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Chair

Mr. Dan Ruimy

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•(0855)

[English]

The Chair (Mr. Dan Ruimy (Pitt Meadows—Maple Ridge, Lib.)): I call the meeting to order.

Thank you, everybody, and welcome back. This is meeting number 44 of the Standing Committee on Industry, Science and Technology. Pursuant to the order of reference of Friday, December 9, 2016, we are studying Bill C-25, An Act to amend the Canada Business Corporations Act, the Canada Cooperatives Act, the Canada Not-for-profit Corporations Act, and the Competition Act.

Today, from the Department of Industry, we have Mitch Davies, assistant deputy minister, strategic policy sector, and Mark Schaan, director general, marketplace framework policy branch, strategic policy sector.

You have 10 minutes.

Go ahead, Mr. Davies.

Mr. Mitch Davies (Assistant Deputy Minister, Strategic Policy Sector, Department of Industry): Good morning, Mr. Chair and members of the committee. It's our pleasure to be here today with you to speak to Bill C-25.

Innovation, Science and Economic Development's core mandate is to help make the Canadian economy and industry more productive and competitive in a global economy, thus improving the economic and social well-being of Canadians. One of the critical ways in which we accomplish this is by ensuring that our framework legislation is up to date and in line with international best practices. Maintaining effective legislative frameworks for business is a critical endeavour, since these laws lay out the ground rules for doing business in Canada.

We're in constant review of the laws administered by our department, how they compare to other jurisdictions, and how they meet the expectations and needs of Canadians. The Canada Business Corporations Act, or CBCA, is an important piece of framework legislation that sets out basic rules for federal corporations. This law establishes the legal regulatory framework for close to 270,000 federally incorporated companies. Allowing for ease of doing business by providing for clear and predictable operating rules is critical, as our laws act as a foundation for innovation in a growing economy.

Governing the relationship between a corporation and its shareholders is one of the most critical elements of a sound business landscape, and that's why it's important to make sure that the CBCA

continues to meet its policy objectives. To this end, the department embarked on a broad stakeholder consultation in 2014 to canvass the views of those most affected by the CBCA. We received over 80 submissions with a range of viewpoints on how best to proceed.

Some of these areas we will continue to look into, where thought is still developing and experience abroad is still fresh. Others bore a clearer consensus among the competing viewpoints. It is this set of issues that we have chosen to address by way of Bill C-25 before you today, in order to optimize Canada's corporate governance law to allow our businesses to thrive and innovate within as modern and responsive a framework as possible.

The items you find in Bill C-25 concern the way corporate directors are elected, how diversity is promoted in the business sector, and how corporations communicate with their shareholders. Certain of these changes will be reflected not only in the CBCA but in its companion statutes that deal with co-operatives and the not-for-profit corporations as well.

Other elements of this bill concern the clear and unambiguous prohibition of unregistered instruments that can be misused for criminal means and an update to how affiliated entities are treated under competition law. The changes being made here are informed by best practices from here in Canada and at the provincial level, as well as from our main trading partners abroad.

To get more specific, Bill C-25 makes a number of discrete but important updates to Canada's corporate and co-operative laws, which I'll highlight briefly here, and we'll happily field questions that you may have afterward.

The bill makes three important changes to the process by which directors are elected. First, it ensures that elections are held for all directors annually, which is an update from the current requirement under the CBCA that allows directors to serve up to three years at a time, with staggered terms.

Second, it ensures that directors are elected individually, rather than as part of an all-or-nothing slate of directors. This rule, as well as annual elections, would bring the CBCA in line with existing TSX rules.

Third, if the number of spots open on a board of directors is equal to the number of candidates presented—that is, it is an uncontested election—voters will now have the option to vote against a candidate, rather than simply withholding a vote, and that candidate will only assume the directorship if a majority of votes cast are in their favour. This will prevent the nearly automatic election of directors on the basis of even a small number of “for” votes.

Bill C-25 will also support efforts to increase diversity on corporate boards and in senior management by encouraging an exchange of information on corporate practices in this regard between a company and its shareholders. The bill will require publicly traded CBCA corporations or distributing corporations, as they're referred to in the act, to make disclosures on diversity on their boards and senior management, including the policies they have in place. If no such policies exist, boards will have to explain why to their shareholders. It's a system commonly referred to as comply or explain.

Furthermore, the bill will leverage modern digital technologies and reduce paper burden by allowing corporations to send a notice to shareholders that sets out instructions on how to obtain documents from the corporation's website in advance of a shareholder meeting.

While it's not believed that bearer shares or bearer share warrants—unregistered financial instruments whose proof is in their possession—are in common use in Canada, the bill would nevertheless clarify in very certain terms that these instruments are prohibited. Any remaining holders of bearer shares would have the opportunity to convert them into a registered form of share ownership.

Bearer instruments have been identified as vehicles for money laundering and terrorism financing. These amendments would enhance transparency and support Canada's compliance with international standards.

Finally, the bill would make a targeted but important change to the Competition Act to provide business certainty and reduce administrative burden. The rules for determining which business entities are affiliated with one another would be applied more broadly to take fully into account modern unincorporated structures, such as partnerships and trusts. This revision would increase certainty for businesses by ensuring that they would not be needlessly investigated or sanctioned under law for dealings with their own affiliates as though they were competitors, and also sparing the Competition Bureau from a needless investigation or merger review in these circumstances.

There are other minor amendments in the bill of a more administrative nature, including streamlining documents required to form a co-operative and harmonizing English and French versions of these laws, but the items I've mentioned are the key features.

I and my colleague would be pleased to provide clarification and answer questions on these points. Thank you for your time.

● (0900)

The Chair: Thank you very much.

We're going to go right into questions.

Mr. Arya, you have seven minutes.

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

Mr. Davies, while drafting this bill I'm sure you had large, wide-ranging consultations. Did your guys talk to a diversity expert, an expert on diversity?

Mr. Mitch Davies: In the course of the consultations, starting in 2014, the department received views from various interests, including those particularly interested in enhancing diversity and enhancing representativeness in Canada's corporate sector, so that was within the consultation process. Of course, we also monitor very closely the positions of stakeholder groups and organizations in this regard—

Mr. Chandra Arya: So what does—

Mr. Mitch Davies: I think it's quite widely known that there's interest in seeing improvement in this regard.

Mr. Chandra Arya: What does diversity mean here?

Mr. Mitch Davies: In terms of the statute, the bill doesn't set out a specific definition. The purpose of this is really essentially to invite the corporate sector to consider this in its broadest possible terms and in its broadest possible context in respect of their operations.

Mr. Chandra Arya: Thank you.

Mr. Mitch Davies: We'll see over time how they actually implement this through the disclosures they'll make to their shareholders.

Mr. Chandra Arya: Thank you.

The minister's letter to the committee members states “One of Canada's strengths is its diversity. Women represent 48 percent of the workforce and over half of university graduates, yet remain under-represented...” and blah, blah, blah.

The minister's letter to the committee members basically talks about gender diversity. When you read the minister's letter, you see it just talks about gender diversity. Is that not the case?

Mr. Mitch Davies: Is it not the case that the letter that was provided to the committee by the minister...? Yes, certainly. I think the question that I was answering earlier was in respect of the law, and the definition of diversity is left essentially to practice, as it would unfold.

Certainly in terms of the regulatory steps that would follow the law and what would be prescribed in regulation, it would be most clearly pointed out, as we see now with the TSX standard that now requires gender diversity to be reported on, but we'd also be inviting corporations to take advantage of the opportunity to file plans and represent broader diversity concepts, which I think could extend to a number of other areas.

Mr. Chandra Arya: I'm sure you looked at the diversity laws in various countries, such as Germany, France, Italy, Belgium, Norway, and Spain. All they mean is gender diversity only. How do you think ours is different?

When we read the text of the bill, for me it appears to be only gender diversity.

Mr. Mark Schaan (Director General, Marketplace Framework Policy Branch, Strategic Policy Sector, Department of Industry): Perhaps I can jump in here to indicate that in fact Bill C-25 actually goes an explicit step further.

Currently, under securities commissions' laws in eight of the securities commissions in the country, corporations on an annual basis already need to file the gender makeup of their board and the gender makeup of their senior management.

It's the explicit intent of the bill to go beyond that and ask companies to file their diversity policy and summarize it for their shareholders, facilitating a conversation between shareholders and the corporation. In fact, in the draft regulations, Corporations Canada has indicated that the policy actually specifically indicates a written policy relating to diversity other than gender amongst the directors and members of senior management.

It is actually explicit that it is in fact beyond gender, which would put us in a—

Mr. Chandra Arya: Suppose I have a company and our board decides to come out with diversity support, saying that our understanding of diversity is geographical diversity. Ours is a pan-Canadian company. We need a diverse board. We need one board member from Atlantic Canada, one from Quebec, one from the territories, one from western Canada. We also need to have two women on the board. Is that diversity policy acceptable?

Mr. Mark Schaan: What the bill does is facilitate a conversation between shareholders and the corporation. The acceptability would be up to the shareholders. On an annual basis, they'd have the opportunity to make representations to their firm and to indicate whether this diversity policy was sufficient for their purposes.

• (0905)

Mr. Chandra Arya: If it is acceptable to the shareholders, it is acceptable to the government too. Is that correct?

Mr. Mark Schaan: Our view is that shareholders are best placed to advocate within their organizations, and our minister has made it clear that should there be a lack of progress on diversity within the corporate structure—

Mr. Chandra Arya: When you say “lack of diversity”, what do you mean by that?

Mr. Mark Schaan: Well, it varies. As my colleague has indicated, diversity is a broad concept that includes gender, race, geography, class, age. I think each corporation will work with shareholders to determine what makes the most sense for them in their line of business.

Mr. Chandra Arya: Now in your intent, at least in the thought process, were indigenous people part of this diversity?

Mr. Mark Schaan: We would certainly hope that indigenous persons were one of the very elements that corporations would look to—

Mr. Chandra Arya: It would also include visible minorities, people with a physical disability?

Mr. Mark Schaan: Yes.

Mr. Chandra Arya: Suppose a corporation comes with none of these, but sticks to, say, geographical diversity or workplace

diversity. Maybe I have a manufacturing company, and the board might decide that I need to have a diverse board, that I need one representative from the shop floor, one from the supervisor level, one from middle management, and, oh yes, I need to hire a couple of women also. This would be acceptable under this bill, right?

Mr. Mitch Davies: Mr. Chair, I think I'll just go back to the drafting concept. The word is not defined in the statute, and this was purposeful. If we were seeking a definition, I would imagine there would be many views on what would be included in that definition. I think the bill provides for a diversity of approaches in the corporate sector to address this idea. It's a long-standing matter of public debate and concern and it's what the minister addressed in his letter to the committee in saying that gender diversity is key and that our performance can be improved as a country. This is something that's already being pursued under security rules and that will proceed, and our legislation reinforces it.

I think what goes beyond that, though, where the government is showing leadership, is to allow for a diversity of approaches to encompass other ways of viewing diversity in a corporate context and having that information come forward in a way that adds to the overall richness of approaches taken in the country. We don't rule anything out, and that's why there's no definition to prescribe this or narrow it at the outset.

Mr. Chandra Arya: Mr. Davies, gender diversity is good. I think we all support it. If that is the objective, good. If there's an objective beyond that, that's also good. However, putting a word in without defining it or explaining what direction that word should lead to creates a problem in this bill, at least in my opinion. We have seen the studies done in various countries—

The Chair: Your time's up. Sorry.

Mr. Dreeshen is next.

Mr. Earl Dreeshen (Red Deer—Mountain View, CPC): Thank you, Mr. Chair, and my thanks to our witnesses here today.

This is the minister's second bill since taking office a year ago. Just like the first one, it comes straight out of the previous Conservative government's budget in 2015, so we certainly appreciate that the time has not been wasted on the present government.

I'd like to talk about some of the issues you spoke of. You said 270,000 companies would be included under this particular ruling. I wonder if you could explain the diversity of those companies and what we are looking at, so that the public has a bit of an idea of what the effect will be.

Mr. Mitch Davies: Thank you, Mr. Chair, for the question.

What requires some understanding is that there are 270,000 companies covered under the Canada Business Corporations Act, but the diversity policy will apply to distributing corporations, which number around 3,000, of which around 600 are on the TSX. That is the population of companies to which the diversity requirement would apply. Obviously, if you have a corporation set up to run your private business, this regulatory requirement wouldn't require anything further of you.

Mr. Earl Dreeshen: The other point you brought up, looking to the future, was about co-operatives and not-for-profit companies. Could you explain what the thoughts are there?

The other item that was mentioned was about voters having the opportunity, if it's a full slate, to vote somebody out. I'm thinking more of the directors we have in small community organizations and so on, and how some people might think that would be an opportunity to finally get off a board, so they'd see it as something positive. I'm sure that's not exactly what was meant.

Could you explain how that function would work, and also try to tie in what is out there in the future for co-operatives and non-profits?

• (0910)

Mr. Mitch Davies: I'll start, and then I'll ask my colleague to add a few comments.

I'll go back to the intention of the changes in the voting rules, which is a part of the question. What's being done is to change from what's called a pluralist model to a majority-vote model, which has been called for by experts in corporate governance, particularly those on the owner side, in order to improve the responsiveness of the folks who are put forward for board positions to the shareholders by requiring they have majority support rather than simply perhaps one "yes" vote, with all the other votes being uncontested, or being part of a slate, which doesn't allow for differentiation between different directors. We're using this approach to extend shareholder democracy and create more responsiveness.

This equally applies if it's a distributing entity of any sort. Obviously, a non-profit isn't distributing to its ownership, so the policy doesn't apply.

The point is to make a stronger linkage between the interests of the owners of the firm and the activity of the board of directors that actually carries out that fiduciary role.

Mr. Mark Schaan: I'll just add that when we looked at the possible amendments to the various structures, your first question on the diversity of firms and types that are covered by the three acts in question was not lost on us. Of those 270,000 firms, as my colleague points out, the vast majority are small and medium-sized enterprises, private corporations, so annual voting and a number of those things simply won't apply because they're not distributing companies.

The same thing goes for co-operatives, although if there was a surge of distributing co-operatives, they would be subject to the same rules.

However, the goal within the overall package of amendments was to balance ease of doing business and administrative burden with appropriate checks and balances on governance and allowing for shareholder input where it is called for, and that's particularly the case when you're trading in the public securities markets.

Mr. Earl Dreeshen: Regarding the situation of proxy votes and that type of thing in a shareholder meeting, can you explain the process there, and how that would tie into a slate that might be presented at a shareholder meeting, and some of the nuances that might take place if there happen to be changes that occur on the floor?

Mr. Mark Schaan: Corporate governance will still follow the normal traditional call for meetings. For instance, in the appointment of directors, the number of people standing for election wouldn't change. They'll have to be in the proxy circular circulated by management to all shareholders, and proxies will be informed at the same time in advance.

The one novel change is that currently that entire package needs to go physically by mail to all members. This bill will allow for notice and access, so instead the notice of meeting will be sent to all owners and beneficial owners of shares and they'll be able to elect a proxy and facilitate their vote, but they'll be able to access all of that information online from the company's website.

In terms of the proxy situation and anyone holding a proxy, all of those motions would still need to be tabled far enough in advance to allow for timely consideration by voting members.

Mr. Earl Dreeshen: What types of regulatory costs or what kinds of costs do businesses think will be involved? I know that you had massive consultations and so on, and somebody is always going to ask what this is going to cost to implement and what advantage they're going to gain versus the cost they're going to incur.

Have you, within the legislation, looked at perhaps reducing some of the other regulatory burdens they have to balance that out?

Mr. Mitch Davies: What's at the heart of the change, in terms of the notice and access system, is relieving companies of costs by using digital conveyance for a lot of paper that otherwise has to be prepared and mailed to shareholders. That's a big win in terms of the costs of doing business.

In terms of the rollout of these changes, I think we've been quite mindful that at one level we're addressing 10% or thereabouts of the market share of incorporated entities in the country. You can also incorporate at the provincial level, so we also have an overlay of provincial securities rules with which we're seeking to maximize our alignment. We don't want to be offside by creating a whole set of other burdens or requirements. That's something we've taken quite deliberately into consideration in crafting this bill.

With respect to preparing slates for voting and in order to respond to majority voting, I think the effort required there would really just be to find candidates who will be suitable, who will actually get the majority nod to be on your board of directors. I wouldn't describe that as a cost. I think that's a win in terms of overall governance.

On the diversity policy, here we're mainly extending or broadening the option to have a broader and fuller diversity policy expressed beyond what might now be required by a securities exchange, which might be limited to gender. This allows for companies to go further, and that option will be taken up by companies as they see fit.

• (0915)

Mr. Earl Dreeshen: Thank you.

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

Mr. Brian Masse (Windsor West, NDP): Thank you, Mr. Chair.
Thank you to our witnesses for being here today.

It's true that this bill has taken quite some time to get to the House, given the fact that a lot of money laundering has gone on through processes that we can actually control rather easily, so I'm glad to see this come forward.

There are some chances to make improvements to the bill. I would recognize that this is only the second time that the bill has come to Parliament in over 40 years. Hopefully we'll see this get done much more efficiently.

Importantly, some changes are warranted. I know we've had some discussions here about the definition of diversity. In terms of consultations from 2014 on, who did you consult and where? Is that list available for members? I didn't check your website to see if it was up there. I imagine it might be. Could you give us a little background on that? That would be helpful, please.

Mr. Mark Schaan: Thank you for the question.

In 2014, we did consult, using a document that posed a wide array of corporate governance issues within the Canada Business Corporations Act on a whole series of elements. In fact, we received over 88 responses, all of which are publicly available on our website.

On the issue of diversity, for instance, we actually had 43 submissions. Not everyone responded to every single element that we asked about, but we asked about over two dozen elements of the Canada Business Corporations Act to try to get a wide range of views. Those elements included diversity, organizations, corporate governance organizations, law firms, the corporate community, pension funds, etc.

Mr. Brian Masse: That's good to hear. Of the 43 submissions.... We're just kind of leaving a blank diversity out there in terms of interpretation. Were there any other suggestions or guidance offered as alternatives to maybe sharpen the definition of diversity a little bit?

Mr. Mitch Davies: I won't try to artificially discern the weighting of the views. I think the area of diversity that is represented most clearly and probably most frequently in the submissions we received is that of gender. This is one also where there is more data, more evidence in terms of where we stand. There are also, obviously, gaps between where society generally.... There are different views as to where we need to be, but improvement is definitely what's being sought in that regard.

As for diversity more broadly, I would echo the minister, who spoke at the introduction of the bill and talked about the broad concept of diversity as being a core goal of the government. This is something that adds to the richness of our business life, our community, and the success of our businesses—

Mr. Brian Masse: I get that—

Mr. Mitch Davies: From that point of view—

Mr. Brian Masse: I get that—

Mr. Mitch Davies: —this is an invitation for the business community to respond to that call.

Mr. Brian Masse: I get that. I only have a limited time here, so I'm sorry to interrupt, Mr. Davies, but....

There was a blank opening, so I would suggest that the only other bill this committee really dealt with was the Marrakesh treaty, which went rather quickly through here. This was with regard to print availability for the blind. We have over 50% unemployment for persons with disabilities who are looking for work in the workplace. That doesn't count all the ones who have given up. I hope to deal with that a little later.

I am going to move to the “comply or explain” idea. Comply or explain is not a new concept in this situation. In fact, several provinces and some territories already have this in place. Alberta is moving towards it as well. British Columbia is about the only one that doesn't have comply or explain.

This has been in place for a number of years. Since 2014, the diversity of boards of major corporations has gone up only 2.4% for women. I think that by math alone you'd be able to get better than 2.4%. What type of consultation has been done with the provinces, and what's failing in their system to raise the tide of women?

Finally, what types of penalties are there on comply or explain? Is “comply” basically saying, “I'm going to do this. I've added one position in three years”, and “explain” saying, “We're just not really good at this, so we've had only one position in two years”? That doesn't even count the other diversity issues with visual disabilities, other physical disabilities, or race and ethnicity diversity. What penalties are in place, and what have you learned from the provinces? It just doesn't seem to be working very quickly.

● (0920)

Mr. Mitch Davies: I'll start and go back to the point about the provincial systems that have taken on comply or explain. The TSX would be notable, and it applies to most of corporate Canada.

I can't speak to how they would view how this is unfolding in what they have put in place. I certainly acknowledge the statistics and the points you are raising in terms of the progress made so far. I would say that obviously it's not finished and it needs to improve in terms of the trends.

The United Kingdom and Australia are jurisdictions we looked at that have implemented comply or explain. In the U.K.'s case, they had a doubling of representation of women on boards and in senior management. Australia actually exceeded that, coming close to tripling representation. I see no particular reason why the Canadian corporate community wouldn't be able to meet or exceed this sort of progress.

The minister has also made it very clear, and has done so publicly, that there is a loop-back in this mechanism, which is that all these filings will come back to the director of Corporations Canada so that we can analyze and look at the improvements and reflect on whether or not more needs to be done. The minister has been open to that possibility.

As for a penalty, there is no penalty structure, other than bringing more transparency to the matter, bringing formality to it, making it something that corporations have to do and take account of, and then obviously providing a feedback loop to the public so that we can evaluate whether we are making progress and decide on the next steps.

Mr. Brian Masse: Thank you. Do I have any time left?

The Chair: No. It's two seconds.

Mr. Brian Masse: Thank you. We are clear on what's happening.

Thank you, Mr. Chair.

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

Mr. Lloyd Longfield (Guelph, Lib.): Thank you, Mr. Chair, and thanks to the members opposite for the questions.

I want to build on a few of the themes, one of them being the regulatory burden. You've talked about reporting electronically. I know that the business community, through the chambers of commerce and others, has highlighted the regulatory burden as one of the things that make Canada uncompetitive internationally. Are there ways, other than electronic filing, that you could see an impact on business in terms of the regulatory burden?

Mr. Mark Schaan: The changes called for here today do take a look at the ease of doing business within the corporate statute and try to facilitate an appropriate mechanism by which corporations can go about their business and govern themselves accordingly.

There are a couple of zones here where.... For instance, on notice and access, currently there is an exemption requirement that corporations have to request the permission of the director of Corporations Canada to pursue notice and access. This will now be the standard and minimize the administrative burden of having to annually ask whether or not it's okay to use a website to share their corporate information. They will now be able to pursue all of that electronically, which also has a benefit to shareholders in terms of allowing them to more easily propose measures to their boards without having to overcome the administrative burden that the corporation sometimes indicates is a challenge to those proposals.

In terms of the filing requirements to the director of Corporations Canada, we have added the diversity requirement, but in most other cases this is all easily filed through the securities commission for distributing corporations. It's one form, essentially, that allows them to meet all their requirements, both under our act and under the securities commission's rules.

Mr. Lloyd Longfield: Thank you.

Are there other long-term outcomes that you're anticipating? You've talked about harmonization or at least some type of connection with provinces and territories to look at best practices internationally and whether this can help us in terms of global trade competitiveness or trade deals that might be coming in place. What long-term outcomes did you see that would have triggered this back in 2014 and carried it forward into our government?

• (0925)

Mr. Mitch Davies: I'll just take the opportunity of your earlier question and build on what you've asked.

Mr. Chair, I think the bill doesn't address this specifically, but another matter that's under consideration is arrangements on internal trade in order to make it easier to do business across the country. One of the areas that has been identified by the business community as a long-standing issue is multiple registration across jurisdictions. This is an area where we've worked to advance conversation with the provinces that also have jurisdiction to look at how we can streamline this process. Filing paperwork and providing information to multiple levels of government are things that we need to work on and find solutions to, in particular with the opportunity of technology allowing us to do this sort of thing. I think that's one of the trends.

I think the other is a broader trend in the shareholder democracy provisions here. There's a very active debate. I would say that the matters in the bill are those on which there is a solid consensus on bringing them forward, so obviously they are met with support here, and obviously we can see this pass through. However, there's a debate on the different approaches to enhance democracy and the overall objectives of corporations. There's a broader debate about socially beneficial corporations and social responsibility, so there's actually a wide range and a wide, broad debate. I think all of those debates will continue, and we'll continue to participate, and I take the earlier question that we need to also reflect and come back to these laws on a more regular basis to make sure we're keeping them up to date. That's a very well-founded point.

Mr. Lloyd Longfield: Exactly.

That leads into my next question about the not-for-profits.

I'm thinking of the chamber of commerce network. Some of them are under provincial jurisdiction and some are under federal jurisdiction. There is quite a lot of discussion within chambers of commerce around the Boards of Trade Act and complying federally versus provincially. Would this take away any of that, or would it take that out of the equation if there was a standard process that groups like chambers of commerce would be able to fall under that would satisfy provincial requirements as well as requirements under the Boards of Trade Act?

Mr. Mitch Davies: There are no specific provisions in terms of those requirements in this bill. I'll leave it to my colleague if he has anything to add. I'm not fully informed in terms of different options one might look to in terms of trade acts and so forth. That's not addressed in the bill specifically.

Mr. Mark Schaan: That's right. There are no specific provisions on the Boards of Trade Act in this act.

It is an act that does regulate boards of trade. I would argue there haven't been a lot of incorporations under the Boards of Trade Act for quite some time. Most of them are already in existence. The regulatory burden that's imposed is something that we continue to monitor in terms of the degree to which corporations fall under multiple acts or may wish to avail themselves of different registries.

Mr. Lloyd Longfield: I'm chairing the co-op caucus, so I'm very interested in the one member, one vote idea and the provisions that co-ops would be looking at under this act. Are there areas that you weren't able to satisfy for co-ops, or are there areas that you've brought forward that are very favourable for co-ops? Could you talk about co-ops a little bit?

Mr. Mitch Davies: The non-financial co-op sector falls under the responsibility of the department. We have an active exchange with the sector. If I fully understand, they've been seeking support in terms of co-op financing, and this is something in all business sectors, but in particular the co-op sector. They are looking for support also. Support through the mechanisms we have for the co-op model itself is a sustainable business model, one that actually offers benefits on the social side as well as the commercial side.

All of that is of interest to the department. We put a lot of work into this. I think there's actually a motion before the House in terms of co-ops and support for co-ops, so all this, I think, is a matter we would probably deal with beyond the legislative proceeding, because the co-op sector does not have specific legislative amendments that I'm aware of that they've sought and would like to see us move forward. I think it's more overall support in terms of the model—financing support, and so forth, and more program measures—that they are seeking.

Mr. Lloyd Longfield: A lot of what I've seen in the bill are provisions that really reflect the co-op movement in terms of diversity and social responsibility as well.

The Chair: Thank you very much.

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

Mr. Alexander Nuttall (Barrie—Springwater—Oro-Medonte, CPC): Thank you, Mr. Chair.

Thank you, gentlemen, for appearing today and for taking the time to present on this bill.

One of the things that has been brought up by me and by a couple of our colleagues across the way is targets. A frustration I have with government, coming from the private sector, is that we come forward with these things that are intended to achieve something, but we never actually determine what it is we're trying to achieve in terms of measurements and a timeline to do so, which is integral to any plan.

I understand this bill was first written or at least conceived for the 2015 budget, and now it has come forward two years later. I guess the question I have is, what is the target for the participation of women on boards of directors and in senior positions? What is it you're trying to achieve over what timeline, so that we can measure the results of these changes against whatever the measurements are?

• (0930)

Mr. Mitch Davies: Thank you, Chair, for the question.

As far as the bill and the provisions in the bill go, there is no numeric target.

Mr. Alexander Nuttall: Do you see an issue with that?

Mr. Mitch Davies: I would say, just to represent the process we went through to get to this enactment of a comply and explain model, that this is where there's more consensus on the usefulness of putting this into a federal statute. I think what has been done by adding to that further is to also extend this beyond gender to diversity in the broad sense. These are both constructive.

As to consideration of targets, this is a very active, rich debate. For some parts of what we would be trying to measure, there is some decent measurement on it. Gender diversity is fairly well measured.

For diversity in respect of other dimensions that could well form under this statute, those measures will have to be developed over time to get the right kind of data to be able to track it.

I think it's important that the minister has emphasized, in presenting this bill, the need to see improvement. Obviously you want to see the trends moving in a positive direction. On gender diversity, we know where we are and what improvement would look like. It's definitely north of where we are. He's obviously said that based on the experience under this act, he would decide on whether further measures would be required. I think that's as far as it goes at the moment, as this statute is being brought forward at this point.

Mr. Alexander Nuttall: Let me be very clear on this. Your measurement is, does it go up?

Mr. Mitch Davies: The act requires—

Mr. Alexander Nuttall: Sorry. This is a yes-or-no question. Is your measurement and your target at this point whether they go up at all?

Mr. Mitch Davies: The minister has spoken of improvement in diversity, and therefore improvement would definitely mean improvement in representativeness. It's a logical extension of what he said.

Mr. Alexander Nuttall: I'm hearing a lot of bureaucratic language. What I would like to hear is, what is the target? You must have internal targets. If we don't have internal targets, that's a real issue. If we have a bill that we're trying to achieve something with, what is it we're trying to achieve? Is it gender parity? Are we trying to increase the number of visible minorities to a certain point? There are all types of different measurements. We're talking about diversity. What is it we're trying to achieve with this bill in terms of real numbers?

Mr. Mark Schaan: As colleagues around the table have indicated, there's a whole diversity of corporations that are covered by our act, the Canada Business Corporations Act. Distributing corporations come in a whole series of forms.

What this bill does is facilitate a conversation between shareholders and their boards about what diversity looks like for them. Overall, we'll be able to see what progress looks like.

There's a whole host of civil society actors that are active in this space. There are organizations like Catalyst Canada. There are organizations like the Women's Executive Network. There are organizations like the centre on board diversity. All of those organizations have been actively working with the shareholder community to be able to arm them with the right kinds of discussions to be able to put pressure on their organizations to be able to say, "What does good look like for your company and your organization?"

Then at the aggregate level they've made things like the 30% Club or other organizations. I think that conversation is what this bill facilitates. Shareholders and corporations will now have an annual discussion on these issues, and civil society actors will continue to be exerting pressure from the outside as well to be pushing the marker upward.

• (0935)

Mr. Alexander Nuttall: Maybe I'll go at this a different way. Your dialogue—

The Chair: Alex, we're out of time. Sorry.

We're tight on time, and I want to make sure everybody gets in there.

Go ahead, Mr. Jowhari.

Mr. Majid Jowhari (Richmond Hill, Lib.): Thank you, Mr. Chair. Thank you, witnesses. I'll be splitting my time with Mr. Sheehan.

Mr. Davies, I noticed that the last time a comprehensive amendment was made to CBCA was back in 2001, so it's been about 15 years. This is a long gap. I would appreciate it if you could shed some light on why it took so long. Also, has any consideration been given to providing a periodic review of this framework, and if not, why not?

Mr. Mitch Davies: On the last question about a periodic review, I understand it's been offered as a suggestion, and this is a matter for debate. The bill doesn't have that provision in it, and I imagine that can be debated in respect of this enactment. I wasn't there in 2001, so I can't directly speak to the experience between then and now.

I would only add one point of context. Some of this has to do with the places where some of the reform is unfolding. In the area of securities law, and particularly shareholder democracy, we see very active engagement in the provincial securities exchanges. In our country, we have this debate being carried out at multiple levels—provincial statutes, the securities exchanges, corporate statutes, the federal level. I would say that this change and this act intend to bring diversity front and centre, diversity in its broadest possible sense, as a policy objective and as a conversation between shareholders and the management and directors of the company.

The intent is also to bring shareholder democracy forward, and in particular to bring forward the majority voting standard. Those are the two big-principle policy aims of this enactment that are trying to move things forward at the federal level. What you will see over time is the interplay of things between the federal and provincial levels. Obviously it's a question for debate. Should there be more going on at the federal level at various times? That's something people can comment on.

Mr. Majid Jowhari: You also mentioned that there are other considerations that did not make it into this amendment. Is there any sense of when those will be considered for review and will make it back into the bill? There is no periodic review.

Mr. Mitch Davies: We continue to monitor the state of debate, the evolution of various matters. For example, there are different international models on “say on pay”. At the shareholder level there are movements, and people are availing themselves of the core governance mechanisms they have to press these forward. I think that issue can advance in other fora.

This bill doesn't require a particular review period, but the department's commitment is to monitor and engage on these debates and remain open to whether further reforms could come forward at the direction of the government.

The Chair: Mr. Sheehan is next.

Mr. Terry Sheehan (Sault Ste. Marie, Lib.): Thank you very much.

We talked about diversity in respect of various groups. What about young Canadians? Were they consulted as a group? How will this encourage more young people to get involved in governance and in boards? What about young entrepreneurs? How might this affect them as they move up from sole proprietorship?

Mr. Mitch Davies: Thank you, Mr. Chair, for the excellent question.

I think this goes back to leaving quite open the diversity of approaches to diversity. I think you picked up on another one—representation of young people in a management company, people from different walks of life, young entrepreneurs. I think all this is possible in terms of how a company chooses to take this statute and use it in its operations. We expect to see a number of approaches taken to that, so pick one of them. Because it's not prescriptive, it allows for that.

I think at the early stage of a company, when it's probably not moved to a publicly traded position, these statutes, these changes, wouldn't apply. It's only when they've actually gone through an IPO and into the public market that they become a distributing corporation.

I think the emergence in the corporate sector of young leaders is an interesting phenomenon linked to the new economy, the digital economy. Some of the biggest companies in the world now are run by very young people, looking at the corporate sector as a whole. A lot of young people are managing very large enterprises, and often with a different mindset. I think this bill encourages people to embrace diversity in its full sense, because a lot of those companies are incredibly diverse in their makeup and include people from all over the world and from different backgrounds.

• (0940)

The Chair: Thank you.

Mr. Lobb, you have five minutes, please.

Mr. Ben Lobb (Huron—Bruce, CPC): Thanks very much.

The first point I would like to make is that it's unfortunate that the minister isn't here today. I thought that would be nice. Seeing as how it's his first bill to come through Parliament as a minister, that would probably be the least he could do, to show up today for his own bill, but we'll leave that for what it is.

My first question to you gentlemen is with regard to class A and class B shares. Bombardier and Torstar would be two examples. How does that impact here, with this bill?

Mr. Mark Schaan: Split-share structures and voting versus non-voting were consulted about in the 2014 consultations on the CBCA, and there was no consensus. There is an ongoing debate in the corporate governance community about class A and class B, voting and non-voting shares.

Mr. Ben Lobb: In the two examples I gave you, there are family interests in both. Does this bill apply to the way their structure goes and the way they have their voting structure?

Mr. Mark Schaan: If they're distributing corporations under the CBCA—you'll excuse me if I don't know, for those two specific examples, whether they're under the CBCA or they're provincial or both—then they will be required to meet diversity requirements. They will be required to put forward individual elections of their directors and have individual yearly terms.

With respect to whether or not this specifically addresses any changes to the class structure of shares, this bill is silent on that.

Mr. Ben Lobb: Okay.

You would have been familiar with the criticism around the election of the board members and the requirement about a majority. What is your interpretation of the meaning of “majority”? If a board of directors member doesn't receive a majority, it is assumed under this bill that it's now deemed that he will resign or that his membership not be included in the board.

Is that a criticism or an interpretation that you've heard of this bill?

Mr. Mark Schaan: The standard applied for any director election under the CBCA under these provisions would be that individual directors would be subject to election by all voting shareholders. Shareholders would have the capacity to be able to vote yea or nay on each director. If a director does not receive a majority of votes cast, that director would not be deemed elected.

There are provisions in place for failed elections—when, for instance, there's a lack of quorum or a lack of regional representation, as per the articles of the corporation. In all of those cases, there's a capacity for the board to be able to take appropriate action to allow business continuity. This act sets out the rules, and any corporation in Canada under the CBCA would be subject to them.

Mr. Ben Lobb: Do you see this as a potential loophole down the road, whereby special exemptions would be given to the boards to allow them to say, “Well, this person didn't get a majority, but we've looked at it, and we'll still accept them into the board”?

Mr. Mark Schaan: In the case of the Canada Business Corporations Act, this act is actually quite explicit in terms of what happens in the case of a failed election. A failed candidate is not able to be appointed by directors of the corporation except in extremely rare circumstances.

Mr. Ben Lobb: But I think that number is like one in 10, isn't it?

Mr. Mark Schaan: The number you're quoting is the number under current securities rules, not under the CBCA. These are new provisions that would require a majority voting. In the current rules of the CBCA, the board of a CBCA corporation is elected for a three-year term and as a slate. This bill will require individual elections for annual terms, with a majority voting standard.

Mr. Ben Lobb: In the whole idea of diversity and everything else that's included in that, will those new people still be required to fulfill the mandate of share ownership of directors and all these types of requirements? Will that still apply to them as well?

Mr. Mark Schaan: With respect to the obligations of directors, the law remains as is. The changes are to the elections process.

Mr. Ben Lobb: What about multinational corporations that would have multiple layers of boards? How does that apply to them?

Mr. Mark Schaan: With respect to multinationals, if you're registered in Canada under the Canada Business Corporations Act, you're subject to the rules of the Canada Business Corporations Act with respect to your annual meeting of your corporation in Canada.

● (0945)

Mr. Ben Lobb: Okay.

Next, let's take the example of the Vancouver Stock Exchange. Is it provincial? If I have a business and I don't want to do this, I'm just going to start on the Vancouver Stock Exchange....

Mr. Mark Schaan: The corporations in Canada have a number of choices, and there are a couple of distinctions.

One is that they can choose to incorporate provincially or federally, because the commercial power is split between the provinces and the national government. Moreover, there is then, in addition to the securities commissions, a separate power, securities law, which applies to those that are publicly traded and wish to participate in the stock exchange. Incorporation happens either provincially or federally, and then trading of shares happens separately under securities law, under the securities commissions.

Mr. Ben Lobb: Thank you for your time.

I just want to let you guys know that I heard the minister is transferring you guys. With all this democratic work, you're now going to the ministry of democratic reform after this bill passes, so congratulations.

The Chair: Thank you very much.

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

Mr. Frank Baylis (Pierrefonds—Dollard, Lib.): Good to see you again, Mark, gentlemen, Mitch.

I'd like to understand stuff we didn't look at, which was on insolvency and arrangements. Can you talk a little about that and why you chose not to address anything?

Mr. Mitch Davies: In particular, using the CBCA to conduct a restructuring of a company was one area where comments were received in the consultation, but there was no clear consensus on whether this should be changed in any way at this point. We're trying to figure out what we would embark upon now, and I think this comes back to the point of what keeps you moving ahead versus leaving the bill static. I think the way you move ahead is you pick up what—

Mr. Frank Baylis: Okay. You didn't have a consensus on what to do.

Did you do any comparisons with how the Americans do insolvency?

Mr. Mark Schaan: Obviously our insolvency statutes, the Companies' Creditors Arrangement Act and the Bankruptcy and Insolvency Act, are the primary mechanisms by which insolvency law plays out in Canada, so those laws were also reviewed and a recommendation was sent to this committee, which looked at those recommendations and that overview.

With respect to the relationship between corporate governance and insolvency, by and large our relationship reflects best international practice.

Mr. Frank Baylis: The Americans have a slightly different tilt on insolvency, in that they're looking to save the company to the detriment, you could almost say, of other stakeholders, such as bond holders and shareholders. We don't have that flexibility, which means that our companies are more vulnerable when they're in trouble. That's what I was driving at. We chose not to address that, though.

Say on pay—CEO and executive compensation—was another one. From what I could read, there were arguments on both sides of the coin, but we chose not to deal with it. I'd like to understand why, because from my understanding, many other jurisdictions in the world—the United States, the U.K.—have dealt with some form of say on pay.

Mr. Mitch Davies: I'll just highlight two considerations among many.

First, yes, there wasn't a consensus, so that was important. Second, where best to address that issue is also important. With respect to what we put forward in this bill, when you look at the comments from the bar, the people who are in this for a living, you see there's a lot of comment about being sensitive to how this works with TSX requirements and securities requirements, being sensitive to how it's playing out at a provincial level, and not creating duplicate or contradictory or different standards, so where and how that issue could best be moved forward is something we have to take into account.

I think a lot of representations are being made to securities commissions with regard to this issue. There are a lot of forceful voices speaking to how this could be evolved. At the moment, that's probably where the debate is playing out.

In this bill the federal government is putting the emphasis on the two matters that I spoke to earlier: first on diversity and—

Mr. Frank Baylis: Yes, I understand that—

Mr. Mitch Davies: —its processes, and second—

Mr. Frank Baylis: I got that—

Mr. Mitch Davies: —on the matter of democracy.

Those are the points, I think.

Mr. Frank Baylis: That leads me to a question about our patchwork of governance, as you just described, Mark.

Is that one reason we didn't tackle some of these problematic issues, such as say on pay? You're saying to me it's a patchwork. We have provincial jurisdictions and different regulators. Would a national regulator have facilitated doing this, if we had that in place?

● (0950)

Mr. Mitch Davies: I think to get into that would be exceeding my and my colleagues' area of responsibility. It would probably be best to have officials from the Department of Finance come and speak to the federal experience in that significant debate.

I would describe the patchwork as the Constitution, which is not a small matter in the way it was framed. The powers were shared. Commerce power was shared. As a consequence, we have registration at the federal-provincial level and we also have security systems at the provincial level.

I think this is the circumstance we're in. This the country we're in. In each government we try to figure out the areas where we can lead and move forward, each in our own turns, when we look to a decision as to how to proceed.

Mr. Frank Baylis: When we look to our trading partners—France, the U.K., Switzerland, the United States—they've moved forward with these things. We've been silent on them.

Mr. Mitch Davies: I would only say that the United Kingdom is a unitary government. It's a much different set-up in terms of the scope at their national level to move forward in those areas. We obviously have a different arrangement in Canada. I wouldn't speak further on it, as it's not in our area of competence.

The Chair: Thank you.

Mr. Masse, you have three minutes.

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

The Chair: I'm sorry; you have two minutes.

Mr. Brian Masse: Oh, jeez, I thought I was going to get away with that.

I'll continue with the say on pay. Canada is actually considered a laggard in that respect. One example is Steinhafel, from Target. I think it was 11 Zellers stores that were operating. They were doing okay, but they weren't exceptional. Zellers was taken over by the owner of a U.S. corporation, a giant that ran them into the ground essentially. He threw out a bunch of workers who had pay and benefits. Zellers was a profitable corporation. It essentially went bankrupt, and he walked away with, I believe, \$61 million in compensation from that endeavour.

What is it that makes us different, that we can't have some say in pay with part of this amendment? You were mentioning consensus a lot. Don't they have consensus on gender equity? Some of these boards are in some of the most diverse places in Canada, and they don't actually have diversity on the board, and there's no penalty for it as well. I think that when we're looking at changing a bill only twice in 40-plus years, it's a major opportunity to correct and empower shareholders in a much-changing society. Norway has done it differently from the way we have, as an example. Where do we have an option?

Maybe we don't want absolute consensus on this—I don't know what your definition of consensus is—but what specifically can we do in the immediate and maybe long term to include more say on pay?

The Chair: We're out of time, but I'll give you a quick reply.

Mr. Brian Masse: Sorry.

The Chair: Give very brief remarks, please.

Mr. Mitch Davies: My apologies, Mr. Chair, in that a lot of the questions are more of a policy nature and would probably be best addressed to the minister, in terms of the broader question. The space in which this bill is offered.... I think Target, for example, is a provincially registered company, so it's also a question of which company is covered under our statute versus a provincial statute.

I do fully acknowledge that these things need to be updated. I think we need to be current, and it applies to all of our framework laws, so I take that point very well.

Again, as regards the policy question of whether it is going far enough or whether we are doing enough, I would leave that more to the minister.

The Chair: Thank you very much.

On that, Mr. Davies and Mr. Schaan, thank you very much for coming in today and letting us have time with you.

We are going to suspend for about two minutes so that we can go back into committee business.

Thank you, everybody.

[Proceedings continue in camera]

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