

## **Ontario Teachers' Pension Plan Comments to the House of Commons Special Committee on Industry, Science and Technology on Bill C-25**

Representing Ontario Teachers' Pension Plan: Paul Schneider, Head of Corporate Governance

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Mr. Chair, committee members, thank you for the opportunity to be here today to speak to you about Ontario Teachers' Pension Plan's views on Bill C-25. Ontario Teachers' supports the passage of Bill C-25. Please note that my comments will be limited to Part 1 and more specifically to amendments to the Canadian Business Corporations Act that address two key corporate governance issues: the election of directors to the board and board diversity.

Ontario Teachers' Pension Plan is Canada's largest single-profession pension plan, managing, as of our last audited annual returns, over \$171 billion of assets that provide retirement security for 316,000 active and retired teachers in the province of Ontario. We have a long history of promoting good corporate governance in our investments and believe that "good governance is good business." We are a founding member of the Canadian Coalition for Good Governance and remain active in the organization. Since its beginning in 2003, CCGG has grown from representing investors managing \$350 billion of assets to today, where collectively CCGG members manage approximately \$3 trillion of assets on behalf of all Canadians. Clearly, governance, and in particular the governance of Canadian companies, matters to investors.

As Head of Corporate Governance, my focus is promoting effective corporate governance on behalf of our members throughout our global public company portfolio of over 1,600 companies. We are engaged investors, meeting regularly with companies, actively voting all our shares and working to improve corporate governance regulatory frameworks around the world. Personally, I have 15 years of

experience in corporate governance with the past seven in my role at Ontario Teachers'. Prior to that, I was the Director of Research at CCGG.

At its most fundamental level, corporate governance is the system and structures put in place to ensure a company is effectively directed and controlled. In corporate governance framework shareholders elect directors, directors oversee management, and management executes its strategy.

The characteristics of public company ownership significantly raise the importance of having effective corporate governance. Typically, a public company shareholder like Ontario Teachers' will have a very small ownership stake in the company, usually less than 1%, yet their investment could be in the tens or even hundreds of millions of dollars. As a result, we are placed in a situation where we have a large amount of money at risk, yet have limited levers of influence. We rely on the board to adopt and execute effective governance practices that properly oversee management, and to keep the best interests of the corporation in mind, and in so doing, safeguard and allow our investment to grow. When governance fails, our investment is impacted and this can affect the pension promise we have made to our members.

Hence, our statement that "good governance is good business," and why we spend so much time working to ensure that our public company investments have effective governance practices.

Effective governance is about getting the right people around the board table and holding those individuals to account.

Our shareholder vote is our means tool for holding the board of directors accountable. Unfortunately, in its current form, the effectiveness of our vote is limited. Our only two options when electing a director are Number One, to support (vote for) or Two, not vote at all (withhold). Voting against a director is not an option. We find it difficult to reconcile the fact that, as public company shareholders, we are

providing capital to companies, yet we cannot vote against a director should their actions cause us to lose confidence in their ability to effectively discharge their duties. For years we have advocated for the inclusion in Canadian and provincial laws of true majority voting, that is the ability to vote for or against, in director elections.

That is why we were extremely pleased to learn of the inclusion of majority voting in director elections in Bill C-25. We fully support the amendment to the CBCA that requires directors be elected only when they receive the support of at least 50% + 1 of the vote. This change will allow shareholders like Ontario Teachers' to truly hold individual directors accountable. We believe holding directors accountable leads to more effective boards, effective governance and effective capital markets and is simply good business.

Some may argue that the current TSX rule requiring a majority vote policy is sufficient. We disagree for the simple reason that under majority vote policies there is no guarantee that a director resignation will be accepted. In fact, there was an incident in 2015 when a director of a large Canadian company received a majority of withhold votes because shareholders were unhappy with the decision made by a committee the individual chaired. As per the majority vote policy, a resignation was submitted only to have it rejected by the Chair because in part the loss of a director of "high quality and integrity would be deplorable." While shareholders voiced their displeasure with the rejection of the resignation, they were left with little recourse, and with having to accept a director in whom they had no confidence remaining on the board.

This example illustrates the significant difference between a "withhold vote" and a "vote against" that cannot, nor should not, be underestimated. Facing the consequence of being voted off the board may be just the stimulus needed to cause a board or director to think twice about how they are exercising their fiduciary duty.

Let me be clear. Ontario Teachers' believes the vast majority of directors are highly qualified, extremely competent individuals who are performing a difficult and sometimes under-appreciated task. However, we also strongly believe that it should be our right as owners of the company to decide who should be in that boardroom overseeing management and ensuring that management is acting in the best interests of the corporation ... and by extension in the best interests of the investors, in our case, the active and retired teachers of Ontario.

Furthermore, and as I believe you are aware, Canada and the United States are outliers. We are the only jurisdictions in the world that do not allow shareholders to vote for, or against, directors. Thus, in addition to supporting effective governance, majority voting will increase the confidence global investors have in the ability of our capital markets to function effectively.

The second issue I would like to discuss with respect to Bill C-25 is the requirement to disclose, on a comply-or-explain basis, the existence and substance of a diversity policy.

We believe that diverse boards are more effective boards. For Ontario Teachers', diversity is not limited to gender but includes diversity across a number of spectrums. However, as we stated in our submission to the OSC during their consultation on diversity in 2013, we believe that focussing on gender diversity is an appropriate starting point to increase overall board diversity and encourage issuers to develop a broader and deeper selection process that embraces and enhances diversity. Furthermore, we believe there is a deep pool of untapped potential directors that a broader and deeper selection process will reveal. We point to the thousands of individuals who have attained either an ICD.D from the Institute of Corporate Directors or are recognized as a Chartered Director from the Directors College as two potential sources of diverse directors.

Gender diversity improves board effectiveness because it brings different views to the boardroom table. Studies by Catalyst and others continue to show that company performance improves if there are women in senior management and/or on the board. A recent study by MSCI, published this past December, found that companies with at least three women on the board in 2011 experienced a median change in Return on Equity of 10% and in Earnings per Share of 37% by 2016. Conversely, companies with no women on their board in 2011 had an ROE change of -1% and EPS change of -8% over the same time period. The study also found that companies adding women directors to the board correlated with higher median increases in EPS compared to losing women on the board during the 2011 to 2016 time period.

In addition, the MSCI study looked at gender diversity throughout the organization and found that companies with three or more women on the board had higher rates of women in senior management, including the CEO.

What we conclude from the MSCI study is that promoting a higher percentage of women to the board will have an impact on the gender diversity across an organization. We are not suggesting that the CBCA establish any quota, but rather promote more diversity through the comply-or-explain regime articulated in Bill C-25. The efforts of the provincial security regulators, issuers, organizations such as Catalyst and the 30% Club (of which Ontario Teachers' is a member) and institutional investors, have all contributed to increasing female participation on boards. While we are not where we need to be, Ontario Teachers' does strongly believe that a sustained effort, as well as the comply-or-explain approach of Bill C-25, will continue to move us down the path of increasing gender diversity both on boards and in senior management. This will open organizations to a broader diversity of opinions, experiences and outlooks in their decision-making. It is our hope that someday in the not so distant

future we will no longer need to have discussions on how to make boards and senior management more diverse.

In closing, I would once again like to thank the Chair and the committee members for inviting me here today and to reiterate Ontario Teachers' support for the passage of Bill C-25. I hope you found my comments useful. I would be pleased to answer any questions you may have and would also like to encourage each of you to not hesitate to approach me at any time should you have further questions.