

## Institute of Corporate Directors

Podcast Transcript: Be It Resolved: Poison Pills are important tools for public companies in times of tariffs and trade wars.

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**Rahul Bhardwaj** (00:02): Welcome to Be It Resolved, the podcast where bold ideas meet courageous leadership. I'm Rahul Bhardwaj, President and CEO of the Institute of Corporate Directors in Canada. Each episode, I speak with experts to delve into pressing issues, impacting directors and decision-making in the boardroom.

My guest today is Walied Soliman, Canadian chair of Norton Rose Fulbright and co-chair of the Special Situations team. A highly regarded expert in corporate law and governance, Walied has been recognized for his expertise and shareholder activism and regulatory matters. Today, he'll share his insights on the role of poison pills in protecting Canadian industries from a low dollar and potentially increased foreign encroachment.

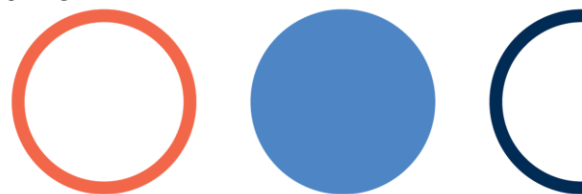
**Today's resolution** - Be It Resolved: poison pills are important tools for public companies in times of tariffs and trade wars. Which way will you vote?

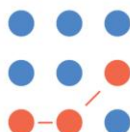
Walied, welcome. Good to have you here today.

**Walied Soliman** (01:02): Thank you very much for having me, Rahul.

**Rahul Bhardwaj** (01:04): Excellent. And you're gonna get to vote at the very end, but let's have a conversation first. So let's start from the very beginning here. Poison pills, I mean, that's quite a term. What are we talking about? Let's give the listeners some context.

**Walied Soliman** (01:16): Let's get right into it. So poison pills are an invention of US law firms that are probably about 45, 50 years old now.





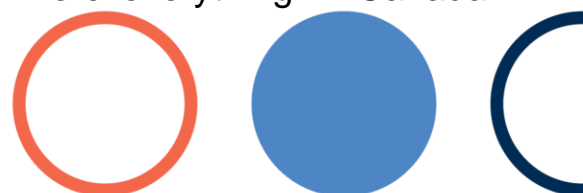
And their focus was to stop or to give the boards a capability to stop takeovers of companies. That has continued to be the case in the United States. And in fact, if a very determined board in the United States wants to stop a takeover, the only way for a buyer who's looking to do a hostile bid is actually to do a proxy fight, change over the board, and then remove the poison pill before running a process. Page | 2

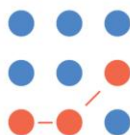
In Canada, we have a very different regime. Poison pills do not play a role in stopping hostile bids. If anything, we have a very different takeover bid regime, which is a subject for a whole other seminar but they do not play that role. And in fact, if you try to use poison pills to play that role, your poison pill will be ceased traded or shut down by our securities regulators across the country.

Poison pills have one function in Canada and that is the slow creeping takeover of a company over 20% by either a single shareholder or a group of shareholders. So they have a more limited utility in Canada - that's always a big distinction to explain to directors from Canada to the United States - but in the current environment we are in, they still play a very important role.

**Rahul Bhardwaj** (02:43): Great. So let's unpack some of this. So poison pill gives a hostile takeover indigestion. You don't wanna buy into this company now, because it doesn't make sense economically. Feasibility's not on the table so you're gonna be swallowing poison. But in Canada, we've got shareholders' rights plans, which is a uniquely Canadian way of looking at things to begin with, which is good, but it is a defensive strategy. So let's talk a little bit about that. How is that defensive?

**Walied Soliman** (03:11): Well, look, first off, every board needs to constantly be looking at itself and challenging whether they are in a position to withstand a hostile bid, to withstand a proxy battle. And they need to sit around and think to themselves, are we in a momentary voluntary position where we need to put up as many structural defences as we possibly can? Obviously, using any structural defences, just for purposes of entrenchment, will also be shut down. By the way, interchangeably used and called shareholder rights plans in Canada can play a very important role, particularly in times like this, where everything in Canada seems to be for sale.





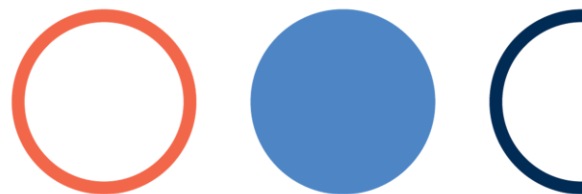
**Rahul Bhardwaj** (03:55): So let's go right there. Tariffs, trades, lower Canadian dollar vis-a-vis the Americans. You can't think that we're a bit of a discount right now and I've gotta think the public company directors are very mindful of this, hostile bids and shareholder activism percolating in the background. How should boards and directors be thinking about defensive strategies?

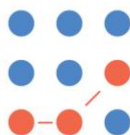
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**Walied Soliman** (04:17): I'll tell you, we are in a very dangerous place, companies in Canada right now, and it's a very, very, very simple reason. We're for sale and we are one of the leading rule of law jurisdictions in the world. Think about that for a second. We're not Argentina, we're not Egypt, we're not some Eastern European country that has its companies for sale as a result of weak rule of law issues as a result of significant debt issues. We are a top rule of law jurisdiction that has hopefully, and I think what most folks would believe, is a periodic issue based on tariffs, based on our proximity to the president of the United States. But as a result of that, we have great commodity issuers that have no business being on the sales that they're on. We have great technology issuers, we have great financial institutions, we have great industrial companies that are on significant sale.

Look at our steel companies, look at some of our local automotive makers. They're on significant sale in a great rule of law jurisdictions with great securities regulators. And of course those companies need to have boards who are taking a look at them and saying, (A) I gotta monitor this and (B), how can I protect this company during this hopefully periodic episode?

**Rahul Bhardwaj** (05:39): I'm so glad you started off with the rule of law because we're seeing that being slated everywhere right now. Now you know what ICD for years, I've been saying it's time to make corporate governance Canada's global competitive advantage because you're talking about trust or trust in our capital markets or trust in our country. You can put your future here and it's worth protecting and I'm glad to hear you say that. Now, we're talking about one mechanism to do that and this is around defensive strategies in this environment. And you shared a really interesting example that you worked on. I think you can tell us a little bit about it, about how that actually plays out in the Canadian context.



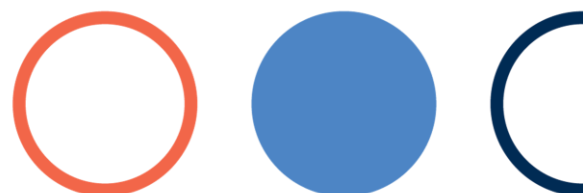


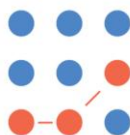
**Walied Soliman** (06:17): Well look, as we were just saying, poison pills, shareholder rights plans, they actually have quite a limited utility here in Canada because of being a very friendly jurisdiction for hostile bids and for proxy battles. We need to do more than that. Companies need to be taking a look at their board lineup. They need to be taking a look at their management lineup. They need to be taking a look at their businesses thinking, what is it that I need to maybe hive off right now in an environment like this? Is there a discount being applied to my US business and can I be spinning it out? I'll tell you, there's a lot of folks looking at those structures right now in Canada as defensive measures. There's a lot of folks looking very carefully at capital allocation. Is this the time to be doing M&A, especially risky M&A in circumstances where you could be buying back your stock at a sale yourself?

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And of course the other one that I've recently experienced that I think is just worthwhile for Canadians to be thinking about is one example of a company we recently defended. And it was a fabulous file. CAE is one of this country's greatest companies. It is a Canadian champion. And at the end of that defense mandate, your directors can actually just look up a press release that the case to Depo put out. It was a great press release and in a very gentle and constructive way, the case played a very important role in helping that company during a transition period. And I gotta tell you, I was blown away by how amazing a job the case did, how light a glove they played while at the same time helping ensure that a Canadian champion is able to continue to prosper. And I think they are an incredible example for our friends at C-P-P-I-B, for our friends at Teachers, for our friends at Aimco, for our friends at B-C-M-C-I. They're a great example.

Look, you look around the world, ADIA and Abu Dhabi, the Singapore Sovereign Funds, PIF and Saudi Arabia, the Norwegian Sovereign Funds, those guys would not ever hesitate in looking out for their Canadian champions, just for our free market thinkers here. I'm not suggesting bailouts and CAE was a great example, it's a great company. What I am suggesting is that our great local sovereign funds have a great duty and role to play in helping make sure that those companies in Canada that have the potential to be global consolidators, to be global head offices of some of the greatest companies in the world, I think they have a very important role to play in helping those companies through this period.





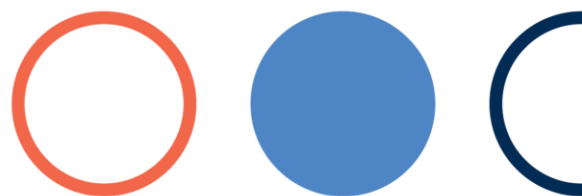
**Rahul Bhardwaj** (08:52): Absolutely, it's great to hear you say that. And this is so consistent with the long-term frame of institutional investors and this long-term shareholder value creation that's been so central to their core. And you know, Canada has been defined for a long time by the strength and in some cases the wisdom they would say over institutional investors and pension funds. So good to hear you've had a good experience there.

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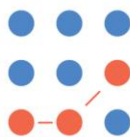
Now, I wanna take us back into the boardroom for a minute. You said something interesting a couple minutes ago around seize trade orders. In other words, we've got regulators saying these poison pills, sorry, not happening here and that puts boards in a very interesting position as well. And we know under Canadian common law, boards always have the business judgment rule to somewhat rely on. And we get into the the specifics about it but I think people have a general sense that courts aren't gonna second guess their business judgment if they're acting in an unconflicted manner and in a well thought out manner.

How do boards start to look at some of these defensive mechanisms and potentially poison pills knowing that the business judgment rule is there, but maybe it's not there to protect them as much as they thought?

**Walied Soliman** (10:02): Yeah, I'll tell you, we love thought leadership at Norton Rose and probably about eight or nine years ago, we co-authored a paper with our friends at RBC Capital Markets and BCG about using your strategy day to test yourselves through the lens of an activist. And when you do thought leadership, some stuff sticks and it works out great, other stuff just sort of ends up in the dust bin. That one ended up in the dust bin. And surprisingly here we are 10 years later, any company worth their salt in their strategy day is looking towards the future, understanding the strategy that management is bringing to the table but at the same time, are having somebody, usually an independent bank come in and give them the white paper and the thesis would be to attack them. And it's a really hard thing for board members to accept.





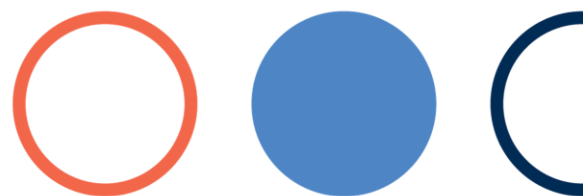


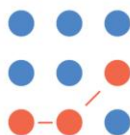
And I always tell board members, they say, that's BS, that will never work. And I say to them, look, a white paper presented by an activist or someone coming after you needs to make sense for about five minutes for an analyst and about 30 seconds to one minute for a shareholder, that's it. It doesn't have to be perfect. You're selling a dream and part of selling a dream is it needs to be believable, but your technical reasons for why it doesn't work is not the reason why it's presented. It's presented so that the board and management team can critically take an opportunity to look at themselves and say, Hey, you know what? That might be a very interesting attack. How is it that we are going to put ourselves in a position where that argument can't even be made? Do we front end counter arguments over a course of a few quarters in our MDNA? Do we talk about it with analysts and investors when we're on the road? Are some of the ideas actually constructively good? It's okay by the way, other people are allowed to have good ideas and what is it that we can do to actually adopt some of those ideas?

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And more and more companies are doing that as part of the exercise of their fiduciary duties. And in order for them to be in a position where they could say they've properly exercised their business judgment, Rahul, what I tell companies all the time is the morning that you get a short report or the morning that you get a hostile bid, or the morning that you get an announcement of a proxy battle, if the best your board can do is to put out one of those lame loser press releases that says 'the company is aware of what has happened, please hold off, we'll report back to you', that is a fail. And whenever I see that, I just literally, I email the general counsels, if they're not a client of ours, you just say, hey, either you have a plan and you've somehow don't have the confidence to talk about it, or you don't have a plan, in which case you're in bigger trouble. But putting out that lame loser press release, I hate those press releases, is the first indication that a company wasn't prepared. And unfortunately, there's still a number that are not.

**Rahul Bhardwaj (13:04):** Right. So this is so key to foresight and actually doing something about it. You know, strategy and risk being two sides of the same coin. If you don't do something in an advance, you're lost in the moment. So it's really interesting to hear that tied into how to actually lay the foundation for good business judgment in this environment.





Now I wanna pull on another threat though, and that's shareholder activism. So that's going to be the genesis of a lot of this activity. But let's talk a little bit about some of the activity you're seeing or the trajectory of shareholder activism because my sense is where it was going the last couple of years has made a real pivot now.

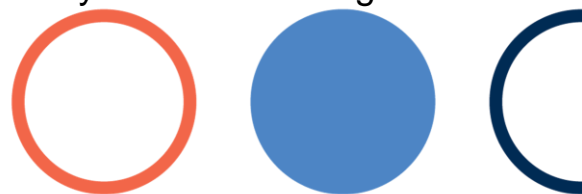
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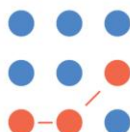
**Walied Soliman (13:46):** Yeah, it's very, very, very busy in this area right now, I'd say on two fronts. Number one, I'd say just a precursor, there isn't a board of a TSX100 company right now that doesn't have at least a few people who've been through a hostile bid, a very complex piece of M&A or a proxy battle. So there's war wounds in the top 100 companies and experience in the top 100 companies. And that's leading even companies that are very healthy to be saying, how can I critically take a look at my situation and what preparedness do I have to ensure that I'm in the best position possible?

The second thing that we're seeing is activists for the discount that we're seeing in Canada for the fact that we are a rule of law jurisdiction - and by the way, good on you Rahul and the ICD to be taking on governance in the way that you are - but for those reasons, we're an attractive jurisdiction. Layered on top of all of that, structurally, we are the most activist-friendly jurisdiction in the western world, period. Full stop. And by the way, when your 2% of the world economy, that's not a bad thing.

We start having protectionist measures. I get boards all the time who say it's crazy that we're so activist and hostile bid friendly, we need more protections. I turn around and say, guys, we're not the United States, we're not Europe. We are 2% of the world economy. In order for us to have a vibrant capital market that's healthy, we actually need the checks and balances of some of these actors that I know people don't like. But it's important.

**Rahul Bhardwaj (15:22):** Interesting. So what's on the agenda now? Proxy season. You're seeing the activist the last couple of years, so much was tied up with ESG was taking a lot of the bandwidth. Now, it's changing though. What's the trajectory look like over the next couple of years? We're in an environment where activism is almost welcomed by the sound of it. What do you see on the agenda?





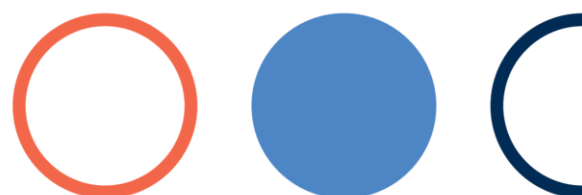
**Walied Soliman** (15:44): Well, I see management teams being called to task. I see boards being called to task. I'm seeing capital allocation strategies being called to task. We're seeing more and more creative white papers. We are seeing more and more creative ideas coming from activists. We're seeing top-tier directors from around the world being nominated and we're seeing a track record of activists and hostile bidders of succeeding. And the result of that makes it more attractive for others to join the party.

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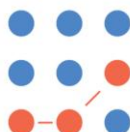
**Rahul Bhardwaj** (16:20): So shareholder engagement, we've been talking about it for years, but it sounds like more important than ever being a part of a good governance framework for a public company.

**Walied Soliman** (16:30): Yeah. Look, I like to remind directors 'cause you know, it is kind of the fashion, like which of the directors are going out and meeting the shareholders and what are they saying and that sort of thing. At the end of the day, performance trumps all. So yes, it's important to have the pulse of shareholders, but a great IR team, a great CEO and CFO who are doing their jobs cover it really well, generally.

**Rahul Bhardwaj** (16:55): It's good to hear. A takeaway from what I'm hearing from you today is, you know, Canada's vulnerable, but we're not without tools. We've got regulatory tools. I'm glad we're talking about our institutional investors. We've got a good business climate and it's good to know that we've got directors who are schooled in these as well. So you know, you build your muscle in this and it's important to have that. Does that sort of cause for optimism right now, even if we are at a discount?







**Walied Soliman (17:25):** Well, I'll tell you, I think we have the base of some of the best boards and individual directors in the world. And I think the job that you guys are doing here on ICD, and I'm not collecting a paycheck from you guys but the job that you guys are doing here to make sure that our directors are asking the right questions in the boardrooms, are collaborating with management in an appropriate manner and are ready for those difficult issues around how to exercise their business judgment and their fiduciary duty gives us some boards that are really making the right decisions. And it's a great capital market to be involved with.

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**Rahul Bhardwaj (17:59):** Super. Well, it's been great talking to you this morning. I feel like I'm getting my elbows up and that feels good today. So we've got a resolution on the table and the resolution is be it resolved, poison pills are important tools for public companies in times of tariffs and trade wars. Walied, which way are you gonna vote?

**Walied Soliman (18:18):** So the vote is yes, but I would add there are many tools and boards should be looking at the full spectrum of them, particularly, when there's a big for sale sign on our lot.

**Rahul Bhardwaj (18:30):** It's great to have you here today. Love the discussion. And to our listeners, I hope you enjoyed today's episode of Be It Resolved and that you've deepened your boardroom insights to stay ahead of emerging trends.

Now, if you enjoyed the episode, please subscribe, rate and leave your review on your favorite streaming platform. From the Institute of Corporate Directors in Canada, I'm Rahul Bhardwaj. Until next time.

