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Chair

Mr. Dan Ruimy

Standing Committee on Industry, Science and Technology

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● (0845)

[*English*]

The Chair (Mr. Dan Ruimy (Pitt Meadows—Maple Ridge, Lib.)): Welcome, everybody, to meeting number 47 of the Standing Committee on Industry, Science and Technology. Again today we are working on Bill C-25.

We have quite a few witnesses with us today. We have, from the Institute of Corporate Directors, Matthew Fortier, vice-president, policy. From Catalyst Canada Inc., we have Tanya van Biesen, executive director. Via television land, from Osgoode Hall Law School of York University, is Aaron A. Dhir, associate professor. As well, from the Canadian Coalition for Good Governance, we have Stephen Erlichman, executive director, and Catherine McCall, director of policy development.

Welcome, everybody.

We will get right into it. You each have 10 minutes to present, and then we'll go to our rounds of questioning.

We're going to start with Monsieur Fortier.

Mr. Matthew Fortier (Vice-President, Policy, Institute of Corporate Directors): Thank you, Mr. Chair.

[*Translation*]

I would like to thank the committee for inviting me here today.

[*English*]

The Institute of Corporate Directors is Canada's association for boards and directors from the for-profit, non-profit, and crown sectors. We represent about 12,000 organizational and societal leaders who direct and lead their companies and play a significant role in determining the strategies for many of our country's most important institutions. We train Canada's board leaders and work with stakeholders to socialize the crucial importance of strong governance. The work we do with and on behalf of our members has a positive impact on Canada's economy by reinforcing trust and confidence in our institutions.

We have been working with the department for the past three and a half years to communicate our opinions regarding the review of the CBCA, and to express support for many of the initiatives that have ended up in the proposed legislation, such as the proposal to allow corporations to use notice and access. We would like to commend the government for the measured approach it has taken to this review.

Canada's corporate governance regime is a principles-based one. Our public issuers are subject to an evolutionary and fulsome set of rules and regulations through harmonized provincial securities regulation and stock exchange rules. This is a system that serves us well.

At the end of last year, I ended my term as the chair of the global policy committee of the Global Network of Director Institutes, which includes the major director organizations from 18 countries—from the U.S. and the U.K. to Pakistan and Malaysia. I can tell you that Canada's corporate governance is second to none, and that the common-sense approach we take and have taken is highly respected throughout the world.

In the interest of time, I will focus my remarks on two aspects of the proposed legislation: majority voting and diversity disclosure.

In our 2014 comment letter to Industry Canada, we expressed our support for the modernization of the CBCA but noted that our companies are also subject to a variety of rules, regulations, and legal precedents that inform their operations. Any changes to the legislation should not interfere with the mandates or decisions of those bodies, or add to the regulatory burden of companies by overlaying duplicative requirements. We noted that the TSX introduced a rule in 2014 that mandated majority voting policies at listed companies. This approach provides real consequences for directors who do not receive a majority of “for” votes, but provides boards with flexibility and a proper process to deal with the fallout from failed elections, i.e., when no directors are elected, when an insufficient number of the directors are elected to meet statutory or corporate by-law requirements, or when directors with a particular and necessary skill set are lost.

We support the government's intention to ensure that boards of directors have the confidence of shareholders. However, we continue to believe that the TSX rule is working well and that it may not be optimal to duplicate what has become standard for listed companies. We also note that the TSX rule does not apply to venture companies, which typically have concentrated share ownership and lower shareholder participation at AGMs. Given this, we don't believe that it is appropriate that CBCA amendments apply majority voting standards to venture companies. Moreover, while we know that the government has been attentive to our concerns over failed elections, we believe it is also important to to be mindful of potential similar unintended consequences of these amendments.

In a soon-to-be-released discussion paper, the law firm Hansell LLP—one of Canada's leading authorities on corporate governance matters—has flagged a number of potentially problematic consequences of the proposed amendments. These include uncertainty about the size of the board. That's to say that if a number of directors do not achieve a majority of “for” votes but the board still attains quorum, the board can continue to operate at a much reduced size, say from seven people down to three. Needless to say, a much smaller board may find it very hard to operate effectively. Another potential issue is the inability of shareholders to have a say on the replacement directors. Under the proposal, directors who remain in office can increase the size of the board by one-third. They can appoint whomever they want, and shareholders won't be able to approve or disapprove of them until the next AGM.

A final challenge concerns the potential actions of dissident shareholders. It's plausible that a dissident shareholder with a significant percentage of voting shares may use this change in the legislation to target one or more directors in a self-interested campaign. Without the ability to reject a director's resignation in exceptional circumstances, as is now the case, the board may lose quality directors because they were unfairly targeted.

We would welcome the opportunity to work with the government, and indeed with this committee, to help address these concerns—perhaps simply just through language—and to align the intent of the amendments with the practices that are already in the market.

I would like to spend a few brief minutes on diversity disclosure. First, we would like to congratulate the government for its leadership on this file and for signalling the importance of diversity on boards.

The ICD has been a consistent advocate for greater gender diversity on boards and was an early supporter of diversity disclosure, which eventually became the “comply or explain” rule.

In recent months, we've also been working with our friends at Catalyst Canada, the Canadian Coalition for Good Governance, the 30% Club Canada, Women in Capital Markets, the Business Council of Canada, and others to find new and better ways to socialize how business-critical board diversity is, and to help promote some of the thousands of experienced and effective women up the corporate ladder and into the C-suite and the boardroom.

● (0850)

The ICD believes that the more Canada views diversity as a driver of innovation, the better our boards, companies, and economies will perform. The equation is simple: greater diversity promotes better governance, which in turn promotes more innovation. After all, what is innovation but new thinking translated into the marketplace? In a world of blockchain, artificial intelligence, and market and political disruption, boards have to be more agile, disruptive, and innovative in their own thinking.

In our view, the case for gender diversity has been made. Unfortunately, Canada is a good distance away from where we need to be. In the fall of last year, the OSC reported that only 21% of public companies had adopted a board diversity policy and that only 12% of total board seats are occupied by women.

While disappointing, this isn't necessarily surprising. While many large cap companies have begun focusing on diversity, the Canadian public markets are fuelled by small and mid-cap companies that are often governed by directors who take off their workboots at the boardroom door. These directors are often just trying to keep the company going, maybe help find some more customers, and keep their people employed. Our job is not only to convince them that diversity on their board is good for business but also to make the process easy for them.

Before Christmas, the ICD in collaboration with the law firm Osler, Hoskin & Harcourt launched a board diversity policy template that provides all companies access to a template that allows them to choose how they will diversify their boards in a time frame that makes sense for their business. I believe the clerk has distributed to each of you a copy of this, with some supporting materials. We've had hundreds of downloads of this free tool, and we think it will help provincial regulators and the federal government achieve results that move the dial on gender diversity disclosure.

We're also focused on showing companies that identifying experienced, talented female candidates is not a barrier to board diversification. The ICD maintains a directors register that includes more than 3,500 women, nearly 1,000 of whom have their ICD directors designation, which means that they're not only board-ready but are also innovation-ready.

There are two items regarding the diversity amendments, however, to which we wish to draw the committee's attention.

First, we note that companies would also have to disclose whether they have a policy addressing diversity categories other than gender. While we agree that diversity goes beyond gender, we think it's important to recognize that policy levers regarding diversity really must start with gender. It is simply untenable that more than half of the country's population is so severely under-represented in corporate leadership positions.

The ICD teaches boards how to think broadly and critically. Integral to this is diversity of thought and experience, but we should be cautious to not signal to companies that having three male former CEOs from three different financial institutions constitutes diversity.

Second, we note that these amendments would apply to all distributing CBCA companies. Whereas provincial securities requirements exempt venture companies, federal legislation would mean that small issuers and small boards would be subject to the same reporting requirements as large cap banks or oil and gas companies.

To be clear, we are working to achieve greater diversity across all sectors of the economy, but we have to be realistic and understand that change will be slower in small cap companies—particularly, say, in mining or in IT—than it will be at the big five banks. The objective in the small cap sector is to better socialize the importance of diversity and to help build greater capacity. We look forward to continuing to work with the federal government to this end.

Thanks very much. I'm happy to take your questions.

● (0855)

The Chair: Thank you very much for your comments.

We will move to Catalyst Canada, Tanya van Biesen.

You have 10 minutes.

Ms. Tanya van Biesen (Executive Director, Catalyst Canada Inc.): Thank you, Mr. Chair and committee members. It's a distinct honour for me to be here today to represent Catalyst Canada.

Our goal as a non-profit organization is to help businesses around the world to build workplaces in which women and men of all backgrounds have equal opportunities to succeed. I'll be focusing my remarks from the perspective of working with organizations to close the worldwide gender gap in leadership, wages, and opportunity. I do so in the hopes of providing further context for your deliberations on Bill C-25 and specifically addressing the section of part 1, requiring corporations to provide information respecting diversity among directors and their members of senior management as it pertains to women's representation on boards and in senior leadership.

Let me start with a very simple point. What's good for women is good for business. I say this because the issue of gender parity on boards is driven not simply by questions of fairness and equity. This is an issue that speaks directly to Canada's ability to compete and flourish in a global economy. How effectively Canadian businesses leverage diverse talent, starting with women, will be critical to our long-term competitiveness. Achieving gender balance on boards and throughout the executive ranks is widely recognized as a global economic imperative. Furthermore, there's a strong business case for having more women on boards and in senior leadership. Study after study has shown that having more women on boards and in senior leadership on average improves organizations' overall financial performance, enables them to better serve their customers, and allows innovation to flourish. Research from Catalyst and the Harvard Business School has found that companies with more women in leadership also tend to have a stronger commitment to corporate social responsibility.

There's some good news around the issue of women's representation on boards. It's fair to say that the conversation about women on boards in Canada has shifted in an encouraging direction in recent years. The dialogue no longer focuses on why we need more women at the table, but rather how we can accelerate progress. Furthermore, the introduction of “comply or explain” securities law rule amendments, which have now been adopted by almost all jurisdictions across Canada, and the introduction of the legislation we are discussing today are positive, encouraging, and exciting steps forward.

The issue is firmly on the radar. However, the reality is that we are still a long way from reaching parity, which is the ultimate goal. Unfortunately, the pace of change continues to be frustratingly slow. For example, the Canadian Securities Administrators' recent review of comply or explain showed little or no progress for women on boards and in senior leadership positions. It found that only a small percentage of companies had adopted written policies for improving diversity on boards, and it showed that almost half, 47% to be specific, of all TSX-listed issuers have zero women on their boards.

Additionally, as recently as last October the Washington-based Peterson Institute for International Economics reported that men still hold 86% of executive positions in Canada and 93% of board seats. Clearly work remains to be done.

Turning to the “how” with regard to advancing women into leadership positions, the central question to consider is what instruments will most effectively bring about change? Catalyst Canada research suggests that more than a decade of raising awareness, leadership for many prominent business leaders and organizations, and women knocking on the doors of boardrooms have had little impact. Bold action is required to accelerate progress for women on boards. Governments and businesses continue to engage in discussions about the best way to increase women's representation on boards. Around the world there are numerous efforts taking place, from legislative quotas to regulatory actions to voluntary pledges or targets initiated by companies.

Our recent report entitled “Gender Diversity On Boards In Canada: Recommendations For Accelerating Progress”, which was commissioned by the Government of Ontario, looked at the various approaches and their effectiveness. The experience of Norway, which implemented gender quotas for board directors in 2003, tells us that legislative quotas have definitely moved the needle in that country. Other countries, including the United Kingdom and Australia, have chosen mandatory disclosure and transparency in diversity policies for public companies similar to what the bill we are discussing today puts in play. In Australia women's representation shot up from 10.7% in 2010 to 22.7% in 2016, and women comprised 34% of new appointments to ASX 200 boards in 2015.

In the U.K. women's representation on FTSE 100 boards has more than doubled from 12.5% in 2011 to 26.1% in 2015. Thus, these types of policies are certainly an option or interim step for Canada to consider, eliminating protracted debates about the issue of quotas and focusing instead on the policies, practices, and outcomes of the board selection process.

● (0900)

Ultimately, Catalyst believes there's no one right way to accelerate progress for women on boards. What matters is intentional action and the commitment to setting goals and making change. That's why in the same report I just cited, we made 11 recommendations for companies, business leaders, and governments to drive change.

Among these are that TSX-listed issuers set 30% targets for women board directors by 2017 and achieve them within three to five years, that they use at least one mechanism to facilitate board renewal, and that they establish written policies to increase the representation of women on boards. Also, we recommend that governments reinforce the setting of the targets, renewal mechanisms, and written policies; that they track and publish progress; and that they set a minimum goal of 40% for their own agencies, boards, commissions, and crown corporations. In addition, Catalyst recommends that more stringent legislative or regulatory approaches be considered if progress is not made, particularly toward the 30% target.

These recommendations are based on the following. First is the new five-year historical trend data conducted in partnership with the Rotman School of Management, which shows that issuers with more board renewal—be it board term limits or written policies stating they are considering women when recruiting for new board positions—have more gender-diverse boards than those that don't. Second is a review of best practices, learnings, and key models adopted by governments around the world. Third is Catalyst's expertise, which has been gained over 50 years of conducting groundbreaking research to measure and diagnose talent management gaps and developing programs for organizations to leverage top talent and accelerate the advancement of women and inclusive workplaces.

Government policies mandating companies to report the types of actions they are taking to address board and senior management, as well as explaining why they may not have policies in place, force companies to address the issue. They can also provide best practices or proof points for other organizations to implement.

One proven solution is sponsorship, the act of support by someone appropriately placed in an organization who has significant influence on decision-making processes and advocates and fights for the advancement of an individual. The Catalyst women on board program demonstrates the impact of sponsorship. The program pairs a CEO or board chair with a senior executive woman who aspires to board service, for a two-year partnership. The mentor sponsors provide valuable advice and counsel, and critically, introduce the women candidates to their network of sitting directors. Since the program began almost 10 years ago, almost 60% of program alumni have been appointed to corporate boards, and over 130 Canadian companies have appointed “women on board” participants to their boards.

Another proof point can be found in the Catalyst accord. The accord is a call to action for Canadian companies to increase the overall proportion of the FP 500 board seats held by women to 25%. Since the launch in 2012, 86% of the accord's signatories are at or above the 25% goal, including several at 30% or higher.

At the end of the day, while the means to increase women's representation may vary, the key is that it gets done and gets done quickly. Until women achieve parity in business leadership roles in Canada, they will be marginalized in every other area.

Thank you for your attention.

● (0905)

The Chair: Thank you very much.

Now we're going to move to Osgoode Hall Law School of York University.

Mr. Dhir.

Professor Aaron Dhir (Associate Professor, Osgoode Hall Law School, York University): Thank you, Mr. Chair.

I'm grateful to the committee for the invitation to join you this morning. It's an honour to appear and to share my thoughts on the bill, in particular on the aspects that relate to diversity in the boardroom and the executive suite.

By way of background, I am a law professor at Osgoode Hall Law School and currently a visiting professor at Columbia Law School. I teach and research in the areas of corporate law and corporate governance. Over the last several years, I have focused my scholarly work on the topic of regulatory approaches to diversifying corporate governance.

In my recent book, titled *Challenging Boardroom Homogeneity*, I study the two main forms of regulation that have been adopted internationally: quotas, which require specific degrees of gender balance in boardrooms, and disclosure regimes, which ask firms to report on diversity levels and practices.

Bill C-25, as we know, proposes the latter, a disclosure-based approach. The need for government intervention in this space is pressing. Using gender as an example, as both Matthew and Tanya have mentioned, the CSA released a report just last year after surveying 677 issuers listed on the TSX. They found that women hold only 12% of these companies' board seats, and that was an increase of just 1% from the previous year. Strikingly, 45% of issuers had no women at all on their boards.

The reality is that in Canada we currently trail a number of other developed economies. With that context in mind, I'd like to offer thoughts on what, in my view, the bill does well and what can be improved.

What does the bill do well? The bill and the draft regulations, as we know, import into the CBCA disclosure requirements that have already been in place for just over two years in most jurisdictions under provincial securities regulation. The bill would require all CBCA distributing companies to report on the gender composition of their boards and their management teams, and on the details of their diversity policies and considerations. All of this would be done on a comply or explain basis. This is certainly a positive development.

In the course of writing my book, I reviewed every diversity-related disclosure provision that exists internationally. In my view, the current rule is certainly among the best, both in terms of the level of information that it requires and in terms of its focus, which is the entire governance ecosystem of the board and the executive suite, not just the board in isolation.

The proposed regulations then go a step further than the existing rule by also requiring companies to report on forms of diversity other than gender. This development has the potential to be an improvement on the rule currently in effect, and that leads me to how the bill can be improved. I have two suggestions.

First, I'd like to return to the conversation that took place in the committee on Tuesday when Minister Bains appeared. During a very thoughtful set of exchanges, both Mr. Masse and Mr. Arya emphasized the importance of defining “diversity”. In Mr. Masse's comments, there was a skepticism that “market forces” alone can be relied on to reach the legislation's goals. I support these sentiments.

As it stands, the draft regulations do not define the term “diversity” other than gender, and that, in my view, is a serious omission.

Why do I say that? In 2010 a diversity disclosure rule went into effect in the United States. Under it, the U.S. Securities and Exchange Commission requires publicly traded companies to report on whether they consider diversity in director appointments, and if so, how, but the SEC made the conscious decision not to define the term “diversity”. Similar to Minister Bains' comments on Tuesday, the SEC reasoned that diversity can mean many different things and that companies should be given maximum flexibility to express their commitment to diversity in the broadest sense possible.

How did corporate America respond? In my book, I analyzed the disclosures that the S&P 100 submitted to the SEC during the first four years of the rule. My most striking finding is this. While almost all companies complied with the rule by disclosing that they do consider diversity, only about half actually define diversity in terms of gender, race, or ethnicity. Firms, when defining diversity without sufficient regulatory guidance, prefer to focus on a director's prior experience or skills, rather than his or her socio-demographic characteristics.

● (0910)

Minister Bains expressed the view that diversity isn't about checking a set of boxes, that it goes beyond traditional identity-based factors. I understand this view, but I would also like to invite the committee to think about it another way. It need not be an either-or situation. It's entirely feasible to allow companies to discuss diversity in the broadest sense, while at the same time making it clear that disclosures must also include information on identity-based characteristics, such as race, ethnicity, indigeneity, and so on.

A definition of diversity could be drawn from existing federal sources, such as the Employment Equity Act or human rights legislation.

Of course, gender equality is of the utmost importance, and we must move beyond Canada's male-dominated leadership structures. At the same time we have an opportunity to consider the importance of a more holistic diversity, a diversity that includes other characteristics, and this is particularly important given current demographic trends. For example, the city of Toronto is home to more head offices of the leading 500 revenue-generating firms than any other large Canadian metropolitan area.

To use the term of current federal legislation, Toronto is comprised of almost 50% visible minorities, and Statistics Canada projects that groups falling into this category will make up to 63% of Toronto's population by 2031. Yet a recent study by the Canadian Board Diversity Council suggests that the percentage of directors from racialized groups is actually decreasing as compared with previous years, with these persons occupying just 4.5 % of board seats in the FP 500. Can it really be that in a population the size of Toronto's there is such a dearth of qualified racialized candidates?

My second suggestion relates to the importance of data collection and monitoring. If a goal of C-25 is to diversify corporate leadership, we cannot assume that the passage of a disclosure rule, in and of itself, will necessarily achieve this objective. If the provision passes, we should think of it as more of a working hypothesis than a foregone conclusion.

On that front, it is essential that the federal government monitor the disclosures and the explanations, and that it work with other agencies, such as the provincial securities commissions, to track levels of representation year over year.

I want to return to that CSA study from last fall. As we've heard, the number of women on boards increased from 11% to 12%, and only 21% of issuers reported having a policy on the nomination of women directors. At first, those numbers didn't surprise me. I thought to myself that issuers reasonably need time to adjust to the new rule and the information that it requires, and also, there's a waiting game. Since only about 20% of firms have director term limits, women won't have the opportunity to join boards until existing directors retire.

But then, the chair of the OSC announced that in fact 521 board seats had become available in the previous year, and just 15% of those vacancies, i.e., 76 seats, were filled by women. That is a troubling statistic, and we have to ask ourselves why the numbers are as they are.

Social science research tells us that we all have a tendency toward unconscious bias, in particular the assumption that men are more effective leaders than women. The work that we're asking the law to do here is really to help shift existing social norms and biases, but the law's ability to do this depends on how strong the existing norms and biases are. In this case, they are deeply entrenched, and it may be the case that for the law to be effective in shifting norms, the law itself has to be equally potent.

That is why, while I certainly support tracking the data, and allowing the comply or explain regime the time to work, I also think that the government has to at least begin a conversation on the potential use of more prescriptive forms of regulation, while being mindful of the fact that they may soon become necessary.

Those are my thoughts, and I really look forward to your questions. Thanks so much.

● (0915)

The Chair: Thank you very much. With five seconds to spare, that was very good.

Finally, we're going to move on to the Canadian Coalition for Good Governance with Mr. Erlichman or Ms. McCall.

Mr. Stephen Erlichman (Executive Director, Canadian Coalition for Good Governance): Thank you very much.

Mr. Chair, members of the committee, thank you for inviting the Canadian Coalition for Good Governance, colloquially referred to CCGG, to present to you on the topic of Bill C-25. My name is Stephen Erlichman. I'm the executive director of CCGG. With me is Catherine McCall, CCGG's director of policy development.

Before I provide my remarks, let me say a few words to introduce CCGG.

The coalition was founded in 2002 to promote good governance practices in Canadian public companies whose shares are owned by our members. CCGG's members include a wide range of institutional investors, primarily pension funds and third-party money managers, that have an aggregate of approximately $3 trillion in assets under management. Millions of Canadians rely on returns from these investments to fund their retirements. A full list of CCGG's members is available on our website at ccgg.ca.

The coalition is widely recognized in Canada as a thought leader in corporate governance. We are regularly consulted by governments, regulators, and stakeholders for our views. Just yesterday, we intervened at the Supreme Court of Canada in the Livent case because of certain issues we believed were very important in the corporate governance context.

When we last appeared before this committee in 2009, we recommended many of the changes that are in Bill C-25 relating to the governance of public companies under the Canada Business Corporations Act, colloquially referred to the CBCA. We are pleased to return today to offer further comments and suggestions. At the outset, I note that all our recommendations relate to part 1 of Bill C-25, which concerns amendments to the CBCA. In particular, we are concerned with provisions that apply to distributing corporations, the term used in the CBCA for public companies.

To begin, my colleague, Catherine, will address the key provisions of C-25 that should be maintained going forward. Later, I will review recommendations for further improvements to corporate governance under the CBCA.

Catherine.

Ms. Catherine McCall (Director of Policy Development, Canadian Coalition for Good Governance): Thank you, Stephen.

Thank you, Mr. Chair, and thank you to the members of the committee for asking us to appear before you.

CCGG strongly urges this committee to support and endorse the CBCA amendments proposed in Bill C-25 and to recommend to the House that those amendments be adopted, keeping intact four key governance enhancements.

First is the requirement to hold individual elections for directors. Not long ago it was common for companies to circulate a form of proxy to shareholders where the options presented were to vote for or withhold from voting for a slate of directors rather than for individual nominees. Individual elections for directors are now a listing requirement on the Toronto Stock Exchange; however, nothing prevents this TSX rule from being reversed in the future. Individual director elections are a fundamental matter of good governance and this rule should be set out in statute.

Second is the requirement that a director's term shall end at each annual meeting of shareholders following that director's election. Again, though such a provision is now a listing requirement of the TSX, nothing prevents this TSX rule from being reversed, and we believe annual elections should be set in statute.

The third governance enhancement to be preserved is the majority voting system for uncontested director elections. We consider this to be one of the key reforms of this bill. The CBCA, as you know, currently provides for a plurality voting system. Under such a system, it is not possible to vote against a director. Rather, a shareholder can either vote for or withhold from voting for a director nominee. Withhold votes are, in effect, an abstention, and they do not count. By way of example, a nominee who owns just one share could vote for him or herself and still be elected. We know of no principled reason why this system should remain. The election of directors is a fundamental right of shareholders, and as such, they should have the ability to cast a meaningful vote either for or against a nominee.

Earlier, Matthew referred to the current TSX listing requirements that companies adopt a majority voting policy. We believe this is an inadequate workaround for a number of reasons. First, again, it could be reversed by the TSX, and second, it only applies to TSX-listed companies and not to the approximately 1,500 venture companies that have access to the public markets. Access to those markets comes with accountability, and the requirement that directors be able to be voted against is not an onerous requirement. I think that even venture companies should be accountable to shareholders.

There have been examples. Even companies with this majority voting policy have ended up in the situation of what are known as zombie directors, where directors that have not received a majority of the votes in favour are kept on by the board. We think that is unacceptable.

Finally, Bill C-25 should retain the comply or explain regime for board diversity, both the gender diversity and the forms of diversity other than gender, as proposed in the regulations. CCGG supports efforts to improve diversity. We have stated for many years that public companies should be composed of directors with a wide variety of experiences, views, backgrounds, and expertise that, to the extent practical, reflect the gender, the culture, the ethnicity, and other characteristics of the communities in which they operate.

Thank you.

● (0920)

Mr. Stephen Erlichman: CCGG recognizes that Bill C-25 currently reflects changes to the CBCA where there's a perceived consensus among the comments received during the previous round of consultations. However, CCGG has identified the following three additional corporate governance issues that require further consideration. CCGG does not believe Bill C-25 should be held up, however, while these additional issues are considered.

First, the CBCA should facilitate the ability of shareholders to nominate directors. Current methods by which shareholders nominate director candidates are quite simply not effective. As a result, director nominees are almost always chosen by the incumbent board or company management.

Further, in our experience, companies very seldom seek input from shareholders when selecting board nominees. Canada is becoming a laggard in this area of governance. In the United States, for example, 39% of the S&P 500 companies have adopted a meaningful method for shareholders to nominate director candidates. We also understand that direct shareholder input into the director nomination process exists in many other countries around the world.

Second, the CBCA should require an advisory “say on pay” vote by means of an ordinary resolution at each annual meeting of shareholders. The area of such advisory votes is one in which Canada is an international outlier. Periodic say on pay votes are mandatory in the United States, Australia, and such western European countries as the United Kingdom, France, Germany, and others.

Third, the CBCA should as a general rule require that the board chair be independent of management. The board chair plays a key role in leading or coordinating the other directors, both during and outside of meetings, in support of the board's obligation to supervise the senior executive team's performance. When the board chair is not independent of management, it results in a serious conflict of interest and obscures the lines of accountability. For example, the oversight of the senior executive team, in particular of the CEO, is one of the board's key responsibilities. A combined board chair and CEO would thus be responsible for leading the body that oversees himself or herself.

Finally, in addition to the three specific issues I've just mentioned, CCGG recommends the creation of a standing external stakeholder advisory body to advise the federal government on corporate governance issues. It's been addressed many times over the past few weeks before this committee that the CBCA has not been substantially amended since 2001, and only twice in the past 40 years. If consensus is what drives this process forward, then we respectfully submit that there is consensus for more regular follow-up.

A standing stakeholder advisory body in corporate governance would support a regular review process. The advisory body could be populated with key government stakeholders and professionals to provide periodic reports on ways to improve the regulatory environment for CBCA public companies as well as federal public financial institutions. Further, such a body could provide helpful feedback regarding the matter in which the provisions in Bill C-25 related to diversity are being interpreted and adopted by public companies.

In closing, we thank you for the opportunity to testify before this committee. Catherine and I would be happy to respond to any questions.

The Chair: Thank you very much for your comments.

We'll now move to Mr. Arya for seven minutes.

Mr. Chandra Arya (Nepean, Lib.): Thank you, Mr. Chair.

Professor Dhir, thank you for your testimony. I have some questions for you.

First, do you think the word "diversity", beyond gender diversity, should be defined in the bill, or is there another place it can be done?

● (0925)

Prof. Aaron Dhir: Thank you for that question. It's such a simple question, yet it's so difficult to really get our heads around. What is the proper location for a definition, should there be a definition, and so on?

I think my research from the U.S. experience certainly suggests that if we do have a desired outcome for this provision—that is to say, the increased socio-demographic diversity of boards—then yes, there does need to be a definition. I think ideally that definition would be found within the text of the bill itself. It could certainly also be placed within the regulations, but again, I want to suggest that it need not be an either-or. That is to say, we can allow corporate Canada to tell us about their preferred forms of diversity while at the same time making it clear that there are certain types of diversity that we also want information on.

Mr. Chandra Arya: Suppose in the regulations we put in words similar to these, "Diversity may include the designated groups under the Employment Equity Act."

How do those words sound?

Prof. Aaron Dhir: The "may include" formulation, though, is a permissive formulation. I think that could be legitimately construed as guidance, but it certainly would not be construed as a requirement.

Mr. Chandra Arya: Okay, then what is the wording you prefer to see in the regulations?

Prof. Aaron Dhir: I'm hesitant to be that prescriptive to the committee, but since the committee has asked—

Some hon. members: Oh, oh!

Mr. Frank Baylis (Pierrefonds—Dollard, Lib.): Just write it down.

Prof. Aaron Dhir: —I think it's very reasonable for the draft regulations or the bill to say "diversity shall include", and then include the socio-demographic factors that the committee chooses to take, for example, from the Employment Equity Act or from human rights legislation, and then, in addition, companies may discuss other forms of diversity appropriate to them.

Mr. Chandra Arya: Mr. Fortier, you mentioned some numbers regarding gender diversity on the boards.

Mr. Matthew Fortier: Yes.

Mr. Chandra Arya: Do you have the number of how many women on boards belong to visible minorities?

Mr. Matthew Fortier: I don't have that number for you, I'm afraid. I don't know if Catalyst can help there, but—

Ms. Tanya van Biesen: We don't have a Canadian number, so for this—

Mr. Chandra Arya: Do you think those kinds of numbers should also be tracked?

Mr. Matthew Fortier: I want to think this through. I think it would be good to track those numbers. We come at it from the perspective that the first order of business is to achieve greater gender balance on boards, right?

Mr. Chandra Arya: Now, Paul Schneider, who is the head of corporate governance of the Ontario Teachers' Pension Plan board, told the committee that he would like government to give some sort of direction on what it means beyond gender diversity.

Do you agree with that?

Mr. Matthew Fortier: Listen, I think Teachers' has a significant number of holdings. At the end of the day, if that's what they want to see from their holdings, that is completely appropriate, and if they think the Government of Canada can help in that respect, that would be helpful for them, and I think it would probably be helpful for the market to have a better understanding of that, yes.

Mr. Chandra Arya: I want to know the position of the Institute of Corporate Directors in this field, other than gender diversity, which is a noble cause we all agree with.

Mr. Matthew Fortier: Yes. We've said that diversity goes beyond gender, and that is beyond question.

Mr. Chandra Arya: What do you mean by that?

Mr. Matthew Fortier: It can include ethnicity. It includes age and experience, obviously, and geographic diversity. But we also think that, given how poorly Canada has performed on the gender front, that's the first order of precedence.

Mr. Chandra Arya: No, we are not talking about gender diversity here.

You mentioned geographic diversity and age diversity. Is that what you are limiting yourself to?

Mr. Matthew Fortier: I haven't limited anything. Those are just examples. I'm not sure what other categories you'd put in there.

I think it's important for boards to essentially compose themselves in a way that reflects the market they're trying to serve.

Mr. Chandra Arya: Thank you.

Mr. Dhir, you just heard Mr. Fortier's, I would say, lack of definition. I think he is trying to limit himself to certain things and not go beyond that.

What do you make of that?

Prof. Aaron Dhir: I have tremendous respect for the work that ICD has done in this policy space and I think ICD has been a real leader.

One of the most poignant moments, for me, going through the regulatory process with the OSC and also participating as an expert in the OSC process, was when the former director of ICD, Stan Magidson, stood up and said quite frankly that ICD supports a disclosure rule, because they did take it to their membership that they need to increase diversity on a voluntary basis, but unfortunately it didn't take. I thought that was a tremendous example of honest leadership.

I would also note that in the comment letters that were submitted to the Ontario Securities Commission on the proposed diversity disclosure rule, I believe—and certainly Matthew can correct me if I'm wrong—ICD did come out in favour of a more holistic definition of diversity, actually along the lines of the definition that you are suggesting, Mr. Arya.

● (0930)

Mr. Chandra Arya: Thank you.

Tanya, the last question is to you.

Do you think that the number of women on boards should be increased? We all agree with that. Do you think it has to be much more beyond that? For example, in Toronto, 50% of the population is women. At the same time, 50% of the population belong to racialized minorities, so is replacing a white man with a white woman the limit, or should we go beyond that?

Ms. Tanya van Biesen: I think we should go beyond that.

Mr. Chandra Arya: Okay.

The Chair: Thank you very much.

We're going to move on to Mr. Dreeshen. You have seven minutes.

Mr. Earl Dreeshen (Red Deer—Mountain View, CPC): Thank you very much, Mr. Chair.

Thank you to all of our guests this morning for the very interesting perspectives that you've brought in. We've heard many of these.

First of all, Tanya, I'd like to mention a couple of things. I've had the opportunity to attend meetings in Central and South America, where they talk about having more women as politicians and political people. When I was down there, Canada at that point in time had between 80% and 90% of its population being governed by female premiers.

When we take a look at that, there are many in the business who say they didn't get there by quota, they got there by talent. There's always that argument.

You talk about sponsorship and mentorship. How can you advocate and how do you advocate for women so that they are getting into a position where they can and will be selected? We see that it happens at the political level, but I know that the question we're dealing with here is the corporate level. How can we see that same success at the corporate level as we see at the political level?

Ms. Tanya van Biesen: Let me make a distinction between sponsorship and mentorship. Both are very important in the development of anyone's career, whether it's in the political sphere, the corporate sphere, or the not-for-profit sphere.

When you have a mentor, that mentor will talk to you and coach you and give you advice and counsel. A sponsor talks about you. A sponsor will put their hand in the fire and advocate on your behalf when you're not in the room.

What we have found through many years of research is that men have many more sponsors. Women have many more mentors. Why is that? It's because the top levels of management tend to be men. I think as humans, we look for people like us, so men sponsor men. If there are no women at the top, then men sponsor men.

How can organizations do better? Right now we're trying to create a national conversation about this with an initiative called #GoSponsorHer, in partnership with Deloitte and McKinsey. People need to be very intentional. Senior leaders, men and women, need to say, “Who am I going to sponsor and advocate for and progress the career of? I'm going to put my own reputation on the line and pull them up the organization.” That's what we are asking people to do.

Does that answer your question?

Mr. Earl Dreeshen: Yes. Thank you very much.

Matthew, you had mentioned, and we've heard this number before, that there are 3,500 women who are in this pool who we can look at. How many men would be in a similar pool?

Mr. Matthew Fortier: The 3,500 number is just in our pool. The total number of people in that register is 8,000, and we have 12,000 members. Roughly one-third of our members are women, and of the 3,500 number, those are people who have asked us to help them find a board position if one is available and suits their capabilities. A thousand of them are people who finished the director's education program, which is the leading education program in Canada.

There are probably 3,000 men who finished the program and a 1,000 women.

● (0935)

Mr. Earl Dreeshen: When you look at your board diversity policy, the template that you've shown here, you've done two things. First of all, you've looked at 30%, at least, which kind of fits the number you've presented. The other thing that you've mentioned, which we haven't seen, is a timeline. That has been one of the discussions that we've had here; that is, when can we see the metrics and what can we measure from this, rather than just a “Yeah, we'd like to do better”.

In this you've outlined 2021. I'm sure, as a template, people can adjust this however they choose. Why did you choose those numbers? Were you simply looking at the pool to make that decision, or did you have other thoughts?

Mr. Matthew Fortier: The template you have before you is something that I filled out. I think 30% is something that we should be looking to achieve in the near to mid-term, and 2021 fits in that term.

If you go online and you look at the template, you can choose. You could say that you're going to achieve 5% by 2050, but that's obviously not acceptable. The point of the template was to recognize that not all companies are created equally and that not everybody can get up to those standards by 2020.

We're trying to help companies understand that diversity is good, that it will help their business, that it will help them to innovate, and also to help the provincial regulators and the federal government, now through the CBCA to achieve better results.

We had a webinar two weeks ago with the head of the Norwegian institute who pushed through the quota system there and with the chair of the OSC. We talked about what happens next if we don't get the results, organically, as we called it. What is the next lever here? Nobody wanted to put a time frame against it, but I think we all agreed that it's in the mid-term. Nobody wanted to use the word “quota”, but it's on everybody's mind.

The next iteration could be something like mandatory policies. I don't think anybody is discounting any options, because this is something that has to happen. We'd rather see it happen organically.

Mr. Earl Dreeshen: The other question I have, and you mentioned this, is about the skill sets that are required for the directors. If you brought somebody in that has that legal component you require and they leave, you need to replace them with somebody.... That's a position that has to be done. It's the same situation, whether you are using accounting, or some political expertise, or people from the workforce. Those are other things that tie into the breakdown of your numbers.

When you do training, are you actively pursuing those individuals who are representative of the skill sets that are needed?

Mr. Matthew Fortier: Absolutely. We market this to as many professions as possible and to as many backgrounds as possible.

What we say around diversity, whether it's gender diversity or any other kind of diversity, is that it's performance, not conformance. We would never expect a board to put somebody on the board, just because. You have to have the skill set. If candidate X has that skill set and fits the male profile, while candidate Y doesn't have that skill set, clearly you should put candidate X on the board. However, we firmly believe there are many candidate Ys with the skill sets out there.

Mr. Earl Dreeshen: Thank you very much.

The Chair: Thank you very much.

We're going to move to Mr. Masse, for seven minutes.

Mr. Brian Masse (Windsor West, NDP): Thank you, Mr. Chair, and thank you to our witnesses for being here and also for being available from abroad.

If we follow the minister's proposal with regard to this bill and it stays in its current context for enforcement and disclosure, and so forth, we won't get a chance to have a new legislative product until 2025, based on best estimates in the current time frame.

I'll go around the table quickly. Would that be a satisfactory date to have a piece of legislation looking at this issue, in which there is no enforcement, given that we would have to review for 2025 before any enforcement takes place?

I'll start with Mr. Fortier and go around the table. You can say yes or no really quickly because I have other questions. If you don't respond, then I'll take that for what it is.

Mr. Matthew Fortier: I will say no, but very briefly, I have a couple of points.

I think the coalition's proposal to have an advisory committee is an interesting one, but I also think—

Mr. Brian Masse: If I could interrupt, here's the thing I'm asking right now. This is the reality. We don't have theoretical situations here. The reality is that, if we follow the timelines we've had for this bill to get here to this Parliament, to get a new product in the field with no change, the earliest for it to get to the next Parliament is 2025.

Are you comfortable with that?

● (0940)

Mr. Matthew Fortier: No. We want to see some change now, particularly on diversity

Mr. Brian Masse: We'll get to those later. I appreciate that.

Ms. Tanya van Biesen: No.

Mr. Brian Masse: Mr. Dhir, maybe you could start.

Prof. Aaron Dhir: Thank you, Mr. Masse.

Clearly, the answer is no, which is why one of my suggestions is that contemporaneous with the passage of the bill, the government begin substantive conversation now on next potential more prescriptive forms of—

Mr. Brian Masse: Right.

If we could hear from our other guests, please.

Mr. Stephen Erlichman: Again, the answer would be no. Eight years is too long. That's one of the reasons we suggested the stakeholder advisory committee.

Ms. Catherine McCall: I agree.

Mr. Brian Masse: Thank you very much for that.

To Mr. Dhir, with regard to advancing this bill in terms of quotas —we haven't talked a lot about it—what if there was a more modest quota that was put in place, say for example....

What I thought was most interesting about the testimony today was your notation of the 500-plus positions. By that indication of measure, we're actually stepping back because I believe 21% is the number right now, so we're actually in a reverse trend, at least for this one year. That can be measured over several years to be more accurate about what the real trend is, but that happened?

What about the potential of a more modest, interim quota, that could get a land base, so to speak, for further change?

Prof. Aaron Dhir: Yes. I should say I've studied the quota system by travelling to Norway and conducting research interviews with corporate directors who are subject to a quota regime. I asked those directors, who I should say almost uniformly support the quota legislation, if you were to do things differently, what might be a particular step you would take? A number of them did suggest to me that going with too much too soon does create a significant burden, such that a progressive form of escalation might be more appropriate along the lines you're suggesting.

I should note, Mr. Masse, that we talk a lot about the Norwegian experience, but subsequently a number of countries have also passed quotas. Two come to mind, Italy and France, that have done exactly that, creating a progressive quota system with lesser numbers expected as an initial goal.

Mr. Brian Masse: Mr. Fortier, with regard to your company.... You mentioned some of the things: age, experience, geography. I guess one of my frustrations about this bill is that potentially we walk away from an opportunity for real diversity.

Your board has two women and five men, and I believe there are no visible minorities on it. Is that correct?

Mr. Matthew Fortier: I guess that's right.

Mr. Brian Masse: How about persons with identified disabilities?

Mr. Matthew Fortier: I don't believe so.

Mr. Brian Masse: My past experience.... I used to work with youth at risk, new Canadians, and I also used to work on behalf of persons with disabilities, as an employment specialist in both cases. What I found was that decision-makers aren't there, and I would just be shocked if we walked away from a bill here that didn't address diversity issues, especially given the climate that we're in right now, to some degree.

Why are you so hesitant, and did your position change with the submission to the Ontario...with having more diversity involved in that? What's so wrong with the human rights code, or something like that? Do you think there could be some change in your position, or am I getting it wrong? If we're looking at 2025 before enforcement mechanisms take place, that's a heck of a long time to do something about it, when you look at some of these numbers.

Mr. Matthew Fortier: With respect, I am not saying that the board should not diversify along other lines. What I said in my remarks was that, as it is written, a company could receive the signal that diversification of experience is the same thing as gender diversity. For example, if a white man who was the CEO of TD is on the board, and if we had another white man who was the CEO of Royal, that's diversity because it's two different companies. If you want to get more specific in the language, that's one thing. I'm not saying that we shouldn't diversify more. I'm saying that, as it is written, diversity is left so wide open that it could mean anything.

Mr. Brian Masse: That's my concern. It seems that what I am hearing, as things advance here, is that the diversity of some of these boards—when you're talking about geography and so forth—seems to be a kind of a diversity model inside a bubble, versus that of the regular population, which would never consider such factors as part of diversity. I think we do generally speak about some of those things, like geography and representation—the Canadian political model has some of that—but it doesn't stop there.

Ms. Biesen...?

● (0945)

Ms. Tanya van Biesen: It's van Biesen.

Mr. Brian Masse: I apologize.

Ms. van Biesen, I would like to know a bit more about the model that you proposed for.... You're working with different—

The Chair: Sorry, you're out of time, but you can have a brief comment if you want.

Mr. Brian Masse: No, I'll have extra time, so.... Thank you, Mr. Chair.

The Chair: We're going to move on to Mr. Baylis. You have seven minutes.

Mr. Frank Baylis: Thank you, Mr. Chair.

Thank you to the witnesses for being here.

I notice there is a difference between the ICD's view and the CCGG's view with respect to majority voting. Mr. Fortier, could you explain specifically why your association favours a policy versus a standard?

Mr. Matthew Fortier: There are a couple of points.

First, we believe that majority voting has been addressed through the TSX rule, and it applies to companies of significant size. It doesn't apply to venture companies, but there are very good reasons for that.

For instance, not a lot of shareholders go to the AGM, and therefore, if you have a group of shareholders who go to the AGM of a venture company, that could actually facilitate the change of the board. That may or may not be a good thing. That would be one point. We think that it's addressed very effectively through the TSX rule.

The policy side of things, which is what the TSX addresses, also allows boards to reject the resignation of a director who has been voted against. Now, you can say, "Well, that doesn't sound right", except that, in exceptional circumstances—such as that this is the only person on the board who understands financials or who has a CPA designation, for instance—we need to keep this person for a while until we find somebody new or—

Mr. Frank Baylis: Just out of curiosity.... If I understand, you're sitting on 8,000 people who have said they're ready, willing, and able to serve, so if someone is rejected—for example, someone with financial expertise—I can't believe that there isn't someone else to—

Mr. Matthew Fortier: Fair enough. What I would say is that it takes quite a while—

The Chair: We have to suspend for two minutes while we fix a technical glitch.

● (0945)

(Pause)

● (0950)

The Chair: Welcome back, everybody.

Oh, the humanity.... You'll have to use your fingers to push the buttons.

Mr. Matthew Fortier: Am I the guinea pig?

The Chair: Let's pick up where we left off, please.

Mr. Matthew Fortier: I'll get back to your question about majority voting. You said that if we have thousands of people who are ready and willing to sit on boards, the switchover should be fairly easy. I take the point, but I think it's important to recognize that onboarding takes a while, that understanding the company takes quite a while. This can and should be improved, but usually it takes about two years before a director feels comfortable.

I think we just have to be realistic that we can't just put somebody in. That would be my answer.

Mr. Frank Baylis: I'll pass it over to you, Ms. McCall, because at CCGG you have a different view with respect to majority voting. Perhaps you could explain that.

Mr. Stephen Erlichman: The Toronto Stock Exchange majority voting listing rule was adopted in 2014. In effect, it's a majority voting policy that CCGG published in 2006. It took eight years for the TSX to adopt the rule after CCGG published it. The TSX rule applies only to TSX companies, as Catherine said. There are over 1,500 TSX venture companies that are not covered by the rule that should be covered. This is a matter of principle. There is no reason why they shouldn't be covered.

The TSX also is a for-profit company, and the TSX could change this majority voting listing requirement if it wishes.

I was the co-chair of the global network of investor associations until last summer. That's an association of investor organizations around the world, akin to CCGG. I also am a member of the International Corporate Governance Network. Based on my discussions in these various groups, I can tell you that the fact that Canada does not have legislated majority voting is looked at around the world as a huge negative for Canada's corporate governance. Canada is an international outlier in this regard. It's Canada and the U.S., basically, that are these outliers.

In fact, I'll go further. I'll give you an anecdote. I sat beside a senior person in the securities regulator in Chile at a dinner several years ago. Somehow, we started talking about majority voting, and I explained to him that we have a plurality voting system in Canada, not a majority voting system. He started to laugh, and I asked him why he was laughing. He said, "Well, Steve, you're telling me a joke." I said, "No, I'm sorry, this is not a joke. This is exactly the way it is in Canada and in the U.S. We have plurality voting, not majority voting, for directors." His response was, "Steve, we are a third-world country in Chile, and yet we have majority voting."

Mr. Frank Baylis: I don't mean to cut you off, Mr. Erlichman, but is it safe to say then that you're happy with the proposed legislation to address that issue?

Mr. Stephen Erlichman: If there need to be words to tweak what it says, we're okay with that, but the principle, majority voting for directors, needs to be there.

Mr. Frank Baylis: Thank you. I would tend to agree with that because I think if we're looking to get diversity.... First of all, if there's a director who has no support except for one person and we can't remove that person, I don't see how we can get diversity.

I want to move on to another point quickly: say on pay. That's another place where I've heard diverse opinions between ICD and CCGG.

Your organization, ICD, is against say on pay. I'll let you speak to it, Mr. Fortier.

Mr. Matthew Fortier: No, I wouldn't say that we're against say on pay at all. I think we're against legislating or regulating say on pay uniformly across the markets. I think that advisory say on pay votes within companies can be very helpful, if that's what the shareholders want and demand.

I think it's important to recognize that Canada isn't the U.K. or the U.S., and we have—we've seen a few—very few egregious pay packages. Now, that's not an excuse for not going to say on pay, but if the shareholder group wants to inform the board on how to compensate its executives, absolutely, they should. I just don't know if we want to legislate or regulate that across the board.

● (0955)

Mr. Frank Baylis: What's your concern with regulating it?

Mr. Matthew Fortier: I think what happens once you start regulating all companies the same is that you're not recognizing that Canada's markets are very different. Not every company is a TSX 60 company. We have a lot of very small companies and issuers that should not be subjected to the same rules and standards, and that applies to majority voting as well, as I mentioned in my remarks. With regard to majority voting, I would just say that we already have it in Canada. We have phenomenal corporate governance, and I would argue, as Steve said, that Chile's a third-world country. Canada is far ahead in many respects.

Mr. Frank Baylis: Okay, I appreciate that. I'll throw it back—

The Chair: Thank you.

Sorry, you ran out of time.

Mr. Frank Baylis: Are you sure? I was tracking myself, and I know I was cut off. I see I have 45 seconds, but you know....

The Chair: Sorry.

We'll move to Mr. Lobb.

Mr. Ben Lobb (Huron—Bruce, CPC): I have a number of issues with this bill.

A voice: We need a microphone on.

The Chair: Ben, remember the technology.

Mr. Ben Lobb: By the way, these microphones were made by white men, so you can see why there's a problem with them.

I have a number of issues with this bill for a number of different reasons. One of them has to do with what Brian had to say, that this will be it for at least a decade and probably longer. I think this bill doesn't address a number of issues, and it uses one little clause to deal with diversity such that you might as well just forget about it because it doesn't do anything.

Businesses have no problems putting targets on everything. I've worked in business, and everything is targeted, everything is monitored, everything is measured; yet when it comes to this, it seems there's a tremendous amount of apprehension about doing anything.

As far as a diversity policy goes, to my mind, as a committee, we can discuss an amendment as to what it would be and how it would be spelled out, but to say that it's impossible for a company to not have a diversity policy and report it on their annual report by next year is baffling to me. Businesses can turn things around immediately in some cases. I don't want to make it too simple, but you could cut and paste a diversity policy from another business, put it in your report, and report your numbers. That is as much as it would take and you could build it out through your HR department and other things as time moves on. I think that would be a starter.

I think it's also an issue that maybe we're dealing with gender but we're not dealing with visible minorities. I can't understand why we do this. I can't understand why the Liberals in government.... They've put targets on all sorts of things, like targets on the environment. They have a deliverology expert, but yet on this they're not prepared to do it.

I ask the law professor, Mr. Dhir, if you could just make some comments on what the risk is of putting something in here that would get these businesses to get at it.

Prof. Aaron Dhir: Mr. Lobb, thank you so much for those comments. I'm in agreement, and I must say in viewing Tuesday's session I saw you put forth the idea to the minister of mandatory policies as a precondition to listing. I have to say I hadn't actually thought about that. I thought that this was a very interesting and creative idea. I think these are the sorts of ideas that we now need to generate in the conversation I'm suggesting we have as this bill goes forward.

I think you've identified a real frailty of the disclosure-based model; it does, at the end of the day, allow for an explanation as to why the prescribed conduct is not being followed. Now it could be that there is a reasonable explanation, and because of that possibility we then leave it to market forces to come in and enforce, and to shareholders to advocate, for example.

No. It's insufficient that we don't have a policy. We need one, but I think what we're seeing with the OSC and the CSA statistics, so far, is that things are not going as well as we would hope, so your skepticism is certainly warranted.

● (1000)

Mr. Ben Lobb: The other point I would make is that we're not talking about saying that 50% of the CEOs of publicly traded companies on the TSX will be women and/or visible minorities. We're saying people on boards. A female who is a certified general accountant, a chartered accountant, or a certified managerial accountant, I would say, is qualified to sit on any board. That's my opinion. They would do a fantastic job. You could work for any accounting firm in this country and you would be qualified.

More to Ms. van Biesen's point, it's the old boys' club. I've worked in the old boys' club. I know how it works. They golf, they drink, and they play hockey together. That's the way it is. Your point about sponsorship over mentorship is exactly correct. The only way you're going to break the old boys' club is to put targets on and to get at it. Maybe the targets won't get met. You said 30% five years from 2017. Okay, but there will be plenty of companies that do make those targets, and the ones that don't should have an explanation.

We have ethical—

The Chair: I hate to cut you off there.

Mr. Ben Lobb: Oh, I have 10 more minutes to go here.

We'll carry on another day.

The Chair: Thank you.

We're going to move to Mr. Jowhari. You have five minutes.

Mr. Majid Jowhari (Richmond Hill, Lib.): Thank you, Mr. Chair.

Thank you to all the witnesses for coming today.

I'm going to take the conversation in a bit of a different direction. We spent a lot of time on diversity and we spent some time on targets. I'd like to talk about the concept of periodic review of this legislation. I just heard Stephen briefly touch on it, and then he went back to the areas that are missing from this bill. I want to bring the group back and quickly go around the room and ask everyone for their thoughts on the concept of periodic review of the legislation.

What are your thoughts? What time frames do you suggest we include as an amendment? When we do that, what are your thoughts on generating a report and what should the content of this report be, as part of the periodic review?

Stephen, I'm going to start with you because you're the only one who touched on it. Then everyone has a bit of time to think about it.

Mr. Erlichman, could you could start, please? Thank you.

Mr. Stephen Erlichman: Thank you very much.

My thought was that we should have an external stakeholder advisory committee that would look at the legislation and give suggestions for the legislation. I don't see any reason why that should happen any less often than every five years, or at the very most, perhaps 10, but five years is a good number to actually look at it to see if there should be changes.

The key point here is that there have been two major sets of changes in the last 40 years, and that just isn't right. Things happen much more quickly, and they need to be looked at in the context of the legislation. It could be five years or 10 years, but it should be much more often than twice in 40 years.

Mr. Majid Jowhari: Thank you.

Mr. Dhir.

Prof. Aaron Dhir: I'm very attracted to the idea of an external stakeholder advisory committee. I think that could produce real value for the government. As I said during my submission, I think it is best to think of regulation in this space as being a working hypothesis, and to think that we constantly have to monitor and test whether or not that hypothesis is bearing fruit. If not, then we need to keep tracking the data and constantly thinking about other possibilities for reform.

Mr. Majid Jowhari: You're an academic. My background is as an engineer, and when we look at a report we look at measuring something. I don't want to go back to the concept of targets, but when we look at this legislation in five years—and let's assume you're going to review it in five years—what should be the key components of that review? If you're going to generate a report, what would actually be reported on? This kind of indirectly goes to the concept of the definitions of diversity, targets, etc.

In five years, when this external commission is going to report, what is it going to report on or what would you recommend it report on?

Prof. Aaron Dhir: I would have to say that I suspect that Mr. Masse is right, that five years with respect to the diversity provision in particular, will be too long. We should keep in mind the fact that because we have this CSA regulation, we have two years of good data, two years of experience with which to work right there.

I think we want to be looking at similar metrics, such as what has been the year-over-year change? How close is that to what we're seeing in comparison to peer economies globally? What percentage of firms are actually identifying themselves as having diversity policies? How do they define "diversity"? Also, it's important to look at not just those numbers but the content of the explanations. It may be that we have something to learn from the explanations.

One of the most striking things I've found under the CSA rules so far is that firms are really sticking to the idea of meritocracy. They don't, for example, set targets, and their explanation generally tends to be that it's because they feel they have a merit-based process.

● (1005)

Mr. Majid Jowhari: I'm going to interrupt you because I want to give Tanya about 45 seconds to also give her input on this.

Ms. Tanya van Biesen: In terms of time frame, I would say no more than three years. I would agree with Professor Dhir that we need to look at whether they have a stated diversity policy. Do they have board renewal mechanisms and what are they? What is the content of the explanations, if they're not complying? Then count progress. What's the year-over-year change? Count progress in each of the diverse groups that they are being asked to measure. Look at the change. Look at the progress.

The Chair: Thank you very much.

We've going to move to Mr. Waugh for five minutes.

Mr. Kevin Waugh (Saskatoon—Grasswood, CPC): This is interesting because I'm from Saskatchewan. About three to five years ago, the Senate.... There was a big uproar in our province about indigenous people not being on boards. The Senate got involved in this study. I'm just looking at our two major corporate headquarters in my city, and there's only one out of 10 on the board.

Another thing that I'm seeing is that we're recycling a lot of the same people. They may sit on one board. They're sitting on two boards. They're sitting on three boards. There's no renewal. We find that there is a champion, let's say from the first nations, and then that person is on every board at the provincial and corporate levels, and we're not developing. I just look at my province, at PotashCorp and Cameco, which both employ a lot of first nations but only have one on their board.

This is a great discussion, because I remember the Senate coming through the city. Everyone was upset with this. Three years later, we have one out of 20. I see a former CEO of Cameco now on PotashCorp. We're just recycling these people, and that is a problem that we're seeing in this country.

Can someone talk about that?

Mr. Matthew Fortier: I'll start. I completely agree. There tends to be and has been for a long time a trend towards getting the same people on the same boards because you know who that person is, and you're friends. As Mr. Lobb suggested, you play hockey together, for instance. That is a problem.

One of the things that we do at the ICD is that we have the directors register and there are a whole bunch of people out there who are prepared to sit on those boards, but it's also about getting people to know each other. We hold networking events across the country. We have 11 chapters across the country and 12,000 people interacting, so that at least you have a name. I think the #GoSponsorHer initiative that Catalyst is involved with is crucial because it introduces new people to people of influence, and that's what's going to drive change.

Mr. Kevin Waugh: Tanya.

Ms. Tanya van Biesen: I think you're right. Part of what's going on is that we have to redefine what it means to be qualified for a board. Not that long ago, there was a view that unless you were a sitting CEO or a former CEO, you were not qualified to sit on a board. Therefore, there was a very limited pool of candidates you could go to. That's number one.

Number two is that we have to continue to build the pipeline of executives. Gender-based, race- and ethnicity-based, we have to continue to build that pipeline. This is not just about boards. This is about who holds senior positions of influence in Canada that will ultimately be tapped to sit on boards. If we have a dearth of those executives, whether they're female or otherwise, we're going to continue to have the board problem.

Mr. Kevin Waugh: The other problem I think we have is that when we have a female CEO running a company, the scrutiny is a little bit different than for the men. I see that day in and day out on the TSX. I look at it. All of a sudden the share price goes down, and for CEOs responding to the board, I think we're seeing two different rules here. There's a shorter leash certainly on females than on males. I look at some of the companies in this country and it's not fair. I think that also has to change around the board table.

Any comments maybe from Mr. Dhir on that? It's not fair, and then we're surprised when a woman CEO actually turns a company around and it's successful. We're seeing that, which is totally wrong, but we are seeing some of that in this country.

Any comments on that, Aaron?

● (1010)

Prof. Aaron Dhir: I think you hit the nail squarely on the head, Mr. Waugh. It seems that the same gender biases that prevent entry into the boardroom then persist when there is representation, such that you have this enhanced level of scrutiny that wouldn't exist if it was a male CEO. This is one of the complexities of the business case.

When we're talking about traditional financial metrics, certainly there have been studies—as has been mentioned—that establish correlation between board diversity and profitability. It's important, though, to be mindful of the fact that correlation doesn't necessarily mean causation, such that if we put too much emphasis on the business case, we might then be putting unrealistic expectations on the shoulders of diverse directors, diverse CEOs, etc.

Mr. Kevin Waugh: What do you think, Stephen?

The Chair: Very briefly, you have 10 seconds.

Mr. Kevin Waugh: Go ahead, Stephen.

Mr. Stephen Erlichman: CCGG's in favour of broad forms of diversity, both at the board as well as in senior management. That's my five seconds' worth.

The Chair: Thank you very much. It was well worth the five seconds.

We're going to move to Mr. Sheehan.

You have five minutes, please.

Mr. Terry Sheehan (Sault Ste. Marie, Lib.): Thank you very much to all the presenters today. It was very informative.

My first question is a question that I've asked of staff, I've asked of the minister, and I'm going to ask you. How will Bill C-25 support young Canadians' getting engaged in the boards and in the entire work process?

Would anyone care to start?

Ms. Tanya van Biesen: I'm happy to start with that.

Actually, we do a fair bit of work around millennials, so I think as young Canadians become more familiar with Bill C-25, whether through studies at university or what have you, it familiarizes them with what a board is, what senior management is, and why that is even important. We are seeing a great appetite from university students to talk about inclusion, and as those kids are graduating and coming into companies, they're asking about what the complexion of the company looks like, what the leadership looks like, and what importance companies place on diversity and inclusion.

I think this is yet another leadership step on behalf of Canada to demonstrate to our youth that there is opportunity for everybody in the economy, not just a certain model.

Mr. Matthew Fortier: If I could jump in on that as well, I completely agree. One of the things that we have to recognize is that young professionals are probably more likely working in the high-tech sector, developing an app working in a garage somewhere, and they're going to be billionaires one day, hopefully. The corporate governance model that applies to traditional industries may or may not be completely applicable to new industries, so we have to think things through.

To the point made earlier around statutory review, I don't think I added my voice. We review the Bank Act every five years. Certainly we could review the overarching statute governing our corporations. I think within that, we have to have a look at how things are moving through the economy. What is the priority for 25-year-olds now, and how do they want to govern their companies?

Mr. Terry Sheehan: Anyone in TV land...? Does anyone else want to contribute online?

Prof. Aaron Dhir: You absolutely hit the nail right on the head.

I will note that there's probably an intersectional aspect to this as well, in the sense that when you look at countries—for example, Norway, which now has the highest percentage of gender diversity on boards—the boards tend to, from a demographics' perspective, get younger as well, because most of the qualified female candidates who are coming on board tend to be younger than the existing male directors. There is a sort of confluence of these two elements as well.

Mr. Stephen Erlichman: At CCGG, we've advocated for many, many years the use of what's called a board skills matrix. It's not just skills, though. It deals with what the requirements are for a board and what experiences are necessary on a board. That includes age, among other things. When we talk to independent directors at 45 or 50 meetings every year, in private meetings, about who's on their board and whether they have the right people on their board in terms of diversity of all different types, that includes age. Whether that's going to happen in Canada, I don't know, but that is something that we bring forward and ask about.

● (1015)

Mr. Terry Sheehan: Thank you.

Bill C-25 makes three key reforms to the process of electing corporate directors. Shareholder participation is more than just voting. How will shareholders benefit from increased clarity and transparency?

Matthew.

Mr. Matthew Fortier: What I would say is that it somewhat duplicates what's actually happening in the market. I understand the argument for legislating this and applying it to all public companies. It's certainly not lost on us and is certainly something that we should discuss further, but I don't think it should be lost in the discussion that this is already happening. We have majority voting. We don't have slate voting anymore in non-venture companies. I'm sure CCGG has numbers in terms of slate voting on venture companies.

I just think a fulsome discussion has to be had around the differences in our capital markets, and what is good for one company or one sector is not necessarily right for the other sector.

Mr. Terry Sheehan: That's very good.

Again, I want to thank everyone for their very informative views.

The Chair: Thank you very much.

We are going to move to Mr. Masse.

You have the final two minutes.

Mr. Brian Masse: Thank you, Mr. Chair.

I want start by noting that the minister has proposed this legislation with no review. Let's be clear on that. I raised this in the House of Commons. He commented on it in his testimony, but there has been no amendment. There is no official proposal in any capacity or a suggestion at this point.

Most legislation that's renewed is often done with a two- to three-year review. I've had many amendments passed by both Conservatives and Liberals on this. It's rather shocking that we don't even have that as part of the tabled legislation, given that this legislation was extremely similar to that of the Conservative legislation prior to it. We've had over a year and a half here.

For those who see this as government intervention, in my nearly 20 years of elected office, I have never had a meeting with a company that didn't ask me about a subsidy they wanted, a tax cut, or some type of state intervention on policy or trade that changed the market forces for themselves. That has been the regular meeting process that they take. The fact that the government now wants to introduce a notion that market forces will not amend to, that should be our responsibility and duty to citizens.

I want to allow the last word to Ms. van Biesen, but I noted the work of the CCGG with great interest and the suggestions you've made for legislation and your responsible comment about Canada as a laggard. I think that's important to note. That's the truth.

Ms. van Biesen, what would you see as a priority for this legislation at the end of the day? There are many, but what would be the top one?

Ms. Tanya van Biesen: My interest clearly is on promoting diversity at the senior management and board levels. Again, as I said earlier, my lead foot is gender but I support a broad definition of diversity.

Mr. Brian Masse: Thank you.

The Chair: Thank you very much, everybody.

That's all the time we have for questions. We've had very thought-provoking, engaging presentations, questions, and answers. You've given us lots to think about.

We are going to suspend for two minutes, and then we'll go in camera for committee business.

Thank you very much.

[*Proceedings continue in camera*]