attempt to avoid government responsibility for a fundamental segment of the provincial transportation infrastructure is fraudulent in the extreme. The creative accounting involved in its initial financial structure would do credit to the most advanced practitioners of this modern art. And the directors of the Authority would have to be fools not to see how they were being used to disguise the real intention of this Bill.

(My thanks for material from Mr. David Gray and also the Comox Valley Public Interest Research Committee. The opinions expressed, however, are my own.) ✍

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