BRIEF OF THE CANADIAN COALITION FOR GOOD GOVERNANCE

Standing Senate Committee on Banking, Trade and Commerce: Bill C-25 (42-1)

1. This brief deals exclusively with the amendments to the *Canada Business Corporations Act* (the "**CBCA**")[1] proposed in Part 1 of Bill C-25[2] which relate to public companies.[3]

2. Bill C-25 will, if enacted, result in significant improvements to the governance regime for public companies incorporated under the CBCA. Accordingly, the Canadian Coalition for Good Governance ("**CCGG**") recommends that this committee report positively on the provisions in Part 1 of Bill C-25 as they apply to public companies. CCGG also recommends that consideration be given to further improvements to public company governance in Canada, both through focussed consultation on key governance matters, and by subjecting the CBCA to ongoing review as informed by stakeholders that have direct experience with the realities of investing and doing business in Canada.

I. Report to the Senate that the provisions of Part 1 of Bill C-25, to the extent they apply to public companies, be adopted

3. CCGG desires to have the provisions of Part 1 of Bill C-25 (i.e., the clauses that amend the CBCA) enacted into law, to the extent such provisions apply to public companies. Our arguments in support of certain key provisions of Part 1 are set out below.

Majority voting

4. Bill C-25 proposes several key enhancements to the corporate governance of public companies incorporated under the CBCA, the most important of which is the introduction of a "majority voting system" for uncontested director elections.

5. Under the current CBCA proxy voting procedure, a "plurality voting system" is used to elect the directors of a public company. Under this system, a shareholder can either vote "for" a director nominee or "withhold" her vote. It is not possible to vote "against" a director, and "withheld" votes in effect are like abstentions and do not count. Accordingly, a director needs only one "for" vote to be elected to the board. By way of example, a nominee who owns one share could vote for herself and be elected.

6. By contrast, under a "majority voting system" as proposed in Bill C-25, a director nominee in an uncontested election would be elected only if that nominee receives more votes "for" than "against". We understand that this system is used in most jurisdictions around the world, with Canada and the United States as notable outliers.

A variant form of majority voting with a 90-day grace period is acceptable

7. In 2006, CCGG first published our majority voting policy to "work around" the plurality voting system in Canada's corporate statutes.[4] The policy requires, in respect of each issuer

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1 *Canada Business Corporations Act*, RSC 1985, c C-44 [CBCA].

2 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*, 1st Sess, 42nd Parl, 2017 (second reading in the Senate 23 November 2017).

3 For the purposes of this brief, the term "public company" is interchangeable with the securities law term "reporting issuer". In the CBCA, public companies are referred to as "distributing corporations".

that chooses to adopt the policy, that any director candidate for whom more votes are "withheld" than are voted "for" in an uncontested election must immediately tender her resignation to the board, which the board shall accept within 90 days of the shareholder meeting absent extraordinary circumstances relating to the composition of the board or the voting results.

8. In 2014, the Toronto Stock Exchange ("**TSX**") established a listing requirement pursuant to which each listed issuer (that is not a controlled company) is required to adopt a majority voting policy if it is incorporated in a "plurality voting system" jurisdiction. The TSX policy is substantially the same as the CCGG policy, and also provides the board with 90 days after the date of the shareholder meeting to accept a resignation, which they shall accept absent exceptional circumstances.

9. As drafted, Bill C-25 provides that a director nominated for re-election to the board ceases to be a director immediately at the close of an annual meeting at which such director receives fewer votes "for" than "against".

10. A variant majority voting system is provided for in, *inter alia*, the Model Business Corporations Act ("**MBCA**") as prepared by the American Bar Association Corporate Laws Committee.[5] The MBCA permits a corporation to adopt a bylaw which provides that a director nominee who fails to receive a majority of shares voted "for" shall serve as a director for a term ending on the earlier of (i) 90 days following her election, and (ii) the date the board selects a different individual to fill the board seat.[6]

11. CCGG strongly believes that a majority voting system for uncontested director elections should be enshrined in the CBCA that applies to all public companies. However, CCGG is not opposed to Bill C-25 being amended to provide for such a 90-day variant majority voting system, as it remains faithful to the principle behind majority voting that shareholders should have a meaningful role in determining the composition of the board. It also parallels very closely the form of majority voting policy developed by CCGG in 2006, and adopted as a listing requirement by the TSX in 2014. However, unlike the MBCA, the CBCA should mandate majority voting rather than giving a corporation an option to pass a bylaw and thereby adopt majority voting.

The TSX "work around" is not sufficient

12. While CCGG applauds the TSX for its adoption of a listing requirement that mandates issuers adopt a majority voting policy, it remains a "work around" for the problems inherent in the plurality voting system. A better outcome would be the adoption in the corporate statutes of a principled "majority voting system", which would obviate the need for such a "work around".

13. Additionally, the TSX Venture Exchange does not have a comparable requirement to the TSX and therefore the over 1,600 issuers listed on the TSX Venture Exchange are not required to adopt a majority voting policy. Each of these listed issuers has the privilege of

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4 CCGG, "Majority Voting" (March 2011, updating original publication dated August 2006), online: <http://www.ccgg.ca/site/ccgg/assets/pdf/2011_MV_Policy.pdf> at 22–24.

5 ABA Corporate Laws Committee, online: <https://apps.americanbar.org/dch/committee.cfm?com=cl270000> (includes a link to the 2016 revision of the Model Business Corporations Act) [MBCA].

6 MBCA, *supra* note 5, §10.22.

access to the public capital markets, and CCGG's view is that with this privilege should come the corresponding responsibility to be answerable to shareholders through meaningful director elections.

Failed elections are rare, and the CBCA has provisions that address them

14. Concern has been expressed by some that a majority voting system will increase the possibility of so-called "failed elections". A failed election in this context generally refers to a situation where, at a meeting of shareholders, the number of directors elected is either (i) less than the number or minimum number required by the company's articles, or (ii) insufficient to meet the company's quorum requirements.

15. To be clear, failed elections are extremely rare. Since CCGG introduced our majority voting policy in 2006, which many public companies voluntarily adopted, followed in 2014 by the TSX listing requirement that its listed issuers must adopt a majority voting policy, there has been no mass proliferation of cases where directors experience more "withhold" votes than votes "for". Such majority voting policies are triggered rarely, and there is no reason to expect that this will change should a majority voting system be adopted in statute.[7] Also, the CBCA already provides for a mechanism to overcome the extremely rare situation where a failed election occurs[8] and, if the CBCA is amended to provide for a 90-day grace period for a director who does not receive a majority vote, then that will provide yet another safeguard. Ultimately, a principled approach to public policy should not be driven by fears of unlikely scenarios already contemplated in statute.

The Chair of the Ontario Securities Commission supports majority voting

16. In her closing remarks at the Shareholder Rights Conference at the University of Toronto on October 28, 2016, Maureen Jensen, Chair of the Ontario Securities Commission, made the following statement in favour of Bill C-25's proposed amendment of the CBCA to provide for majority voting:

> ...corporate and securities law must work in a complementary fashion to improve the governance of our public companies. I am very pleased that recent amendments to the CBCA will mandate majority voting... and we look forward to seeing how it will be implemented.[9]

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7 A noted critic of majority voting as proposed in Bill C-25 is Hansell LLP. However, even Hansell LLP concedes in "Majority Voting: Getting it Right" (11 April 2017, online: <http://hanselladvisory.com/upload/files/HansellMcLaughlin-DiscussionPaperonMajorityVoting.pdf>) that they "are aware of a few – but very few – situations in which shareholders have failed to elect the required number of directors" (at 23) and "it is quite unlikely that a CBCA company would experience a failed election as a result of the amendments being proposed to introduce majority voting into the CBCA" (at 24).

8 CBCA, *supra* note 1. Section 111(2) of the CBCA provides that should the number of directors at any time fall below either (i) the number or minimum number required by the articles or (ii) the number sufficient to meet quorum requirements, the directors then in office shall without delay call a special meeting of shareholders to fill the vacancy and, if they fail to call a meeting or if there are no directors then in office, the meeting may be called by any shareholder.

9 Ontario Securities Commission, Closing Remarks by Maureen Jensen at the Shareholder Rights Conference (28 October 2016), online: < Ontario Securities Commission, Closing Remarks by Maureen Jensen at the Shareholder Rights Conference (28 October 2016), online: <http://www.osc.gov.on.ca/en/NewsEvents_sp_20161028_rights-conference.htm>.

17. We suggest that the endorsement of majority voting by the Chair of the Ontario Securities Commission is an important factor for this committee to consider.

Diversity-related disclosure

18. CCGG also supports the proposed amendments in Bill C-25 concerning diversity-related disclosure, both for gender and forms of diversity other than gender. CCGG has publicly made statements in favour of diversity for many years, including the following:

> It is CCGG's view that board quality is paramount. It also is CCGG's view that diversity improves board quality. By 'diversity' we mean not only gender but all forms of diversity. As stated in CCGG's *Building High Performance Boards*: "While the quality of individual directors is paramount, we also expect boards as a whole to be diverse. A high performance board is comprised of directors with a wide variety of experiences, views and backgrounds which, to the extent practicable, reflects the gender, ethnic, cultural and other personal characteristics of the communities in which the corporation operates and sells its goods or services." CCGG's adoption of a board gender diversity policy should not be interpreted as a sign that the lack of other forms of diversity is less deserving of remediation. Since women comprise half the population and remain persistently under-represented on boards, however, gender is an appropriate focus.[10]
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> […] Given that directors are traditionally chosen from among those with senior management experience (with many boards still thinking that a [Chief Executive Officer] background is essential) it is imperative that senior management become more gender diverse if there is to be an adequate pool of female board candidates. There is some evidence that the lack of women in executive positions is a more intractable problem than board diversity. Accordingly, CCGG supports the requirements in [National Instrument 58-101 *Disclosure of Corporate Governance Practices*] that companies disclose their policies with respect to increasing women in executive officer positions. Again, we would go further and suggest that [National Policy 58-201 *Corporate Governance Guidelines*] be amended to recommend the adoption of policies that consider gender in management succession planning as a 'best practice'.[11]

19. Although not set out in the above public statements made by CCGG, CCGG also believes that a best practice for boards of directors of public companies is to adopt a gender diversity policy that specifies a target for the representation of women on the board, such target to be chosen by the board.

The case for diverse boards and executive teams

20. It stands to reason that organizations which fail to ensure proper consideration is given to diverse candidates for leadership positions are (i) drawing corporate leadership from a subset of the available talent pool, with the result that the quality of leadership will necessarily be less than optimal, and (ii) at a competitive disadvantage compared to those organizations that choose to access the whole pool.

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[10] CCGG, "Board Gender Diversity" (October 2015), online: <https://www.ccgg.ca/site/ccgg/assets/pdf/gender_diversitypolicy.pdf> at 1 [CCGG Board Gender Diversity Policy].

[11] CCGG Board Gender Diversity Policy, *supra* note 10 at 4.

21. Various studies have borne out this thesis, and demonstrate the many tangible benefits that accrue to diverse groups:

    (a) Diverse boards are less likely to succumb to groupthink (that is, where the desire for group consensus circumscribes the ability to present differing perspectives).[12]

    (b) Diversity improves board decision making, independence, and the oversight and mitigation of risk.[13]

    (c) Diversity leads to more effective monitoring of Chief Executive Officer ("**CEO**") performance.[14]

    (d) Diverse groups outperform homogeneous groups when performing complex tasks.[15]

    (e) Research has also shown a correlation between board gender diversity and corporate performance.[16]

22. While the above research indicates that diversity is good for the bottom line, such a finding is not necessary to support diversity initiatives. The pursuit of diversity through disclosure requirements and other measures is, if properly executed, a response to demonstrated implicit bias. When companies achieve a level of diversity among their leadership that reflects the communities in which those companies operate, it signals an awareness of and response to such implicit bias which, in turn, fosters confidence in the capital markets.

Progress to date has been slow

23. In 2014, the majority of provincial securities regulators implemented amendments to National Instrument 58-101 *Disclosure of Corporate Governance Practices* to require non-venture issuers to provide disclosure in respect of gender diversity on their boards.

24. In 2015, following the publication of the first annual progress report on gender diversity by the Canadian Securities Administrators ("**CSA**"), CCGG released its Board Gender Diversity Policy.[17] CCGG noted therein that little progress had been made and that further

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[12] ML Maznevski, "Understanding our differences: Performance in decision-making groups with diverse members" (1994), 47(5) Human Relations 531, online: <http://journals.sagepub.com/doi/abs/10.1177/001872679404700504>.

[13] United Kingdom (Government of), "Women on Boards" (February 2011), online: <https://www.gov.uk/government/news/women-on-boards> at 7–10 [Davies Report].

[14] RB Adams and D Ferreira, "Women in the Boardroom and their Impact on Governance and Performance" (22 October 2008), online: <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1107721>.

[15] KA Jehn, GB Northcraft and MA Neale, "Why Differences Make a Difference: A Field Study of Diversity, Conflict, and Performance in Workgroups" (Dec 1999), 44(4) Administrative Science Quarterly 741–763, online: <https://www.jstor.org/stable/2667054>.

[16] See, e.g., McKinsey & Company, "Women Matter: Gender diversity, a corporate performance driver" (2007), online: <https://www.mckinsey.com/business-functions/organization/our-insights/gender-diversity-a-corporate-performance-driver>; Catalyst, "The Bottom Line: Corporate Performance and Women's Representation on Boards" (15 October 2007), online: <http://www.catalyst.org/knowledge/bottom-line-corporate-performance-and-womens-representation-boards>; Thomson Reuters, "Mining the Metrics of Board Diversity" (June 2013), online: <https://share.thomsonreuters.com/pr_us/gender_diversity_whitepaper.pdf>; and Davies Report, *supra* note 13 at 7–10.

[17] CCGG Board Gender Diversity Policy, *supra* note 10.

steps should be taken to encourage issuers to adopt measures to improve diversity among the ranks of directors and executive officers.

25. Since then, the CSA has released two further annual reports, but progress continues to be slow.[18] CCGG agrees with the position of the federal government that the question of how best to achieve diversity should be revisited if insufficient progress has been made over the next few years.[19]

26. In response, CCGG has joined together with several leading advocacy groups to form the Canadian Gender and Good Governance Alliance ("**CGGGA**").[20] The CGGGA has recently released its first publication: the "Directors' Playbook". This document includes a sample board diversity policy that issuers can use, including for the purpose of setting and disclosing a target percentage of women directors.[21] This publication is designed to be easy to use and implement, which is particularly helpful for smaller issuers, which may lack the resources of larger issuers in addressing the issue, and generally have lower levels of diversity among their boards and executive teams.[22]

27. With respect to forms of diversity other than gender, securities regulators have yet to take any definitive steps mandating disclosure of the composition of a public company's board or executive officers, or disclosure of any policies or other measures adopted towards increasing such diversity. However, diversity comes in many forms, and an effective government response should consider how forms of diversity other than gender can be promoted in the boardrooms and on the executive teams of public companies.

Other Corporate Government Improvements

28. CCGG also supports the amendments that provide for individual (not slate) director elections and annual terms for directors. Although these two practices are also currently listing requirements for the TSX, such requirements could conceivably be reversed in the future. Each of these rules are essential elements of good corporate governance and, accordingly, they should be entrenched in the CBCA.

II. Engage in focussed consultations on future additional improvements to public company governance in Canada

29. CCGG recommends that, going forward, this committee or the appropriate government body should conduct focussed consultations on additional amendments to be made to the CBCA with a view to further improving public company governance in Canada. Such consultations should be held with provincial securities regulators, key stakeholders such as interest groups representing industry and shareholders, and professionals in the areas of law and finance.

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[18] For the most recent such report, see Ontario Securities Commission, CSA Multilateral Staff Notice 58-309 *Staff Review of Women on Boards and in Executive Officer Positions – Compliance with NI 58-101 Disclosure of Corporate Governance Practices* (October 2017), online: <http://www.osc.gov.on.ca/en/SecuritiesLaw_sn_20171005_58-309_staff-review-women-on-boards.htm> [CSA 2017 Review].

[19] CCGG Board Gender Diversity Policy, *supra* note 10 at 3.

[20] Canadian Gender and Good Governance Alliance, online: <https://www.cggga.ca/>.

[21] CGGGA, "Directors' Playbook" (November 2017), online: <https://www.cggga.ca/directors-playbook>.

[22] See, e.g., CSA 2017 Review, *supra* note 18.

30. The Standing Senate Committee on Banking, Trade and Commerce ("**BANC**") is well-known for the quality of its reports on business-related topics. Indeed, its 2002 report prepared under then-chairman Senator Michael Kirby on the topic of corporate governance[23] was a key publication, leading to the introduction and eventual enactment of Bill S-11 in 2001.[24] BANC is also currently composed of several eminent Canadians who are well-versed in the capital markets and issues of corporate and securities laws generally. BANC may therefore be the ideal group to conduct such a review.

31. Three particular measures for consideration during such consultations are set out below. CCGG does not believe that Bill C-25 should be held up to provide for these measures now, however, as these items will take some time to fully consider and draft.

Consultation Item (A): Facilitate the ability of shareholders to nominate directors (aka "Proxy Access")

32. While majority voting would address the deficient nature of public company director elections, this remains a reactive tool in that shareholders are voting for director nominees who have been put forward by the existing board. Currently, there is little meaningful ability for shareholders to act proactively to propose a nominee for election as a director. Consideration should be given to amending the CBCA in order to facilitate the ability of shareholders to nominate directors.

33. Specifically, consideration should be given to an amendment in accordance with the following five general conditions:

    (a) A shareholder of a company should have the right to nominate a director if that shareholder owns at least 3% of the company's shares;

    (b) Such shareholder must have held the 3% of shares for a minimum of three years;

    (c) Subject to principle (a), shareholders should have the right to nominate directors, up to the greater of (i) two directors and (ii) 20% of the board;

    (d) Both company nominees and shareholder nominees should be placed on equal footing in how they are described in the proxy circular and how they are set out on the form of proxy; and

    (e) A shareholder must maintain ownership of the threshold number of shares until the date of the meeting at which the nominees are proposed for election.

34. CCGG further recommends that these measures be inserted into the CBCA as a new section, rather than by way of amendment of section 137(4).

35. Corporate statutes like the CBCA are the appropriate location for such proxy access provisions because they currently provide alternative mechanisms for nominating directors. To the extent necessary, securities laws in Ontario and other Canadian jurisdictions should also be amended to permit shareholders to solicit proxies for their nominees utilizing the company's proxy circular rather than requiring shareholders to prepare their own proxy circular. The interlayered nature of the corporate and securities laws governing public

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[23] Canada, Standing Senate Committee on Banking, Trade and Commerce, Seventh Report "Corporate Governance" (tabled with the Clerk of the Senate on 29 August 1996, Sessional Paper No. 2/35-368S).

[24] Bill S-11, *An Act to amend the Canada Business Corporations Act and the Canada Cooperatives Act and to amend other Acts in consequence*, Royal Assent granted on 14 June 2001 as SC 2001, c 14 [Bill S-11].

companies underlies the need for such consultations to be held in coordination with securities regulators.

36. Current methods by which shareholders can nominate director candidates are, quite simply, not effective, and they also can be onerous and/or prohibitively expensive in their application. In part due to this ineffectiveness, director nominees are almost always chosen by the incumbent directors and/or company management. Further, in CCGG's experience, companies very seldom seek input from shareholders when selecting board nominees.

37. Canada is becoming a laggard in this area of governance. In the United States, more than 425 companies of various sizes and across industries, including more than 60% of the companies on the S&P 500 Index, have adopted some type of proxy access along the lines proposed by CCGG to enable shareholders to nominate director candidates.[25] We also understand that meaningful direct shareholder input into the director nomination process is permitted in many other countries.[26]

Consultation Item (B): Mandate periodic shareholder advisory votes to approve a public company's approach to executive compensation (aka "Say on Pay")

38. Consideration should be given to amending the CBCA to require public companies to hold periodic advisory "Say on Pay" votes by means of an ordinary resolution at each annual meeting of shareholders. The text of the resolution should be substantively similar to the following:

> Resolved, on an advisory basis and not to diminish the role and responsibilities of the board of directors, that the shareholders accept the approach to executive compensation disclosed in the Company's information circular delivered in advance of the [insert year] annual meeting of shareholders.

39. Currently, neither corporate law nor securities law provides any direct role for shareholders in monitoring executive compensation.

40. Generally, a company's senior executive team manages the company's business and affairs, while the directors supervise the senior executive team. Accordingly, one of the most critical roles for directors is deciding how to compensate the senior executive team.

    Shareholders should have the right to signal, in general terms, their support, or lack thereof, for a board's approach to executive compensation. The right to this particular form of engagement flows from the critical nature of executive compensation to a company's success, and the corresponding importance of ensuring alignment of interests between executives and shareholders.[27]

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[25] MS Gerber, "Proxy Access: Highlights of the 2017 Proxy Season", Harvard Law School Forum on Corporate Governance and Financial Regulation (1 July 2017), online: <https://corpgov.law.harvard.edu/2017/07/01/proxy-access-highlights-of-the-2017-proxy-season/>.

[26] CCGG, "Shareholder Involvement in the Director Nomination Process: Enhanced Engagement and Proxy Access" (May 2015), online: <http://www.ccgg.ca/site/ccgg/assets/pdf/proxy_access_finalv.35.docx_edited_on_june_18,_2015.pdf> at 7–8.

[27] There is also empirical evidence that advisory "Say on Pay" votes serve to "better align executive and shareholder interests and to more closely tie compensation to firm performance"; see Ricardo Correa and Ugur Lel, "Say on Pay Laws, Executive Compensation, CEO Pay Slice, and Firm Value around the World" (2016) 122:3 J of Financial Economics 500.

41. Such advisory votes have the benefit of requiring directors to turn their attention to executive compensation. Directors anticipating an annual "Say on Pay" vote are incentivized to thoroughly understand their company's compensation arrangements and meaningfully explain them to shareholders in the company's information circular.

42. Further, such advisory votes are another area where Canada is an international outlier. Periodic "Say on Pay" votes are mandatory in various countries around the world, including the United States, Australia, and Western European countries such as the United Kingdom, France, Germany, the Netherlands, and Belgium.[28]

Consultation Item (C): Require the Board Chair to be independent of company management

43. Consideration should be given to amending the CBCA to require that, as a general rule, the Board Chair be independent of management.

44. A general rule such as this may require exceptions to be carved out. For example, controlled companies could be exempted, such that the Board Chair and CEO roles may be combined, and/or the CEO may be an officer of the controlling shareholder, provided (i) a lead director, who is independent of both the controlling shareholder and management, has been appointed by the independent directors, and (ii) the board has an effective and transparent process to deal with any conflicts of interest between the controlled company, minority shareholders and the controlling shareholder.

45. Certain specific rules should also be considered, such as requiring that, instead of the CEO, the Board Chair or independent lead director, as the case may be (i) set the agenda for meetings of directors with the input of the CEO and other directors, (ii) be responsible for the quality of the information sent to directors, and (iii) lead in camera meetings of independent directors.

46. The Board Chair plays a critical role in leading or coordinating the other directors, both during and outside of board 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 it 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/CEO would thus be responsible for leading the body that oversees herself.

47. Many other key responsibilities of the Board Chair also are compromised when the role is shared: setting the agenda for board meetings; ensuring directors remain apprised of key company developments; and ensuring that board meetings are conducted with open discussion and permit an independent assessment of management's performance and views. Such problems arise with any Board Chair who is not wholly independent of management.

III. Establish and seek advice from a stakeholder advisory council

48. CCGG recommends that an advisory council populated with key stakeholders and professionals be established and charged with providing periodic reports on ways to improve the regulatory environment for public companies incorporated under the CBCA.

[28] RS Thomas and C Van der Elst, "Say on Pay Around the World" (2015) 92:3 Washington UL Rev 653, online: <https://papers.ssrn.com/sol3/papers2.cfm?abstract_id=2401761>.

49. CCGG agrees with the government that "[m]odern and well-crafted economic framework laws are the foundation upon which Canadian companies can innovate and grow to scale in the modern economy on a more regular basis."[29] A stakeholder advisory council with direct knowledge of the opportunities and challenges faced by Canadian investors and businesses can provide invaluable advice to the government as it seeks to bring Canada's corporate laws into line with international best practices, while also ensuring Canada remains a popular jurisdiction for economic growth and investment.

50. Such a council would also provide external stimulus to government to ensure that more regular reviews of the CBCA are conducted. Despite the statutory requirement to review the CBCA every ten years,[30] such reviews have not occurred on schedule. Indeed, the CBCA has been substantially amended only twice in the past forty years: once shortly after its enactment, and again in 2001 through Bill S-11.[31]

51. Further, such a council could provide helpful feedback regarding the manner in which the provisions in Bill C-25 related to diversity are being adopted and interpreted by public companies.

About CCGG

52. CCGG is a non-profit corporation and was founded in 2002 to promote good governance practices in Canadian public companies for the benefit of everyone in the world that invests in the Canadian capital markets. CCGG members include a wide range of institutional investors—primarily pension funds and third party money managers—that have in aggregate over $3 trillion in assets under management. Millions of Canadians rely on returns from these investments to fund their retirements. A list of CCGG members is attached as Appendix A.

53. CCGG is widely recognized as a thought leader in corporate governance. CCGG is regularly consulted on governance matters by governments, regulators, and public companies, and has published many widely-read policy papers on governance topics.[32] CCGG has also been granted intervenor status in certain critical cases before the Supreme Court of Canada that raise corporate governance issues, most recently in the case of *Livent v Deloitte* in which CCGG intervened in February 2017.[33]

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29 Canada, "Backgrounder: *An Act to amend the Canada Business Corporations Act, the Canada Cooperatives Act, the Canada Not-for-profit Corporations Act and the Competition Act*" (28 September 2016), online: <https://www.canada.ca/en/innovation-science-economic-development/news/2016/09/act-amend-canada-business-corporations-act-canada-cooperatives-act-canada-not-profit-corporations-act-competition-act.html>.

30 Bill S-11, *supra* note 24, s 136.

31 Bill S-11, *supra* note 24.

32 CCGG, "Policies & Principles", online: <http://www.ccgg.ca/index.cfm?pagepath=Policies&id=17581>.

33 Supreme Court of Canada, "Factums on Appeal – *Deloitte & Touche v Livent Inc, Through its Special Receiver and Manager Roman Doroniuk*", online: <http://www.scc-csc.ca/case-dossier/info/af-ma-eng.aspx?cas=36875>.

Appendix A – CCGG Members

Alberta Investment Management Corporation (AIMCo)

Alberta Teachers' Retirement Fund Board (ATRF)

Archdiocese of Toronto

BlackRock Asset Management Canada Limited

BMO Global Asset Management Inc.

British Columbia Investment Management Corporation (bcIMC)

Burgundy Asset Management Ltd.

Caisse de dépot et placement du Québec

Canada Pension Plan Investment Board (CPPIB)

Canada Post Corporation Registered Pension Plan

CIBC Asset Management Inc.

Colleges of Applied Arts and Technology Pension Plan (CAAT)

Connor, Clark & Lunn Investment Management Ltd.

Desjardins Global Asset Management

Electrical Safety Authority (ESA)

Fiera Capital Corporation

Franklin Templeton Investments Corp.

Greystone Managed Investments Inc.

Healthcare of Ontario Pension Plan (HOOPP)

Hillsdale Investment Management Inc.

Industrial Alliance Investment Management Inc.

Jarislowsky Fraser Limited

Leith Wheeler Investment Counsel Ltd.

Lincluden Investment Management

Mackenzie Financial Corporation

Manulife Asset Management Limited

NAV Canada Pension Plan

Northwest & Ethical Investments L.P. (NEI Investments)

OceanRock Investments Inc.

Ontario Municipal Employees Retirement System (OMERS)

Ontario Pension Board

Ontario Teachers' Pension Plan (OTPP)

OPSEU Pension Trust

PCJ Investment Counsel Ltd.

Pier 21 Asset Management Inc.

Pension Plan of the United Church of Canada

Public Sector Pension Investment Board (PSP Investments)

RBC Global Asset Management Inc.

Régime de retraite de la Société de transport de Montréal (STM) Pension Funds

Scotia Global Asset Management

Sionna Investment Managers Inc.

State Street Global Advisors, Ltd. (SSgA)

Sun Life Institutional Investments (Canada) Inc.

TD Asset Management Inc.

Teachers' Retirement Allowances Fund

UBC Investment Management Trust Inc.

University of Toronto Asset Management Corporation

Vestcor Investment Management Corporation

Workers' Compensation Board - Alberta

York University