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# **Standing Committee on Industry, Science and Technology**

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**EVIDENCE**

**Wednesday, November 4, 2009**

**Chair**

**The Honourable Michael Chong**



## Standing Committee on Industry, Science and Technology

Wednesday, November 4, 2009

• (1530)

[English]

**The Chair (Hon. Michael Chong (Wellington—Halton Hills, CPC)):** Good afternoon, everyone. Welcome to the 42nd meeting of the Standing Committee on Industry, Science and Technology, this November 4, 2009.

We're here pursuant to the order of reference of Wednesday, April 22, 2009, and pursuant to section 136 of the Canada Business Corporations Act, to conduct a statutory review of the act.

Before us today, we have four witnesses from the Department of Industry: Madam Downie, Mr. Lennon, Madam Kirby, and Madam Ringor. Welcome to you all.

We'll begin with ten minutes or so of opening statements from the department, if they have them, and then we'll proceed to questions and comments from members of the committee.

Before we do that, I just want to mention to members of the committee that there have been a number of Governor in Council appointments made, which have been sent to the clerk of the committee as a point of information. I'll have the clerk of the committee distribute that information to your offices, if you so wish. It's your right, as members of the committee, to review those appointments. If you want to do that, let the clerk know.

Without further ado, we'll begin with Madam Downie.

**Ms. Colette Downie (Director General, Marketplace Framework Policy Branch, Department of Industry):** Thank you very much, and good afternoon.

I'll just start out with a quick note, and an apology, which is that I am going to be referring to a slide deck, but through some kind of miscommunication, we don't have the copies as yet. Somebody is on their way with copies. So I'll make sure that my remarks are self-explanatory. I apologize for that.

Just to expand on your introduction, my responsibility at Industry Canada is as director general for marketplace framework policy. That's my title. I'm responsible for the policy behind the Canada Business Corporations Act.

I am joined by Wayne Lennon, who works with me in the branch. Also joining me is Cheryl Ringor, director of compliance and policy, and a deputy director under the CBCA. Both she and Coleen Kirby, the manager of the policy section at Corporations Canada, are really the feet on the ground, the actual administrators or folks who are in charge of actually making the statute work.

[Translation]

That said, we are here today to help the committee and to answer any questions that you may have. My colleague, Ms. Ringor, and I will start with a brief presentation, which will speak to the provisions in the Canada Business Corporations Act, the amendments that were made in 2001 and the implementation of the act.

[English]

Just by way of initial background, corporate law provides a framework for the creation and governance of corporations, by defining rights and responsibilities of the corporation and its shareholders, directors, and managers. It also provides rules around disclosure and transparency, conflict of interest, and the way corporations interact with third parties, just as examples.

The corporate governance framework in Canada is complemented by provincial securities laws, which apply to the way securities markets work and the rules around the operations of those markets. Obviously, a well-managed corporate framework in Canada benefits Canadian society as a whole. It's a fundamental ingredient to increasing Canadian economic prosperity by doing things such as providing certainty to attract investment; to increase our competitiveness as a place to invest; and to assist in the development of innovation—again because it provides that certainty.

• (1535)

[Translation]

Our corporate governance framework is recognized internationally. Delegations from a number of countries have visited Canada specifically to learn more about how the CBCA works, with a view to including some of its features in their own governance framework.

[English]

In terms of our framework being recognized internationally, the World Bank's *Doing Business 2009 and 2010* ranked Canada second as a place for starting a business—New Zealand was first— and eighth for ease of doing business, behind Singapore, New Zealand, the U.S., Hong Kong, Denmark, the U.K., and Ireland. The World Economic Forum's *Global Competitiveness Report* for this year ranked Canada fourth for efficiency of corporate boards of directors and eighth for the protection of minority shareholder interests. In both cases, obviously, a number of factors went into the ranking. It wasn't all about the CBCA, but certainly the CBCA was an important ingredient in those rankings.

Created in 1975,

[Translation]

In Canada, the CBCA has been considered a leading-edge statute in corporate law and has served as the basis for provincial corporate law legislation and implementation. One of the act's main objectives is to balance the interests of corporations and their directors against those of shareholders and creditors, all the while deflecting an unnecessary burden.

[English]

So the main objective of the law is to permit the efficient administration of the act while balancing the interests of management, shareholders, and creditors of federal corporations. It contains little administrative discretion, again, to provide that certainty that I referred to before. It does provide some flexibility through regulations and for detailing rules. It provides a comprehensive regime of shareholder remedies.

It is a framework statute, as I mentioned earlier, that also provides for the creation and dissolution...all kinds of reorganization in between federal business corporations. It sets out the basic features and structures of a corporation, establishes corporate governance standards, codifies principles of transparency and accountability, and provides a framework for the interaction of various interested parties, directors, management, shareholders, and creditors. It is not prescriptive about the way that a corporation runs its internal and external business. It actually facilitates the ability of a corporation to arrange those structures in the ways that it sees fit and to adapt as the economy and as the business adapts over time.

Perhaps I'll pass it over to you now, Cheryl.

**Mrs. Cheryl Ringor (Director, Compliance and Policy Branch, Corporations Canada, Department of Industry):** I'll just do a quick overview of some of the operations.

The number of new incorporations in Canada is about 180,000 to 200,000 a year. Prior to fall 2008 the strong Canadian economy has meant that there was an increase in the number of new incorporations. In fiscal year 2007-2008 it reached a high of 200,000.

The percentage of new corporations that go under the CBCA is between 11% and 12% of the national total, and that's been relatively steady. But with the economic downturn of last year, the preliminary data show that incorporations have declined by about 10% throughout Canada. For CBCA incorporations, we've experienced a reduction of 4% from the previous years, and some provincial registrars have experienced a greater reduction.

What this shows is that even in the midst of the economic downturn the federal corporate statute still remains relevant to incorporators across the country, providing a stable legislative framework for aspiring entrepreneurs.

The biggest change since 2001 in the operations has been the use of online filing. We first introduced online filing for incorporations on January 1, 1999, and the 2001 amendments made it easier to offer more services online. So what we have now for online is 90% of incorporations are done online and 81% of returned filings are also done online. While they're still very popular, because we have reached a penetration rate of 90%, there's still a certain percentage

who still want to file by paper or other traditional means. We will continue to offer those means of transacting with us.

Currently there are about 192,000 corporations under the CBCA, and fewer than 1% of those are publicly traded. This indicates that the CBCA is an important framework for tens of thousands of small and medium-sized enterprises across the country. Having said that, the publicly traded corporations, though, of CBCA represent 39% of the TSX Composite Index, and 56% of the TSX 60 Index is incorporated under the CBCA. That's excluding banks and other financial institutions.

So that's the broad overview from the operational side. I'll just pass it over to Colette.

• (1540)

**Ms. Colette Downie:** I'll give a very quick thirty-second history of the CBCA. As I mentioned, it was introduced in 1975, and in 2001 a set of very comprehensive amendments were made. These were the result of extensive national consultations across the country involving hundreds of stakeholders and soliciting a large number of recommendations and suggestions for change. The resulting amendments directly reflected the concerns of those stakeholders. We would be happy to provide more detail about the extent of those consultations and those changes.

In 2004, after the Enron and WorldCom scandals, Industry Canada issued a discussion paper asking stakeholders what amendments might be necessary to the CBCA. Among the issues under discussion in that paper were the independence of directors and auditors, the certification of financial statements by the CEO of corporations, the separation of the positions of CEO and chairman of the board, and whether increases in penalties were needed for infractions of the relevant provisions of the CBCA. As a result of those consultations, there was little consensus among stakeholders about how the federal government should address those issues. However, most felt that since the CBCA applies only to a percentage of publicly traded Canadian corporations, these matters should be left to provincial securities regulators.

A second discussion paper was issued, in 2007, asking whether the government should enact a stand-alone piece of legislation to establish procedures on the transfer of securities or whether this should be left to the provinces. The prevailing view as a result of the consultations was that the federal government should not introduce its own security transfers act, but rather that the provinces would be in a better position to regulate the procedures around transferring shares and securities of corporations.

To sum up, the CBCA appears to be a well-functioning statute. It's responsive and flexible, and since 2001 there has been little substantive or significant demand for amendments to the CBCA. However, that's not to say, as is the case for any piece of legislation, that it is perfect. Because of the continuing evolution of the marketplace, modernization may be required. We suspect stakeholders, specifically the Canadian Bar Association, the Canadian Coalition for Good Governance, and the Shareholder Association for Research and Education, will be interested in having the opportunity to address the committee on a number of issues.

[Translation]

We will be following the committee's deliberations with interest and look forward to its recommendations.

We are now happy to answer all of your questions.

Thank you.

[English]

**The Chair:** Thank you, Madam Downie and Madam Ringor.

We'll begin with questions from Mr. Rota.

• (1545)

**Mr. Anthony Rota (Nipissing—Timiskaming, Lib.):** Thank you, Mr. Chair.

Thank you for coming today.

I was going through some of the notes in the area of tipping and insider trading in the act. How effective is that section? When it comes to enforcement, is that done at a federal or a provincial level? How exactly does that work, and how effective is it?

**Mr. Wayne Lennon (Senior Project Leader, Corporate and Insolvency Law Policy and Internal Trade Directorate, Department of Industry):** There are very few provisions in the CBCA regarding insider trading. The 2001 amendments, for the most part, relegated those to the provincial securities regulators. There are some rules in there about buying and selling on margin, or short-selling, that you can't do it as an insider. But by and large, the provincial securities regulators are responsible for enforcement of insider trading provisions.

**Mr. Anthony Rota:** Again, not being familiar with it.... They're enforced at a provincial level. Is there a separate set of laws, or do they use what we have in the CBCA?

**Mr. Wayne Lennon:** They use the securities act.

**Mr. Anthony Rota:** Okay, very good.

The CBCA has provincial counterparts. How do they compare? I mean, different provinces have different regulations. Do you see industry or different corporations going to different places, depending on what they want to get? Is this a problem?

**Ms. Colette Downie:** I can certainly take an initial stab at that question, and others can add detail.

Yes, there are provincial incorporation statutes companies can also choose if they wish to incorporate. By and large, the CBCA is viewed as the model for a number of pieces of provincial legislation. Often, if changes are made to the CBCA, similar changes are made to provincial statutes. It's not always the case. But it's very much viewed as a fairly effective piece of legislation by the provinces.

It's up to corporations as to where they incorporate, and it's very much a business decision. If a business knows from the start that it's interested in operating across the country, and it wants to know whether a particular business name has been taken across Canada, it might choose to incorporate under the Canadian Business Corporations Act, because that search will be done. Other than that, it's very much a matter of a business decision by the prospective new business.

**Mr. Anthony Rota:** I'm not quite clear, aside from the name, as to why they would go national as opposed to provincial. It's not because one is easier to get or one would give them more advantage in some other way.

**Mr. Wayne Lennon:** The administrators can speak to the cost-effectiveness of incorporation and the level of service provided.

The name search is important for businesses that are doing business across the country. If you are of a view that you might want to do business in the international sphere, the Canadian name has a little more cachet than perhaps a provincial name. It's better known. But beyond that, as was said, the laws are slightly different. They're not entirely uniform. It becomes a business decision for the corporation as to where it may wish to incorporate.

**The Chair:** I think Madame Ringor would like to add to that.

**Mrs. Cheryl Ringor:** I would just like to add that for the vast majority of small businesses, a lot of the provisions don't really make much difference to them, because they're just more interested in running their businesses.

When we did an analysis of what's a good predictor of whether they'll come federally or provincially, the cost was a big predictor. When we reduced our incorporation cost in 2001 by half, from \$500 to \$250, we saw an increase in incorporations. In fact, our fees are among the most competitive in Canada, other than Alberta, in terms of incorporation. So the start-up costs are very low.

As well as our services that Wayne alluded to, we offer incorporation online. We've heard anecdotally and also through our surveys that you could almost get a certificate of incorporation in a few hours. That's why, under the starting-a-business element of the World Bank's doing business project, we're ranked number two.

• (1550)

**Mr. Anthony Rota:** Part of that is attributed to the online registration, I take it.

**Mrs. Cheryl Ringor:** Yes.

**Mr. Anthony Rota:** Okay, very good.

How often is the CBCA reviewed? Is there a process that happens on a regular basis? Is there a large demand from industry to have this reviewed?

**Mr. Wayne Lennon:** This is the first review since 2001. The 2001 amendments, which were quite comprehensive—basically, whole sections of the act were rewritten—were the first substantive amendments since 1975. There had been some housekeeping bills and some up-to-date measures that had taken place in the interim, but nothing as substantive as in 2001.

The act, in 2001, said that a committee of Parliament should review the statute within five years of its coming into force and every ten years thereafter. There is a built-in review process.

**Mr. Anthony Rota:** So we're basically working on the tenth year right now.

**The Chair:** No, we're actually three years behind. We were supposed to have reviewed this. The act came into force in November 2001.

**Mr. Anthony Rota:** That's why I'm asking the question. I'm trying to figure out where we are on the scale.

**The Chair:** The act called for an initial five-year review, which was supposed to be completed by the autumn of 2006. That did not happen, so we are three years late in reviewing this. Subsequent to the first five-year review, there is to take place a ten-year review and thereafter every ten years.

**Mr. Anthony Rota:** Thank you. That clarifies it. That's what I was trying to find out.

I asked if there was anything major asked of industry, any changes or any major changes that were proposed either by government or by Industry Canada.

**Ms. Colette Downie:** No, there are no major changes proposed at this stage. We're obviously interested in what the committee has to say and to recommend. We're certainly not aware of significant changes or really loud calls for changes by industry at this stage. I'm sure some issues will be raised with the committee, but nothing really major has come to our attention so far.

**Mr. Anthony Rota:** Will you be contacting stakeholders? Will you be open to the public?

**Ms. Colette Downie:** We don't have plans to actively contact stakeholders. We're assuming that stakeholders will be interested in appearing before the committee. We're certainly happy to suggest names of stakeholders that we think might have comments to make.

**Ms. Siobhan Coady (St. John's South—Mount Pearl, Lib.):** More specifically, have you received any interventions on this bill since 2001? I know you haven't done the outreach, but has anyone come to you asking for changes to this bill that you're aware of at this point?

**Ms. Colette Downie:** We've had some specific suggestions of areas. We've also been sort of perceiving in the media some discussions about corporate governance that have been going on. If that's the kind of thing you're interested in hearing about, I can tell you what some of those issues were.

**Ms. Siobhan Coady:** Yes, and whether they're technical changes or substantive.

**Ms. Colette Downie:** Some of the suggestions we've heard about from stakeholders—and none of the ones on my list that I'm about to give you are particularly technical—concern executive compensation, for example: what are the possibilities in terms of limiting or restricting compensation or making the details of executive compensation packages more transparent? Also, we think that stakeholders may want to raise the issue of shareholder approval of executive pay packages. So there is the whole issue of shareholders' say on pay. That's one.

The other one concerns the rules governing the election of directors, specifically the rules around when and how shareholders can nominate, elect, and remove individual directors, as opposed to

the common practice in Canada now, which is to elect by slates of directors.

Another issue would be the removal, as I mentioned earlier, of the securities transfer provisions of the act and whether that shouldn't just be left to the provinces to deal with, as they deal with it now.

A final one that we've heard about is whether shareholders should be given the ability or stronger tools to approve major acquisitions of other firms, for example, or mergers, particularly where new shares are issued and the value of their shares is diluted or affected as a result.

Those are the significant issues we've heard about.

Do you have anything else to add to that?

• (1555)

**Ms. Coleen Kirby (Manager, Policy Section, Corporations Canada, Department of Industry):** I think the only thing to add is there are a fair number of technical issues. Usually, as soon as the bill gets out there, you'll get a phone call from a lawyer saying what does this mean, or you have an extra word there, or should this comma be moved, or the English and French aren't matching. We always have a fairly long list of technical issues whenever the bill gets opened. There's a ton of them.

**The Chair:** Thank you, Madame Downie and Madame Kirby.

[Translation]

Mr. Bouchard, you have the floor.

**Mr. Robert Bouchard (Chicoutimi—Le Fjord, BQ):** Thank you, Mr. Chair.

Thank you for being here this afternoon.

As you may know, Quebec enforces the Charter of the French Language. Furthermore, Parliament has recognized the Quebec nation. And one of the shared values of the Quebec nation is the French language. Just recently, the NDP put forward a motion having to do with the precedence that Quebec gives the French language in the case of immigrants to Canada.

Did your analysis take into account the province in which companies set up when registering or incorporating under the Canada Business Corporations Act, specifically, whether it is Quebec or elsewhere in Canada?

[English]

**Mrs. Cheryl Ringor:** The only thing we collect from them is where they're going to locate their province of registered office. We don't ask them where they're going to conduct their activities.

[Translation]

**Mr. Robert Bouchard:** So, only the head office is taken into account.

Would it be possible for officials or anyone who reviews applications to tell companies whose operations and head office are solely in Quebec that they have an obligation to respect the Charter of the French Language, which is a Quebec law?

[English]

**Ms. Colette Downie:** My understanding is that there are no restrictions in the legislation to that effect currently. That would require changes to the Canada Business Corporations Act. Currently there are no legal restrictions in the act around where a business can operate. That's left to businesses to decide.

[Translation]

**Mr. Robert Bouchard:** If I understand you correctly, the act does not impose any restrictions. So it does not happen when officials evaluate applications of companies wanting to register under the Canada Business Corporations Act. Is that right?

**Ms. Colette Downie:** I do not think the act permits it.

[English]

If it were to be done, it would require amendments to the legislation to permit it. But it is currently not done. You're correct.

[Translation]

**Mr. Robert Bouchard:** If I understand what you are saying correctly, a company operating in Quebec, outside Quebec and in Canada wanting to incorporate under the Canada Business Corporations Act would be able to do so in English only.

Are there any questions asked about that? Do officials in any way suggest or indicate that companies cannot do that because they are in Quebec, which has the Charter of the French Language? Are companies asked about that at all?

• (1600)

[English]

**Mrs. Cheryl Ringor:** No, there isn't. However, if they do operate in Quebec, they have to comply with Quebec legislation, including the language charter. If they operate in any of the provinces they do have to register in the province. And Quebec also has specific registration requirements, one of them being that they would have to have a French name. If they are operating in Quebec, they would have to comply with the laws of Quebec.

[Translation]

**Mr. Robert Bouchard:** You know that banks that incorporate under the Canadian legislation are not required to respect the Charter of the French Language. Unless I am mistaken, the act would have to include a provision requiring a corporation whose head office is in Quebec to respect the Charter of the French Language in Quebec. That is how I understand it. Am I right?

[English]

**Mrs. Cheryl Ringor:** My understanding is that any CBCA corporation who is operating in Quebec would have to respect Quebec legislation, including the language charter.

[Translation]

**Mr. Robert Bouchard:** That is the case for corporations registered in Quebec. But I do not think that is the case for corporations registered under the Canada Business Corporations Act.

The fact of the matter is that banks are not required to respect the Charter of the French Language. That is the reality. But, could we compel a corporation that has just registered under the Canadian law to respect the Charter of the French Language? That is not done. I do

not know the law; you are more familiar with it than I am. Is there a provision in the act that could compel a corporation registering under the Canadian law to respect the charter?

[English]

**Ms. Colette Downie:** I think it would be very difficult, because I would question whether it would be constitutional for the federal government to introduce an amendment to effectively enforce a provincial law.

[Translation]

**The Chair:** Do you have any other questions?

**Mr. Robert Bouchard:** I think we have covered the topic, and we have the answer: it does not currently apply.

The purpose of my question was to make you aware of the fact that public institutions such as Parliament have recognized the Quebec nation. A motion was moved recently. And Quebec has the Charter of the French Language.

When companies incorporate under the Canadian legislation, they do not respect that reality when they come to Quebec.

**The Chair:** Mr. Bouchard, there will be another round. You can ask more questions then, if you wish.

**Mr. Robert Bouchard:** No, I am done.

[English]

**The Chair:** Merci.

Mr. Lake.

**Mr. Mike Lake (Edmonton—Mill Woods—Beaumont, CPC):** Thank you, Mr. Chair.

Someone starting a small or medium-sized business often has a good idea, is hardworking, but may not be a corporate lawyer. It seems to me the act is very complex, very detailed, and technical.

What kind of service do you provide in terms of making the act accessible or understandable for the average person?

• (1605)

**Mrs. Cheryl Ringor:** We have a number of support materials. One of our most used support materials is the *Guide to Federal Incorporation to Help Small Businesses Incorporate Federally*. We have that online and we have it on paper. A Google search for “incorporation” or “incorporate” comes right after the Wikipedia entry, so it's a very high-demand guide. It was written to be very user-friendly, with samples of articles on how to incorporate and on share structures.

We also have our 1-800 number, which is available until 8 p.m. eastern time, which could provide assistance to small businesses.

**Mr. Mike Lake:** Could you say what the 1-800 number is, in case someone is Googling and comes across the testimony here? It would be good for them to find this.

**Mrs. Cheryl Ringor:** It is 1-866, actually.

**Ms. Coleen Kirby:** It is 1-866-333-5556.

**Mrs. Cheryl Ringor:** They can get a certificate of incorporation within hours on our online filing. They can choose it as an option. If they want a very simple share structure, we have one provided for them. They can just click that. And if they want a numbered name they can click that and get it almost automatically.

We continuously strive to make our forms and our online transactions user-friendly and we keep revisiting our guide to make sure it responds to the needs of small businesses, because we recognize they have other things to do than meeting regulatory requirements.

**Mr. Mike Lake:** I want to follow up on that, because it's one of the things we have worked on as a government. Diane Ablonczy, the Minister of State for Small Business, worked very hard on reducing the paperwork burden. You talked about the online filing. I am just wondering if you could speak to how important that is to reducing that paperwork burden on businesses. What is the difference for a company filing online versus the old way of filing?

**Mrs. Cheryl Ringor:** With online filing they are still required to give us the same information, but you could give them more assistance—for instance, a predefined share structure so they don't have to do all that work. If they did it on paper they would be incorporated within five days, whereas online they could do it within 24 hours, or a few hours if it's a very simple incorporation. It has reduced the regulatory burden tremendously.

**Mr. Mike Lake:** Just thinking about the references to international rankings in your presentation, it sounds to a large extent as if our legislation serves as a model internationally. What is it about our legislation that causes us to rank so highly?

**Mrs. Cheryl Ringor:** Where we rank very highly on the World Bank's ease of doing business index is for starting up. What they've measured is how long it actually takes to incorporate and get your necessary account. Because you could incorporate very quickly, within a day—and we also are in partnership with the Canada Revenue Agency to provide a business number to corporations—that's considered a step in the World Bank ranking. They've calculated that the time to actually get all that done is two days, and two days put us as number two in the whole process.

**Mr. Mike Lake:** That's to do with timing?

**Mrs. Cheryl Ringor:** Yes. They actually measure how many steps you have to take and how long it takes. Some jurisdictions take months, for instance, to incorporate, so we look very good compared to them.

**Mr. Mike Lake:** When I look at the ranking for ease of doing business, eighth is a pretty good ranking, but there are still seven countries ahead. I always like to be number one when we can. What is it that the others might be doing better that we could learn from them to get up to number one?

**Mrs. Cheryl Ringor:** It goes actually beyond the CBCA. One of them is access to financing, trade, and contracts, in terms of contract negotiations that have contract enforcement. So there are other things that are really outside of the CBCA.

**Mr. Mike Lake:** Okay.

It's interesting, you spoke a little bit about a sort of technological aspect, in terms of your presentation and the strength in our system. You talked about holding meetings electronically for organizations. What does that look like?

●(1610)

**Ms. Coleen Kirby:** We've never participated in one.

The basic framework behind CBCA says it's self-enforcing. That means we put a framework in place. A lot of the rules the corporations deal with themselves. We're not enforcing them; it's really to facilitate them to communicate.

For meetings, you can put everybody in a room; you can put half the people in the room and half the people on a conference call, or on some kind of video conferencing over the computer; you can put everybody into conferencing over the computer. It's left to the corporations to figure out what works for them.

Since we have no involvement with them—unless one of us happens to be on the board or a member of the corporation—we've never participated. What we know is solely out of the newspapers.

**Mr. Mike Lake:** Prior to 2001 they weren't allowed to participate in that way, or set up meetings in that way?

**Ms. Coleen Kirby:** No. The concept in the late 1990s of collection of proxies by telephone came in. The technology suddenly hit about 1997, 1998, and CBCA companies weren't allowed to do it because the act itself prevented it.

One of the things we changed was the rules. You're looking at the principle. What do you want? You want people to be able to participate. Does it really matter if they're in a room together, on a computer, on a conference call, or in a chat room, those kinds of things? What we did with the 2001 amendments is make it clear that if you're going to participate in a meeting, you have to be able to hear everybody else and participate meaningfully. But the act is not going to tell you how that happens. We went very generic: we simply said that as long as you meet the principles, it's up to you to determine how you want to run the meeting, whether it's one person electronically, ten people, or everybody.



**Mr. Mike Lake:** I have just a last question regarding witnesses. You've named a couple, I think the Canadian Bar Association and the Canadian Coalition for Good Governance. Are there any other witnesses who should be on our radar in terms of this study, people who are experts in the technical aspects of this law?

**Mr. Wayne Lennon:** The other one that comes to mind is SHARE from Vancouver, the Shareholder Association for Research and Education. They were very involved in the 2001 amendments. They helped us immensely with framing some of the shareholder communications proposals and how they would operate. They're responsible with a lot of venture capital and union capital or ventures. We have a very good relationship with them, and I know they would be very interested in appearing before the committee to make representations.

**Mr. Mike Lake:** Thank you very much.

**The Chair:** Thank you, Mr. Lake.

Mr. Marston.

**Mr. Wayne Marston (Hamilton East—Stoney Creek, NDP):** Thank you, Mr. Chair. I have to ask you a quick question first, being new here and filling in today. Is this my only chance?

**The Chair:** It may be. We only have about 45 to 50 minutes left, because we have votes. The bells will ring at 5:15 today.

Go ahead, Mr. Marston.

**Mr. Wayne Marston:** I happen to be the pension critic for our party. There are some things that have surfaced of late because of the downturn—5,000-plus companies going bankrupt, and those things.

Recently we had some changes to the BIA, under the wage earner protection program. How does that relate to pension severance, how they are ranked or prioritized during bankruptcy proceedings? That would be one question.

Second, in the event a company goes into bankruptcy proceedings, the pensions of the employees are called special payments, I understand. Now, from our perspective we're talking about deferred wages, and we'd like to see a philosophical change to that. I'd like you to comment on whether you see these special payments—that designation—as being acceptable or even just. I'll leave you the chance to absorb those a bit.

**Ms. Colette Downie:** I came ready to answer questions about Canada Business Corporations Act today, not so much about the changes to the bankruptcy and insolvency legislation and the wage earner protection program. I don't have my reference documents on those pieces of legislation, so it would be very difficult for me to explain the changes.

There were two sets of changes, one that came into force last June, and another set that came into force this past September. I'd certainly be happy to explain those at a later date, if that's okay with you.

**Mr. Wayne Marston:** Sure, I understand.

• (1615)

**Ms. Coleen Kirby:** The interaction between bankruptcy and the CBCA is that if you are insolvent you may not use the liquidation dissolution provisions of the CBCA to liquidate; you have to go through either the Bankruptcy and Insolvency Act or the Companies' Creditors Arrangement Act. The CBCA only deals with solvent

companies trying to liquidate. The two are totally separate pieces of legislation.

**Mr. Wayne Marston:** I guess when I saw Mr. Lennon's name and his title here, it led me to the place where these questions—

**Mr. Wayne Lennon:** There's a division of labour within the office.

**Mr. Wayne Marston:** That's been known to happen in our office too.

**Mr. Wayne Lennon:** I'm the corporate law policy guy; the insolvency law policy guy is not here right now.

**Ms. Colette Downie:** We're certainly happy to answer questions. It's just that we're not prepared at this exact moment.

**Mr. Wayne Marston:** Sure, I appreciate that, but it has shot down my questions pretty quickly. That's okay. I understand. I don't mean any criticism.

I'll try one more, then. To both again, this is something a little more direct, on pensions. According to the OECD guidelines, where a pension insurance plan does not exist—and I'll quote from here—it says there should be a “priority position for due”—and I can see the answer coming already—“and unpaid contributions...equal to at least the position of due and unpaid taxes...”. In some countries they'd call that super-preference.

The guidelines recommend that “priority rights may also be appropriate for underfunded pension commitments...that are the responsibility of the plan sponsor”, depending on whether a guarantee scheme exists and the likely impact on credit availability.

I am interested in your comments on the issue of according super-status, especially regarding unfunded pension liabilities, and how this might affect bankruptcy laws. Again we're into that other area.

**Ms. Colette Downie:** I could certainly provide you with a basic answer, and then if you want more details in terms of the specific changes and their timing I'll have to follow up at a later time.

The amendments you referred to—and they came into force in two tranches, depending on whether you were dealing with a bankruptcy situation or a restructuring, which would not necessarily lead to a winding-up of the company—do give super-priority to outstanding pension contributions, the normal contributions that are made into a pension plan based on actuarial information and the predictions about the way the market is going to function. Those are certainly given priority. They do not give priority to underfunded pensions.

**Mr. Wayne Marston:** To unfunded liabilities.

**Ms. Colette Downie:** That's a situation where the market has gone down, it wasn't predicted, and there are special payments that are needed to make up the shortfall. Those are not given priority in those legislative changes. It's not to say they wouldn't be covered; they're just not given that priority.

**Mr. Wayne Marston:** As a result of that view, defined benefit pension plans are under a lot of pressure these days. You have situations where companies are asking workers to go to defined contributions for that exact reason.

I certainly appreciate the response I have been given, and I'll have my staff get in touch, and perhaps we can follow up. I really appreciate it.

That obviously shortens my time considerably, but thank you, Mr. Chair.

**The Chair:** Thank you very much, Mr. Marston.

We'll go to Mr. Garneau.

**Mr. Marc Garneau (Westmount—Ville-Marie, Lib.):** Thank you very much.

There are a number of issues that have come up in the public since the Enron and other scandals. Given the fact that there haven't been changes to the law since 2001, although you had discussion papers and feedback on two occasions that you mentioned, what is your feeling about whether or not this act is achieving the proper balance with respect to the issue of directors' liabilities?

**Mr. Wayne Lennon:** As far as I'm aware, there's no question of any consideration that the director liability provisions are a problem. The act itself provides a due diligence defence in virtually every case.

Do you mean director liability for specific issues or just generally with respect to corporate governance?

**Mr. Marc Garneau:** It seems to me there has been a move towards shareholders wanting a greater responsibility on the part of directors with respect to their roles within companies, given the fact that there were some fairly awful cases where it seemed to me that the board of directors either was not doing anything or seemed to be unaware of things happening within management that led to some pretty awful outcomes.

• (1620)

**Mr. Wayne Lennon:** One of the things the 2001 amendments did was to make much easier and in fact legalize the ability of shareholders to communicate with one another. Prior to that, it was very difficult for them to do so, and it led to organizations such as the Canadian Coalition for Good Governance and the SHARE, of which I spoke earlier, who were combining various institutional investors, particularly, into an organization that can put a great deal of pressure on corporations in which they invest.

Whether they choose to do that on a particular case-by-case basis is pretty much up to them. I know they do it, but one of the things the recent OECD meeting on corporate governance did recommend was that shareholders generally—and they're speaking in the broader context, not just Canada—and especially institutional shareholders, should take more responsibility in administering their shares and

pressuring boards to act in ways that maximize shareholder value in the long term particularly.

If the Canadian Coalition for Good Governance and the SHARE came before this committee, they would probably have specific issues they would like to see raised and discussed. The only one of which I'm aware is one Colette referred to earlier, that they specifically would like to be able to nominate, remove, and elect individual directors.

**Ms. Colette Downie:** If I could add to Wayne's comments, one of the things that's interesting about the CBCA is that compared to some U.S. legislation—I'm not sure exactly which jurisdictions Enron was incorporated in—my understanding is that the CBCA is more focused towards shareholder rights and giving shareholders the tools they need to influence the running of the company. That may not be the case in some U.S. jurisdictions, particularly where they are more management-oriented in corporation rules and corporate governance rules as well. It may be that those lessons of Enron and WorldCom are not directly transferrable here as well, because we have a statute with a different kind of focus.

**Ms. Siobhan Coady:** To follow up on that line of questioning, I want to get my head around the SOX rules in the United States—Sarbanes-Oxley—and how critical they are to what we have before us.

A subsequent question is this. You mentioned five or six substantive changes that you have heard are required in this bill. Are the officials or the government coming forward with these recommended changes, or are you just supposing that some of the witnesses we may call will bring those forward?

**Ms. Colette Downie:** On the changes, first of all I meant to characterize them, and I apologize if I misspoke. They really are issues that we've heard from stakeholders that they would like to bring forward.

**Ms. Siobhan Coady:** You're not bringing them forward.

**Ms. Colette Downie:** No, we're not bringing those forward. We'd like to hear what the stakeholders have to say here and we'll certainly be listening closely and looking forward to the committee's recommendations.

In terms of Sarbanes-Oxley and some of the rules that apply in the securities context, I'm certainly not an expert on those. They're complementary rules to the incorporation laws. I'll let Wayne expand, because he's certainly more knowledgeable about those than I am.

**Mr. Wayne Lennon:** Sarbanes-Oxley, or SOX, didn't affect corporate law in the United States, but it was the U.S. Securities and Exchange Commission that did. In Canada, the Canadian securities administrators looked at SOX and incorporated many of its most positive features, in terms of the disclosure of some issues, the independence of directors, and a few other things.

**Ms. Siobhan Coady:** I agree it's a securities issue, but you can see that we're talking about shareholder rights. I think you just mentioned removing and electing individual directors as one of the things you've heard. How is it complementary?

**Mr. Wayne Lennon:** Well, securities law and corporate law are complementary. But corporate law, as Cheryl said, is a pretty wide beast. There are 195,000 corporations. Less than 1% of them are publicly traded. The SOX rules apply only to publicly traded corporations.

We have a percentage of publicly traded corporations. So for us to incorporate SOX-like rules just in the CBCA would create an unlevel marketplace for publicly traded corporations in Canada. That's why—at the present time anyway—Canadian securities administrators are the best locus for those kinds of protections for shareholders, and the market generally.

•(1625)

**Ms. Siobhan Coady:** You've reached and made a point that I wanted you to make, which is, let's not get confused about some of the shareholder requirements for large corporations that should be found in this particular act. They don't necessarily find their way into this particular act, and sometimes when we talk about shareholder rights, people get the two confused.

**The Chair:** Thank you, Madame Coady and Mr. Lennon.

Mr. Wallace.

**Mr. Mike Wallace (Burlington, CPC):** Thank you, Mr. Chair.

I thank you for coming and joining us today. I've seen a number of you a few times.

I just have a point for Wayne. The finance committee has committed to doing a study of pensions. The questions we're asking here would be great with the right witnesses. That study is to start sometime in December, if not after that. So if you have a colleague who will be witnessing for that, we'd be happy if you replaced him for that meeting. Anyway, that's another point.

Just as a little bit of a follow-up, we've been working on having a national securities regulator. Hopefully, we'll have such a regulator some day. I know you are talking about provincial securities regulators right now, but do you expect that to influence or change the act we're talking about here today, or will the act be able to sustain itself even with a national securities regulator?

**Mr. Wayne Lennon:** We'd have to see the statute and what powers it gives to a national securities regulator, and we would look for complementarities. There is some overlap between corporate law and securities law, and there are some aspects that are on parallel tracks. The corporate law in Canada works more or less hand in glove with securities law. The predominant thrust of our legislative agenda in 2001 was to eliminate duplication where possible or necessary, and to try to harmonize to the extent possible with the securities laws. Securities law can make rules, and the procedures are a little different from trying to get a bill through Parliament, so they can move much more quickly and adapt and be more flexible.

Again, it's a question of complementarity. I'm sure that in the event of a national securities agency, there would have to be some attention paid to the interface between the corporate law and the securities law.

**Mr. Mike Wallace:** I'll be frank with you and say that the one figure that surprised me is that only 1% of the incorporated businesses in the country—and we have a lot them, 192,000, I think

—are publicly traded. Is that what you're telling me, that only 1% are publicly traded?

**Mr. Wayne Lennon:** Yes.

**Mr. Mike Wallace:** The rest's shares are held by the owners?

**Ms. Coleen Kirby:** The anecdotal evidence we have is that there are 1.5 million corporations in this country, and the TSX has slightly over 4,000.

Yes, there are more than 4,000, because there's over-the-counter trading and so on, but essentially there are only 4,000 on the TSX and 1.5 million corporations in total. So the focus is always on the public corporations, but they are a very small part.

**Mr. Mike Wallace:** They are a very small part, yes.

**Ms. Coleen Kirby:** They are, however, a very large part of our economy. So one large publicly traded company can have a lot more effect than one mom and pop shop. But if you put all the mom and pop shops together, they're going to have a major effect on our economy and our hiring rates, and everything else.

**Mr. Mike Wallace:** Okay, I appreciate that.

The other question I have you may not be able to answer. You're on the policy side of the equation of what the organization does. I don't know how much time you have to think about policy changes and where you should be going or whether it's about implementing policy that is already there.

Here's my question. I've been on the finance committee for three years. For the first time, we've heard that there are two different organizations, representing not-for-profits, that would like to develop something that exists in Britain and other countries. It would be a share capital corporation in which not-for-profits could trade shares. It would be a way for them to raise capital and give them an ability to invest in their businesses.

I would like to know, as an organization, whether you've had a chance to look at that. How do we bring that to you as something to get a response on?

•(1630)

**Ms. Colette Downie:** My understanding is that there is actually one organization that would like to come to this committee to talk about that issue. We've only relatively recently heard about this as an issue. It appears to us that these types of hybrid corporations are actually quite possible to incorporate under the Canada Business Corporations Act. It seems to us—and we'll be interested in hearing more if witnesses come forward to talk about this issue or this possibility—that it is more of a tax issue they are perhaps raising. It does seem possible under the Canada Business Corporations Act to create one of these organizations. The question is how they are treated in a tax context.

**Mr. Mike Wallace:** Are you aware of anyone ever approaching you about trying to set up this way?

**A witness:** No, we are not.

**Mr. Wayne Lennon:** I just received a phone call a couple of days ago from somebody who asked if it were possible that he could send me more information on this. I said yes, and I also told him that the committee was undertaking hearings and that he may wish to approach the clerk.

**Mr. Mike Wallace:** Mr. Chair, I tried to get my staffer to look up a name, but I couldn't find it in my pile. I'm going to find that name and see if we can invite them to the next meeting or so to see if they would provide some information.

Thank you very much.

**The Chair:** Thank you, Mr. Wallace. Just let the clerk know, and she will invite them.

We'll go to Monsieur Vincent.

[Translation]

**Mr. Robert Vincent (Shefford, BQ):** Thank you, Mr. Chair.

It is not easy to sit through all these rounds of questions to get to the most important one. I waited, but a lot of the questions did not even have to do with the CBCA. I have a question for you that does. It has to do with section 125. I believe you know it well.

You are no doubt aware of the recent economic developments that have really mobilized public opinion, especially in the papers. I want you to consider a report on Nortel, as one example. We were talking about pensions earlier, and I know that is not your area of expertise, but nonetheless. The government of Quebec was called upon to take over the pensions of 6,000 Nortel employees in Quebec so they could still collect their pensions. Meanwhile, Mike Zafirovski, a former Nortel executive who officially declared bankruptcy for the company, was demanding \$12 million for himself, just one of a group of senior executives demanding a total of \$25 million in pensions, salaries and bonuses. We want to protect shareholders and employees from the sometimes excessive compensation and bonus packages of directors, when a company's financial performance does not justify sacrifices on the part of its shareholders or employees in order for it to survive. Section 125 of the CBCA stipulates that the directors of a corporation may fix their own remuneration subject to articles with the company's consent or unanimous shareholder agreement. That gives directors a lot of discretion in determining their own salaries, and those salaries may go against the interests of shareholders and other employees, depending on the company's success or lack thereof.

I would like to know whether you anticipate making any amendments to section 125 in order to limit the compensation received by directors.

[English]

**Ms. Colette Downie:** We're not coming forward with specific proposals for amendments to the legislation. We're certainly going to watch the hearings with interest and we'll look forward as well to the committee's report.

Generally on the subject of executive compensation, the G-20 has looked into this issue, and it has made a number of recommendations with respect to financial institutions that are being implemented by the government and by financial institutions in Canada. They really are aimed at making sure that executive compensation is transparent, in particular, rather than at setting caps or limits around the compensation levels.

It should also be noted with respect to business corporations generally, not just those under the Canada Business Corporations Act, that the Canadian securities administrators' continuous

disclosure obligations already implement disclosure requirements for salaries and compensation packages. These includes the public disclosure of salary, form of compensation, and the design characteristics of the compensation system, including performance measures and risk policies as well. This is very much consistent with what the G-20 also recognized.

● (1635)

[Translation]

**Mr. Robert Vincent:** My question is simple: do you think we need to limit that compensation? I am not so sure that any executive is worth \$12 million, \$10 million, \$25 million or \$30 million, especially when you consider that in times of trouble, it is the poor workers who end up paying the price, who have to tighten their belts and endure pay cuts. Not to mention the fact that if the company does go bankrupt, the executive will get his money, but retirees take a direct hit to their pension fund. They will no longer have a pension fund. Do you think we need to set a cap?

We are talking about shareholder transparency. As I read in the act, shareholders have absolutely no say in terms of salary. When you talk about transparency, I think that is important. For instance, if I have shares in a company, I should be able to know how much the executives are paying themselves. If they are giving themselves \$10 million, I want to know, because I do not make that kind of money, and I don't think that everyone involved in the stock market does either, and company employees are paying the price. Should we limit the salaries of executives?

[English]

**Ms. Colette Downie:** If we were to limit the salaries of executives through the Canada Business Corporations Act, perhaps by amending section 125, as you suggested, it would still leave all of the provincial statutes as options that corporations could change to or move to or incorporate under. So such a change would be—

[Translation]

**Mr. Robert Vincent:** Things would have to be consistent across the board.

[English]

**Ms. Colette Downie:** It would not have an impact. If a corporation wanted to avoid it, it could do so fairly easily.

[Translation]

**The Chair:** Mr. Vincent, thank you for your questions.

Mr. Warkentin, you have the floor.

[English]

**Mr. Chris Warkentin (Peace River, CPC):** Thank you, Mr. Chair.

I appreciate your testimony this afternoon.

Many of my questions have been asked and answered, and we appreciate the answers you've given.

Here are a couple of things that relate to a business's decision to incorporate. If a company, a corporation, even a mom-and-pop organization, decides it's going to set up in a cross-border location between two different provinces, is it in their best interest to federally incorporate, or would they otherwise incorporate in two separate provinces?

**Mrs. Cheryl Ringor:** If they want to protect their corporate name, it would be in their interest to federally incorporate, because once a name is given to a federal corporation, they could use that name throughout Canada; whereas if you're provincially incorporated and you want to go into another province, you would have to register that name, but if that name were already taken in that province, you'd have to change your name.

**Mr. Chris Warkentin:** Is that the only thing that is protected, by incorporating in a jurisdiction: the name? Would a company be able to incorporate, let's say, in Alberta and operate both there and in British Columbia, with locations, some offices—

**Ms. Coleen Kirby:** Usually within Canada, if you incorporate in one province and want to operate in another, you go to the other province's government and register to conduct business in that province. Once you're registered, and as long as you meet the requirements of registration, then you can conduct business in both provinces.

• (1640)

**Mr. Chris Warkentin:** That's helpful.

In terms of a person applying for incorporation documents, I appreciate the fact that we talked about the speed by which a company can actually become incorporated. My experience has always been that I go to the lawyer if I'm going to incorporate. Do you have stats in terms of how many people will incorporate themselves or apply for incorporation themselves, versus those who go to a lawyer or law office to do that?

**Mrs. Cheryl Ringor:** We don't have accurate stats, but based on our experience, it's about 50-50. Some jurisdictions require that you have to incorporate through a lawyer or through an agent, but because we offer it online, they could do it themselves.

**Mr. Chris Warkentin:** In terms of communications that you have with the general business community, what types of information distributions do you use? Is it mostly online, or are there other mechanisms?

**Mrs. Cheryl Ringor:** Primarily online. We also distribute our guides and other support materials through entrepreneurship centres or Canada business centres. Also, we attend trade shows or shows where entrepreneurs would attend.

**Mr. Chris Warkentin:** I suspect that the advent of the Internet has changed the way that business is conducted in your department quite a bit. As new technologies are developed, are there any changes that you expect you will have to undertake in accommodating the business relationship with Canadian businesses?

**Mrs. Cheryl Ringor:** What we're doing now is using email to remind businesses of when they have to file their annual returns. There are jurisdictions, such as New Zealand, that are taking technology a bit further and we could gain some experience from them. For instance, they send SMS messages to cellphones because a lot of small businesses usually are more mobile and sending it to a

mobile unit would be helpful. Those are ideas that we're exploring and considering.

**Mr. Chris Warkentin:** I appreciate that, and I think it's helpful, and I think that small-business owners, as you know, are so concentrated in doing whatever they do as a small business that oftentimes it's helpful. I appreciate those answers and I appreciate your contribution.

I don't know if there's anybody else on my side here who has additional questions, but I think that answers the few that were left on my page.

**The Chair:** Thank you, Mr. Warkentin.

Mr. Marston.

**Mr. Wayne Marston:** This gets more interesting as we go, because my friend from the Bloc raised a point that has been on the tongues of everybody I've met in the Hamilton area. We raised concerns about the bonusing done by the CPPIB. CPPIB, I would believe, is on separate legislation; it's not part of this act.

**Ms. Colette Downie:** CPPIB is different, that's right.

**Mr. Wayne Marston:** CPPIB, the Canada Pension Plan Investment Board, would have their own legislation over there, so there's no way we can get at them here. The reality is, some of our friends back home would like to get at somebody who got a \$2.3 million bonus in a year they lost \$24 billion. They don't quite understand that.

There's another one, in my own community, and it may be something this committee wants to look at; I'm not sure. We had in CCAA Stelco, which was purchased then by U.S. Steel, and Mr. Mott took \$57 million from this company and went back south with the money in his pocket. There's a reaction to that. Obviously, from the comments I've heard here, to have a strategy to deal with this, both at the national level and the provincial level, would require some kind of a summit or gathering of those people with those particular areas of responsibility.

When you talked about incorporation and when they use a lawyer and when they don't, I recall incorporating provincially about ten years ago, and we were given the choice of getting just a quick number, but if we wanted to incorporate a specific name they felt that it required the use of a lawyer. I never did quite understand why it cost us \$2,400 to find out why, but is that a provision of the way you'd get an incorporation federally? Is there a difference?

**Ms. Coleen Kirby:** You can incorporate federally with a number, which is fast, or you can get a "name" name. We've never come out with a good explanation for that one. The requirement, if you're going to use a "name" name, is that you have it approved to make sure it's not confusing yours with anybody else's name. You're required to do a NUANS search and submit certain information to us. Any member of the public has access to the NUANS site and can go online and do a search. There's a \$20 charge; they can get the search themselves. You can submit the information, such as the NUANS search and information about the company, to us in advance of sending the incorporation documents and ask us for pre-approval of a name. If we pre-approve the name and give you back the letter, it has the number, and when you come back online again, you put the number in there, and again you can go through it quite quickly. Or you can also ask for a name to be approved when you submit the actual incorporation documents.

• (1645)

**Mr. Wayne Marston:** I think you're telling me I could have saved \$2,380, if I had known that.

**Ms. Coleen Kirby:** It's possible. We try to make the information available: what we are looking at; what kind of search you need. We give you access to the tools; you can do it yourself. Will you get a name that's approved or not? The question then is whether the advice of an external source, whether a law firm, search house, or anybody else, is worth their fee, in that if you submit a name that's not accepted, it becomes rejected, and you get to go through the whole process again.

**Mr. Wayne Marston:** Going a bit further now, in a different area, we hear from the government side, from the Prime Minister and the finance minister, how solid our banks are. Under the CBCA, do you feel that Canadian corporations, relative to the rest of the world, are as protected as they need to be? Understanding that this is a review, do you have any comment on that?

One last thing is shareholders' responsibility, in the conversation about our all knowing the due diligence that's required of the board. Is there information provided to shareholders from the government that reminds them of their responsibility to ensure that their board functions honestly and ethically?

**Ms. Colette Downie:** Let me perhaps offer a point of clarification on the initial part of your question, in terms of the types of protections you'd be thinking about. Under the—

**Mr. Wayne Marston:** I think Enron was mentioned. It's whether we have the structures in place to ensure that the reputations of Canadian companies are protected worldwide at the same level as our banking reputations appear to be.

**Ms. Colette Downie:** Do you want to...?

**Mr. Wayne Lennon:** All I can say, and this is anecdotal, is that when Enron broke in the United States, I attended any number of conferences on whether it could happen here. There were academics and business people and securities administrators and a number of different stakeholders, and the consensus seemed to be that because of the corporate law and because of the way our security laws work—and because of our market generally—it was much less likely to happen. Their banking laws are different, and there's a whole range of different parameters under which businesses have to function.

It's not to say it's impossible, but it's much less likely here.

**Mr. Wayne Marston:** So there's nothing this committee should have any concerns to look for?

**Mr. Wayne Lennon:** The committee is free to examine any areas it thinks might help the Canadian marketplace and corporate Canada. But my understanding is that corporations are still subject to market forces: some will asphyxiate, some will fail, but as a group they're a pretty solid bunch.

**The Chair:** Thank you, Mr. Marston.

Mr. Gameau.

**Mr. Marc Garneau:** Thank you, Mr. Chair.

I understand that among other things the changes that were made in 2001 were intended to improve the rights of shareholders. I'd like to have your personal opinion on whether, based on feedback you've received, that goal has been achieved.

**Ms. Colette Downie:** I can only say that I haven't heard any feedback from any stakeholders that it has not. No major concerns have been brought to my attention so far about their rights or the integrity of shareholder rights under this statute.

**Mr. Wayne Lennon:** If I may add to that, as I said earlier, the statute allowed institutional investors, especially, to speak with themselves and to form organizations to lobby on behalf of or to act on behalf of shareholders with corporations. That was a major step forward in freeing up the power of shareholders to win awards. That was a power they didn't have before.

The other thing we did in the 2001 amendments was to dramatically open up the procedures by which shareholders could submit proposals to the board and have them circulated to other shareholders at company expense in preparation for the annual meeting. There were fairly draconian restrictions on that; for instance, beneficial shareholders, guys like me who might have two or five shares, couldn't do it. Those are opened up now. There are a number of avenues for shareholders to approach the board and to approach other shareholders in advance of annual meetings to get certain views discussed at the annual meeting. In my anecdotal experience from talking to some of the stakeholders over the years, the number of shareholder proposals has increased since the 2001 amendments, and corporations are paying much more attention to them.

• (1650)

**Mr. Marc Garneau:** Thank you.

My other question has to do with the overall level of scrutiny of corporate activity. Does the act provide for sufficient scrutiny by shareholders of the activities of a corporation, in your opinion? Is there sufficient transparency? That's what I'm getting at.

**Mr. Wayne Lennon:** Again, most of the transparency with respect to publicly traded corporations is handled through the continuous disclosure requirements of the securities commissions. They're fairly extensive and they've been revised a few times in recent years. The CBCA does require some disclosure of information through the proxy circular that's given to shareholders in advance of the meeting, so again there's a complementarity of effect there.

**The Chair:** Thank you, Mr. Garneau.

Go ahead, Mr. Brown.

**Mr. Gordon Brown (Leeds—Grenville, CPC):** Thank you very much, Mr. Chairman, and thanks to our witnesses for coming today.

This is a statutory review. I'm not familiar with any real push from anyone to see us do any real changes. Is there anything we haven't heard today that the witnesses, each of you, could suggest in terms of amendments, or anything we should be looking for? As I said, it is a statutory review, so we aren't really being driven to do this by anything that is happening, other than the statutory requirement.

**Ms. Colette Downie:** Really, the issues I'm aware of are the ones I listed a bit earlier. I'll turn to my colleagues to see if they have any additions to that list.

**Mr. Wayne Lennon:** There is nothing major. I helped compile the list, so it's pretty complete, as far as I know. There are a number of technical amendments that would certainly smooth the act, streamline it, make it more user-friendly, eliminate some drafting errors in the previous act, or something like that.

There may be a lot of things out there. We just don't know. We haven't heard them, and perhaps one of the useful functions of this committee would be to hear from witnesses as to what they've come up with that we would want to investigate and explore.

**Mr. Gordon Brown:** If we were going to go ahead with any hearings, could you suggest anyone we might bring in front of us to shed additional light on this aspect?

**Mr. Wayne Lennon:** As I said, the Canadian Coalition for Good Governance is one of the leading organizations of institutional investors in the country. From the shareholder point of view they would be very good, as would the Shareholder Association for Research and Education.

The business groups are well known. The Canadian Bar Association and Le Barreau du Québec would also probably have their own insights.

**Ms. Colette Downie:** I suppose you might consider the Canadian Chamber of Commerce and the Canadian Federation of Independent Businesses as well. They always have very interesting and helpful insights, in my experience.

**Mr. Gordon Brown:** Okay. Thanks very much, Mr. Chairman.

**The Chair:** Thank you, Mr. Brown.

Go ahead, Monsieur Bouchard.

[Translation]

**Mr. Robert Bouchard:** Thank you, Mr. Chair.

I think you answered the question. You anticipate conducting a review of the Canada Business Corporations Act, along with the committee. Officials from Industry Canada came before the committee on Bill C-4 and told us that they planned to modernize certain provisions, particularly with respect to securities transfer. This may have already been discussed, but I was away for a period of time.

Have you heard that it would be important to review these provisions specifically?

• (1655)

[English]

**Ms. Colette Downie:** That's certainly an issue we've heard about and that we expect some stakeholders would bring forward. It was one of the issues on my list. It really is whether the security transfer provisions in the Canada Business Corporations Act should be removed because there are already provincial pieces of legislation that deal with that very issue.

**Mr. Wayne Lennon:** It's also useful to know that the transfer-of-securities provisions are also in the Bank Act and the Trust and Loan Companies Act and the Insurance Companies Act. So for a uniform framework, it would be best to address all those acts at the same time.

[Translation]

**Mr. Robert Bouchard:** I have one last question before I give the floor over to my colleague.

Does Industry Canada regularly consult with stakeholders on the implementation of the Canada Business Corporations Act, or does everyone sit on their hands? What is the procedure?

[English]

**Ms. Colette Downie:** We don't conduct regular consultations in the sense of automatic consultations every two years or something like that. We have consulted on issues as they have come up. For example, there were consultations that followed the WorldCom and Enron issues. I gave an example of that in my presentation.

The staff in my branch are very active. Wayne is actually very well known in the community, so stakeholders don't hesitate to call and let us know when they have concerns and issues. Our staff are very active in attending conferences and listening for issues, watching the media. We also have regular contact with some of the business organizations in Canada, like the Canadian Federation of Independent Business, for example, again listening for issues and concerns about all of the legislation that we're responsible for.

[Translation]

**The Chair:** Thank you.

Mr. Vincent.

**Mr. Robert Vincent:** Thank you.

You know that public opinion is being felt very strongly these days. That is the case all over the world. The US president even decided to limit the salaries of executives at GM and Chrysler.

In your opinion, does the current version of the act provide sufficient tools to limit the compensation of directors and avoid excessive packages in difficult economic times? Does the act include any provisions that provide some semblance of transparency to shareholders, the public and company workers? Would the act need to be amended in order to do that? I would also like to know how you plan to amend section 125.

[English]

**Ms. Colette Downie:** We didn't come here today with any proposals for amendments. We really are here to provide information and background on the statute itself. As I mentioned before, we're certainly going to be watching the committee hearings and looking forward to the report of the committee in terms of deciding whether there should be amendments made or not.

With respect to whether anything else could be done in the statute to deal with executive salaries, it's not a statute that's really designed to be regulatory. It's a framework piece of legislation. So it's suggested that as the committee is considering whether amendments should be made to specify or regulate executive salaries, that's one big issue to consider, whether something regulatory or directive would fit in a statute like this. As I also mentioned before, it's one of a number of pieces of corporate legislation. So even if it were regulatory or directive in terms of executive salaries and compensation, it would require all of the other corporate statutes in Canada to make similar changes or else corporations could just move jurisdictions to avoid such a provision.

Those are really the two key considerations I'd bring to your attention.

• (1700)

[Translation]

**The Chair:** Mr. Bouchard, you have the floor.

**Mr. Robert Bouchard:** Thank you, Mr. Chair.

Earlier, I mentioned the Charter of the French Language in Quebec and the possibility of provisions that compel companies to respect that charter. You said that we would need to examine the constitutionality of doing that.

I would like to point something out to you. Minimum wage is a priority in every province and is respected in every province; minimum wage is mentioned in the Canada Labour Code. To my mind, that shows that we could pass an amendment in the future that would have to be respected in every province, similar to the minimum wage reference in the Canada Labour Code.

[English]

**Ms. Colette Downie:** I've noted that.

[Translation]

**The Chair:** Thank you, Mr. Bouchard.

Do any other committee members have any questions?

[English]

It looks as if we don't have anybody else. I want to thank our four witnesses—Madame Ringor, Madame Downie, Madame Kirby, and Mr. Lennon—for appearing in front of us today.

Before we adjourn, I just want to let members of the committee know two things. First, if I understand correctly, supplementary estimates B were submitted to the House today, and we have until the Christmas recess to review these supplementary estimates. If members of the committee wish to review the sups B sometime between now and the recess, let us know and let's have a discussion about that.

Second, as I mentioned earlier, five order-in-council appointments have been made over the last number of months. It's the right of members of the committee to review these appointments if you so wish. If that's the case then bring it up at some future meeting.

Without further ado, this meeting is adjourned.

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