



DEBATES OF THE SENATE

1st SESSION • 42nd PARLIAMENT • VOLUME 150 • NUMBER 181

CANADA BUSINESS CORPORATIONS ACT CANADA COOPERATIVES ACT CANADA NOT-FOR-PROFIT CORPORATIONS ACT COMPETITION ACT

**BILL TO AMEND—THIRD READING—MOTION IN
AMENDMENT—DEBATE CONTINUED**

Speech by:

The Honourable Diane Bellemare

Wednesday, February 14, 2018

THE SENATE

Wednesday, February 14, 2018

[Translation]

CANADA BUSINESS CORPORATIONS ACT CANADA COOPERATIVES ACT CANADA NOT-FOR-PROFIT CORPORATIONS ACT COMPETITION ACT

BILL TO AMEND—THIRD READING—MOTION IN
AMENDMENT—DEBATE CONTINUED

Hon. Diane Bellemare (Legislative Deputy to the Government Representative in the Senate): It is with humility that I rise to speak after Senator Joyal, who is very eloquent and passionate. Honourable senators, let me take this opportunity to explain why I am voting against Senator Massicotte's proposed amendment.

As you probably know, I am absolutely in favour of gender equality and diversity on boards of directors and senior management boards. That is not the issue.

For those who believe that Bill C-25 will not achieve much, rest assured — or concerned — that the proposed amendment will not have much more impact than the bill itself. Personally, I side with those who believe that this bill will be beneficial. However, Senator Massicotte's amendment — which I appreciate — will not improve the bill, in my opinion. On the contrary, it could cause problems.

Let me explain. The provisions in Bill C-25 would promote increased diversity within boards of directors. The bill addresses diversity in terms of designated groups as defined in the Employment Equity Act. Under Bill C-25 — I am repeating myself, but it is important to understand this — all corporations subject to the Canada Business Corporations Act, the Canada Cooperatives Act, and the Canada Not-for-profit Corporations Act, will have to disclose their diversity policy, namely the number or percentage of women, indigenous Canadians, persons with disabilities, and members of visible minorities. Those businesses will have to state their targets in numbers or in percentages or explain why they have none in place.

The bill also requires that a review take place five years following the coming into force of the act in order to determine whether more effective measures need to be introduced.

With regard to women's participation on corporate boards — a notion that I think is important to understand — Bill C-25 provides for the adoption of a regulation identical to that negotiated in 2014 among the provinces in order to harmonize provincial rules. In other words, Bill C-25 is proposing to do something, with regard to women, that was already negotiated in 2014 among a number of provincial stakeholders. I could give you a list of those stakeholders, but they included employer associations, university women's associations, and the Coalition for Real Equity, an organization some senators are very familiar with.

To get back to what I was saying, the approach known as “comply or explain” is what prompted a review of the regulations in a number of provinces in 2014. Many stakeholders from various backgrounds took part in the review, including, as I said earlier, employer associations as well as women's associations.

The government's approach to promoting women's participation on corporate boards involves adopting a regulation similar to the provincial one. However, the government is taking this one step further than the provinces, since the federal legislation also makes room for diversity, thereby complying with the explicit request made by the Coalition for Real Equity in 2014 to provincial governments. We actually know a few people who have participated in that coalition, including Senator Omidvar.

Senator Massicotte's amendment seeks to enshrine the rules in the act itself using a more binding formula. The prevailing regulation in the other provinces is more neutral, and I will provide a comparison.

Item 11 currently in force in the provinces of Alberta, Manitoba, New Brunswick, Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Quebec, Saskatchewan and Yukon with respect to women and all designated members reads as follows:

[English]

11. Policies Regarding the Representation of Women on the Board

[Translation]

The federal regulation will state the following:

[English]

Policies Regarding the Representation of Members of Regulated Groups

(a) Disclose whether the issuer has adopted a written policy relating to the identification and nomination of women [and members of designated groups] directors. If the issuer has not adopted such a policy, disclose why it has not done so.

(b) If an issuer has adopted a policy referred to in (a), disclose the following in respect of the policy:

- (i) a short summary of its objectives and key provisions,
- (ii) the measures taken to ensure that the policy has been effectively implemented,
- (iii) annual and cumulative progress by the issuer in achieving the objectives of the policy, and

(iv) whether and, if so, how the board or its nominating committee measures the effectiveness of the policy.

12: Consideration of the Representation of Women [and members of designated groups] in the Director Identification and Selection Process

This means:

— Disclose whether and, if so, how the board or nominating committee considers the level of representation of women [and members of designated groups] on the board in identifying and nominating candidates for election or re-election to the board. If the issuer does not consider the level of representation of women [and members of designated groups] on the board in identifying and nominating candidates for election or re-election to the board, disclose the issuer's reasons for not doing so.

13. Consideration Given to the Representation of Women [and members of designated groups] in Executive Officer Appointments

— Disclose whether and, if so, how the issuer considers the level of representation of women in executive officer positions when making executive officer appointments. If the issuer does not consider the level of representation of women in executive officer positions when making executive officer appointments, disclose the issuer's reasons for not doing so.

14. Issuer's Targets Regarding the Representation of Women on the Board and in Executive Officer Positions

(a) For purposes of this Item, a "target" means a number or percentage, or a range of numbers or percentages, adopted by the issuer of women [and members in the designated groups] on the issuer's board or an executive officer positions of the issuer by a specific date.

(b) Disclose whether the issuer has adopted a target regarding women in the issuer [or designated groups] on the issuer's board. If the issuer has not adopted a target, disclose why it has not done so.

(c) Disclose whether the issuer has adopted a target regarding women [and designated groups] in executive officer positions of the issuer. If the issuer has not adopted a target, disclose why it has not done so.

(d) If the issuer has adopted a target referred to in either (b) or (c), disclose:

(i) the target, and

(ii) the annual and cumulative progress of the issuer in achieving the target.

15. Number of Women [and members of designated groups] on the Board and in Executive Officer Positions

It says:

(a) Disclose the number and proportion (in percentage terms) of directors on the issuer's board who are women [or members of designated groups].

(b) Disclose the number and proportion (in percentage terms) of executive officers of the issuer, including all major subsidiaries of the issuer, who are women [or members of designated groups].

[Translation]

As you can see, honourable senators, the regulation is quite sophisticated and is the same as that of the provinces I mentioned. In other words, the provinces adopted this regulation for women, and Bill C-25 proposes to adopt the same position while adding diversity and the issue of designated groups. By passing Bill C-25, it will be easy to lobby the provinces to tell them that only one word needs to be changed in their regulation to make it include diversity.

The bill provides for a five-year implementation period, after which we can assess whether significant progress was made and how to achieve the targets.

I believe that Senator Massicotte's initiative is very commendable. However, it is essential to include in the legislation the requirement to set targets. In the regulation, this is a very real obligation for corporations, even if it's not formulated in the same way. In my view, adopting this amendment would be a way of interfering in the regulatory process of a bill. I do not believe that we have all the parameters needed to make strategic decisions about this, as far as the bill before us is concerned.

[English]

In other words, we have a bill that wants to promote diversity, and it is enshrined in a regulation that already exists in all the provinces and that has been negotiated, in a sense, or worked on with all the stakeholders. For this reason, I think we have to give this bill a chance, which goes much further than the regulation in the provinces and can have some effect at some time.

[Translation]

I think that this amendment, if passed, will result in less flexibility in the processes intended for advancing women and designated groups and for improving equality in the corporate governance framework. I am sure you will agree, Senator Massicotte, that simply asking companies to disclose their goals is a way of compelling them to set such goals. Your amendment states, "A prescribed corporation shall establish . . ." Establish goals. Proposing or setting goals has an impact, and Senator Pratte talked about that psychological or moral impact yesterday.

I believe that the Senate can play an important role in improving bills. In fact, some senators met with Minister Bains in December because they had concerns about this bill. As a result of that meeting, the minister made the necessary regulatory changes, which can be found on his website. These changes were published in order to better clarify the concept of diversity and explain the regulatory approach taken. This is clear and set out in black and white on the website.

In my opinion, the Senate accomplished its mission. The Senate will have an impact on Bill C-25 in the current context.

I also believe that, if we want to make improvements, we need to propose our own amendments, not bills. We must follow the

process. Take, for example, term limits. We did not talk about them, but they are another way of improving diversity on boards of directors.

Thank you.
