

**BILL C-41 – AN ACT TO AMEND
THE CANADIAN COMMERCIAL CORPORATION ACT**

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19 November 2001



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LEGISLATIVE HISTORY OF BILL C-41

HOUSE OF COMMONS

Bill Stage	Date
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First Reading:	7 November 2001
Second Reading:	20 November 2001
Committee Report:	30 November 2001
Report Stage:	5 December 2001
Third Reading:	5 December 2001

SENATE

Bill Stage	Date
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First Reading:	6 December 2001
Second Reading:	14 December 2001
Committee Report:	7 February 2002
Report Stage:	
Third Reading:	21 February 2002

Royal Assent: 21 March 2002

Statutes of Canada 2002, c.4

N.B. Any substantive changes in this Legislative Summary which have been made since the preceding issue are indicated in **bold print**.

Legislative history by Peter Niemczak

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BACKGROUND

The Canadian Commercial Corporation (CCC) is an export sales agency, wholly owned by the Government of Canada. It is established for the purpose of assisting Canadian exporters to win sales, on improved terms, in government and private-sector markets at the global level. Using its governmental status to sign export sales contracts on behalf of Canadian exporters, the Corporation puts the power of Canada behind an export sale, guaranteeing its completion. The CCC provides customized export sales and contracting services to assist exporters, including small and medium-sized companies, in accessing opportunities in foreign markets on advantageous terms.

In particular, the CCC seeks to provide access to U.S. defence and aerospace markets and specializes in sales to foreign governments and international organizations. Its services are not restricted to government buyers, however. Canadian exporters, and their potential private-sector customers in foreign markets, also use the CCC's expertise to negotiate deals and manage contracts in a broad range of sectors, including defence electronics, environmental technologies, capital projects, transportation equipment, electrical power equipment, as well as the knowledge and technology sectors.

Essentially, the Canadian Commercial Corporation “wraps projects in the Canadian flag” with a view to making them more credible in export markets.

* Notice: For clarity of exposition, the legislative proposals set out in the Bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both Houses of Parliament, receive Royal Assent, and come into force.

The CCC's involvement is aimed at improving standing with the customer, by providing customers the comfort of the Canadian government's guarantee, which:

- assures them that proposed Canadian suppliers are financially and technically capable of meeting bid specifications, contract terms and supplier warranties;
- gives them a single point of contact for multiple-item purchases, or those involving more than one Canadian supplier;
- provides a cost-effective, efficient alternative to lengthy international tendering processes; and
- facilitates access to Canadian technology and expertise.

The CCC charges the exporter on a cost-recovery basis, i.e., time spent on the contract and travel expenses. This amount is based on the complexity and risk of the deal and is converted into a percentage of the contract's value (average 0.5-3%). The cost-recovery amount is deducted from contractual payments to the supplier. Currently, the actual payment is arrived at through agreement between the parties and is based on recovering actual expenditures.

DESCRIPTION AND ANALYSIS

Bill C-41 – which was given First Reading in the House of Commons on 7 November 2001 – amends the *Canadian Commercial Corporation Act* in several ways. First, it changes the definition of “the Board” to include, not only the President and Directors of the Corporation, but also the *Chairperson* of the Board. Previously, the President of the Corporation *was* the Chair of the Board; the Bill creates a new position of “Chairperson,” separate from the President, and having prescribed duties.

Like the President, the Chairperson will be a Governor in Council appointment and will hold office “for any term that the Governor in Council considers appropriate.” The Chairperson's remuneration – if not a member of the Public Service – will be fixed by the Governor in Council and paid by the Corporation.

A new section, section 3.2, describes the duties of the Chairperson. The primary duty is to preside at all meetings of the Board, as well as to carry out any duties as required in the by-laws of the Corporation or by resolution of the Board. If the Chairperson is absent, the directors will choose a director to preside during that time; the acting Chairperson will have all the powers and duties of the Chairperson.

The President is the Chief Executive Officer of the Corporation and is charged with its direction and management. As is the case with the Chairperson, if the President is absent, the directors will choose a director to preside during that time. However, no person can be appointed for a term of more than 90 days without the approval of the Governor in Council.

This separation of functions was occasioned by the recommendation of *Corporate Governance in Crown Corporations and other Public Enterprises – Guidelines*,⁽¹⁾ published by the Department of Finance and Treasury Board. Guideline number 5 calls for Board independence based upon the principle that, typically, the President of the Corporation represents the interests of “management” while the Chairperson of the Board represents the interests of shareholders. The new structure of the Board gives effect to the guideline.

Section 11(2) of the current Act is replaced. Currently, that section permits the Governor in Council, from time to time, to authorize the Minister of Finance to loan the Corporation (out of the Consolidated Revenue Fund – the CRF) amounts up to an aggregate outstanding amount of \$10 million. That loan may be on such terms and conditions as the Governor in Council may determine.

The new section will still permit the Minister of Finance to lend money; however, he or she can now do so *without* needing prior authorization of the Governor in Council. Moreover, the total amount outstanding on all such loans is raised to a ceiling of \$90 million *or* a greater amount if specified in an appropriation act. As well, instead of the Governor in Council determining the conditions for the loan, the Minister of Finance now determines this. By removing the Governor in Council from the loan approval process, the amendment will likely streamline the borrowing process, as well as clarify that the ultimate responsibility for the Corporation rests with the Minister of Finance, and not – more broadly – the Governor in Council. This change was made in response to a recommendation of the Department of Finance.

Finally, the Bill replaces section 11(4). Currently, that section permits the parties to the transaction – i.e., the Corporation and the other person, department or agency – to *agree* on the amounts to be paid to the Corporation to compensate it for the costs and proportioned operating expenses incurred by it in those transactions. The new section permits the Corporation to charge an amount that it considers *appropriate* for providing its services, having regard to the risk of any loss that the Corporation might incur as a result of the default or failure by the other

(1) <http://www.tbs-sct.gc.ca/report/tbsperf/96-97/2tbs96e.pdf>.

party to the transaction. By replacing the previous negotiated process of determining fees with the authority to unilaterally determine appropriate fees, it is likely that greater consistency and expediency will be realized in the cost-recovery process. In practice, the Corporation's approach to determining fees continues by the same process; the Board will discuss with the Canadian supplier what the fees will be and this will be specified in the contract with the supplier. Importantly, though, the Corporation's authority under the existing act permitted it only to recover actual expended costs. With the greater emphasis on cost recovery in modern government, the Corporation will now be able to factor a reasonable margin of profit into its fee structure.