

Testimony before Senate Standing Committee on Banking, Trade and Commerce

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Good afternoon.

Je voudrais remercier le Comité de m'avoir invité aujourd'hui.

It is an honor to appear before this Committee to comment on Bill C-25, in particular as it relates to diversity in the boardroom and the executive suite.

I am a Professor and Director of the Institute for Gender and the Economy at the Rotman School of Management at the University of Toronto. In this role, I promote the use of rigorous academic research to inform policy and practice, which is particularly important in the realm of gender and diversity where many common beliefs are not actually supported by data and may end up getting in the way of progress.

The goal of the diversity provisions of Bill C-25 is to increase representation of women and other underrepresented groups in business leadership. From a legislative and regulatory standpoint, there are two ways to achieve this goal. The first is quotas and the second is regulated disclosure. Bill C-25, and its precursor at the OSC, follows the latter path.

The working hypothesis underlying this “comply or explain” approach is that disclosure of diversity statistics will be enough to motivate firms to become more inclusively representative.

Unlike when Bill C-25 was first proposed, we now – in late 2017 – have the benefit of 3 years of evidence about whether this hypothesis has been proven.

The answer is that it has not. In the Canadian Securities Administrators' first review at the end of 2015, it found that women held 11% of total board seats. Two years later, the number is only 14%.

The number we should be hoping for would be something like 40%, which is what we see in countries like Iceland, Norway, and France.

Where do we see the 40% figure in Canada?

Well . . . almost 40% of companies still have no women on their board.

When we look at practices to promote diversity, only 35% of companies reported having a written diversity policy, and only 11% of firms had diversity targets.

Disappointingly, of the 505 board seats that were filled last year, 74% were filled by men. At this rate, parity will be far beyond our reach for decades. If, as suggested in your hearing last week, replacement is the barometer of progress, then we are not making much headway.

These figures raise a question about whether the current bill will achieve its objectives. A wealth of social science research has observed the powerful effect of bias that is embedded not only in our minds but also in our systems, processes and structures. This manifests itself in the faulty assumption that qualified women do not exist or that the current imbalance we see today was produced by a meritocratic process. For a law to have a fighting chance of displacing these dynamics, it must be equally powerful. And, this is why more and more countries are opting for quotas which have meaningful consequences for not meeting targets (specifically: substantial fines, invalidating new board appointments, withholding of board compensation, ineligibility for government contracts or dissolution of the company).

Given that Bill C-25 does not contemplate quotas, I would like to suggest three areas where the Bill could be strengthened to increase the likelihood that it helps Canadian business achieve more appropriate representation of women and other underrepresented groups.

As a preface, let me note that – as an American immigrant to Canada – it is my view that the Canadian government has an opportunity to show global leadership on inclusion and representation. We are at a moment in the world when Canada can be a beacon for social justice, and I hope we can grasp every opportunity to do so.

1) First, it is a global advance for the Bill to consider forms of diversity other than gender. It is again an opportunity for Canada to be at the forefront. This additional specification is important because research suggests that many diversity initiatives tend to benefit white women while ignoring other underrepresented groups.

In the current form of the Bill and regulations, diversity remains undefined. The risk here is that the lack of detail will lead firms to use an overly broad definition that will not

accomplish the intended representation goals. In the United States, where the Securities Exchange Commission requires publicly traded companies to report on whether they consider diversity in director appointments, the majority of firms used broad definitions focused on a director's experience or skills, which then justified failure to appoint people from underrepresented groups.

This is the challenge with the “marketplace framework” suggested by Minister Bains in his testimony last week before this committee in which he focused on “diversity of thought, perspectives and ideas.” As a result, I recommend that a clear definition of diversity be included, likely from the Employment Equity Act, and not just as “guidance.”

2) Second, the Bill in its current form only requires firms to report whether or not they have targets. My fear is that this voluntary approach will not move us beyond the 11% percent that report having targets now. I suggest that it would usefully include a requirement that firms set and report targets, rather than just explaining why they don't. Targets are valuable because they give citizens and shareholders a means for holding firms accountable. They are also valuable because they help firms achieve a critical mass of female representation on the board so that women are not reduced to token status, which research shows, reduces their effectiveness.

3) Third, and finally, I suggest a separate or supplemental reporting mechanism rather than just requiring the information to be listed in company Proxy statement. “Comply or explain” relies on comparison across peers and shareholder pressure to improve representation on boards. However, it is very hard to accomplish this goal when the required information can be placed anywhere and in any form in a lengthy proxy statement. To collect the information across firms, someone has to read each statement individually, look for these data and then pull them together in a report. If, however, this information were reported by companies in a separate web form, the data could be easily compiled and reported to all Canadians on an annual basis. Companies could be easily ranked and their progress tracked over time. Comply or explain's mechanisms are substantially weakened if the comparative data are not readily accessible to shareholders and to all Canadians.

I am at your disposal to answer any questions including to continue the conversation from last week about the business case for diversity, the implications for meritocracy or other topics.

Thank you very much. Merci beaucoup.