



Institute for governance
of private and public organizations

The quest for diversity of boards of directors and in senior management of public corporations

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Executive Summary

In June 2009, IGOPP published a Policy Paper on “The Status of Women on Boards of Directors in Canada: Calling for Change”. Almost 12 years later, the issue of diversity on boards of directors still remains partly unresolved. Indeed, women’s representation on boards of directors has doubled during this period [from 15% in 2008 to 29.58% in 2020] but the target of 40% gender diversity set in the IGOPP Policy Paper has not yet been achieved.

But by now a broader definition of diversity is proposed, a definition which targets an adequate representation of several groups making up the general population of the society where an organization is domiciled.

Responding to this emerging trend, the government of Canada amended the Canada Business Corporations Act (CBCA) to foster an increased diversity on boards of directors as well as in the senior management of public corporations. These changes, which came into effect on January 1, 2020, aimed at increasing the representation of women but also of Aboriginal people, persons with disabilities and members of visible minorities. These new legal stipulations apply to federally incorporated corporations listed on a stock exchange. Thus 78 of Canada’s largest corporations, drawn from the S&P/TSX index were subjected to these new requirements.

The following table captures, in raw form, the source of disquiet about representation:

Representation of various groups on boards of directors and in senior management of 78 large Canadian corporations as compared to general population

Designated groups	% Population	% Board of directors	% Senior management
Women	50.31%	29.58%	26.10%
Members of visible minorities	22.27%	4.58%	8.65%
Aboriginal peoples	4.86%	0.65%	0.25%
Persons with disabilities	22.30%	0.52%	0.58%

Note: A person may belong to more than one group; for the 78 corporations, there were 764 individual board members and 1,203 members of senior management

This report begins with a brief comparison of the Canadian law with that of other countries. Then we sketch an overview of the representation of designated groups on boards and senior management of the companies subjected to the new legal stipulations. We collected the information which these 78 companies disclosed in 2020 and compiled the above table. We then carried out further analyses factoring in educational variables and age.

Executive Summary

Several observations emerge from this analysis; the most significant ones are as follows:

- Canada is at the forefront of this quest for diversity beyond the representation of women on boards of directors to include diversity in the senior management of companies, as well as the representation of Aboriginal peoples, persons with disabilities and persons belonging to visible minorities. The Canadian government has opted for a flexible approach, emphasizing disclosure, rather than a quota approach, as advocated in some other jurisdictions.
- The subject companies have interpreted very freely the regulation concerning the number of members of senior management who must be considered for disclosure. The definition in the regulations provides for 5 to 7 senior management members. However, the subject companies defined senior management as made up of some 16 members on average. More than half of the companies seem to have interpreted the regulation incorrectly (but that probably reflects their own internal definition of senior management).
- Although the gains made over the past decade are notable, much remains to be done in terms of the representation of women on boards of directors as well as in the senior management of companies.
- Taking into account the variables of age and education, although these two factors are not exhaustive of all factors influencing selection and promotion, we see a clear under-representation of members of visible minorities within the boards of directors and senior management of publicly traded Canadian companies.

The rate of renewal of board members and senior management is rather slow. Some measures (for instance, quotas, tenure and/or age limit) would accelerate the turnover of board membership but these must be carefully assessed. Absent coercive measures, social systems change over relatively long periods of time.

The laudable goal of increasing the diversity of representation on corporate boards and in the senior management of large corporations will not be achieved without much management goodwill, as well as investors and government prodding, particularly so when that goal includes not only the representation of women but also that of various other groups making up a society.

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The quest for diversity on boards of directors and in senior management of public corporations

To date, except for a few American states (notably California), countries have generally limited themselves to laws mandating the achievement of quotas for female presence.

In this regard, Canada, through its recent legislation on the presence of women but also on the representation of Aboriginal peoples, people with disabilities and members of visible minorities, is at the forefront of this search for equity, as shown in Table 1.

The quest for diversity on boards of directors and in senior management of public corporations

Table 1
Diversity Laws within Boards of Listed Companies, Sample of 13 countries

Country	Gender Diversity Law	Diversity Law other than Gender	Adoption Date	Effective Date	Quota	Target	Consequence of Failing to Comply or Voluntary Quotas (recognized as good practices)
Australia	NO	NO	n.a.	n.a.	NO	n.a.	In 2015, the AICD (Australia Institute of Company Directors) set a non-binding target of 30% women for ASX-listed companies.
Belgium	YES	NO	2011	2017	YES	33%	Directors lose the right to their indemnity until the quota is reached.
Canada	YES	YES	2018	2020	NO	n.a.	Justify the absence of a policy, a target or failure to reach it.
France	YES	NO	2011	2017	YES	40%	Invalidation of the election of new directors until the quota is reached and a fine of up to 1% of the payroll.
Germany	YES	NO	2015	2016	YES	30%	Seat must remain vacant in the event of non-compliance.
India	YES	NO	2013	2014	YES	Min. 1 woman	A penalty of 50,000 rupees, which may extend to 500,000 rupees.
Italy	YES	NO	2011	2015	YES	33%	An initial period of 4 months to comply, then a penalty of up to 1 million euros.
Japan	NO	NO	n.a.	n.a.	NO	n.a.	In 2013, policy of Prime Minister Shinzo Abe (Womenomics): objective of 30% of leadership positions occupied by women by 2020. Dec. 2020, this policy has been postponed to "as early as possible" in the 2020s.
Norway	YES	NO	2003	2006	YES	40%	Sanctions up to the dissolution of the company.
Netherlands ^a	YES	NO	2019	2021	YES	30%	Seat vacant until a woman is found.
Spain	YES	NO	2007	2015	YES	40%	Negative incentives in the granting of subsidies and the award of public contracts.
Switzerland	YES	NO	2020	2021	YES	30%	Justify if the target is not reached.
United Kingdom	NO	NO	n.a.	n.a.	NO	n.a.	A voluntary ratio of at least 25% female representation on the FTSE100 boards was recommended by the Davies report in 2011, then changed to 33% in 2015. The FTSE250 was also advised to achieve this rate by 2020.

^a A first law was passed in 2013 with a quota of 30% in 2016. The law identified in 2019 is more restrictive.

This Canadian leadership position results from changes to the Canada Business Corporations Act (CBCA) for companies listed on a stock exchange and incorporated under the federal regime. These changes, effective as of January 1, 2020, apply to all reporting issuers, i.e. issuers governed by the CBCA listed not only on the Toronto Stock Exchange (TSX), but also on the TSX Venture Exchange (TSXV) and the Canadian Securities Exchange (CSE).

Thus, these changes currently affect 78 of the 221 Canadian companies making up the S&P/TSX index, i.e. 35% of them (and 42% of the index in terms of market capitalization).

THE CURRENT SITUATION

What situation actually led to changes to the Canadian law? Tables 2 and 3 tell the story. Table 2 reports on the actual representation of various groups overall in the Canadian population. Table 3 describes their representation on boards of directors and in the senior management ranks of the 76 companies specifically targeted by the changes in the CBCA.

Table 2

Percentage of the total population in Canada for each of the designated groups

Women ^a	50.31%
Members of visible minorities ^b	22.27%
Aboriginal peoples ^c	4.86%
Persons with disabilities ^d	22.30%

^a Statistics Canada, Estimated total population of women in Canada as of July 1, 2020 ^b Statistics Canada, Estimated total population, visible minorities, 2016 census, Feb 2019 update

^c Statistics Canada, Estimated total population, Aboriginal peoples, 2016 census, May 22, 2020 update

^d Statistics Canada, *Canadian Survey on Disability Reports*, 89-654-X2018002

Table 3

Representation of designated groups on the boards of directors and in senior management of the 76 targeted companies

Designated groups	Board of directors		Senior management	
	Number	Board %	Number	Management %
Women	226	29.58%	314	26.10%
Visible minorities	35	4.58%	104	8.65%
Aboriginal peoples	5	0.65%	3	0.25%
Persons with disabilities	4	0.52%	7	0.58%
Total	764	100.00%	1 203	100.00%

A person may belong to more than one group.

Obviously, these summary and global statistics, though eloquent, require many refinements, which the rest of this document will highlight.

CHANGES TO THE CBCA

As of January 1, 2020, subjected companies must submit information relating to the diversity of their management and board of directors under section 172.1 (1) of the Canada Business Corporations Act (CBCA). This article, the result of amendments made to the law in May 2018, stipulates that “The directors of a prescribed corporation shall place before the shareholders, at every annual meeting, the prescribed information respecting diversity among the directors and among the members of senior management as defined by regulation.”

One of the novelties is therefore to consider diversity issues beyond the board of directors, to include members of senior management.

In the regulation, issued in June 2019, it is specified that for the purpose of the application of subsection 172.1 (1) of the Act, “members of senior management” meant the following individuals (i.e. 5 to 7 persons):

- a. the chair and vice-chair of the board of directors;
- b. the president of the corporation;
- c. the Chief Executive Officer and the Chief Financial Officer;
- d. the vice-president in charge of a business unit, a division or a function, including sales, finance or production; and
- e. any individual with a policy-making role.

The changes also broaden the scope of the term “diversity”, until now limited to gender diversity, as well as the level of information which must be disclosed.

In fact, the regulation specifies that the board of directors or its nominating committee must consider the current level of the representation of designated groups on the board in the selection process of candidates for election or re-election to the board.

The regulation further stipulates that companies must provide “the number and proportion, expressed as a percentage, of members of each group who hold positions on the board of directors”, likewise provide “the number and proportion, expressed as a percentage, of members of each group who are members of senior management” of the reporting corporation, “including all of its major subsidiaries”, and this, for each of the groups referred to in the definition of *designated groups*.

We must refer to Section 3 of the Employment Equity Act for such definition of “designated groups”. It specifies that these groups are made up of women, Aboriginal peoples, persons with disabilities and members of visible minorities. The actual definitions of each of the designated groups will be found in Appendix 1.

Employers are to rely on self-identification for the purpose of classification of people in one or the other target groups (the excerpt from the Employment Equity Act discussing this aspect is also presented in Appendix 1).

The purpose in this research is to assess how companies subjected to these new legal requirements complied with them in their Management Proxy Circular.

THE DATA

As of August 31, 2020, of the 221 companies making up the S&P/TSX index, 78 (or 35.3%) were federally incorporated and therefore subject to the CBCA. Of these, 76 had published their notice of annual general meeting of shareholders and their management proxy circular after January 1, 2020, i.e. after the date of entry into force of the regulation on the presentation of information relating to the diversity. We could therefore expect to find the new information required by law now that the regulations had officially entered into force.

The data was collected from the disclosure by each of the companies. The board-of-directors data refer to the actual directors as of the date of the Management Proxy Circular, and not to the nominees proposed for the next election. For senior management, disclosures by companies were very variable, some limiting their disclosure to the requirement of the law while others chose a broad definition of who makes up their senior management. Our analysis is obviously based on the data as provided by companies.

RESULTS

Board size and number of executive officers

As can be seen in Table 4, the description of persons considered to be members of senior management was interpreted quite differently by the companies studied. Indeed, even if the regulation targets 5 to 7 managers, the median reported by the subject companies is 10 members and the average, 16 members of management. Some companies have adopted a broad definition compared to the stipulations of the regulations.

In addition, boards of directors are made up of an average of 10 people, varying from 6 to 21 members.

Table 4

Board size and number of members of senior management

	Board of directors	Senior management
Mean	10.05	16.26
Median	10.00	10.00
Standard deviation	2.33	21.81
Maximum	21.00	181.00
Minimum	6.00	3.00
Total - individuals	764	1,203
n (companies)	76	74

It is also noted that two companies did not disclose the number of senior executives, nor the number of people in the various designated groups (only the percentage).

Presence of women on the boards and among the senior management of the companies studied

The targeted companies have almost 30% female representation on their boards of directors, on average, as can be seen in Figure 1. The proportion of women in senior management positions is, on average, a little less at 23.94%. However, this is an increase in percentage from that observed in a recent study¹ which showed 17.9% of women among the senior executives of S&P/TSX firms as of December 31, 2019, a figure that was itself growing since 2015 when there were only 15.0% of women in this group.

1 Catalyst, *Women in Leadership at S&P/TSX Companies*, 2020, p.3

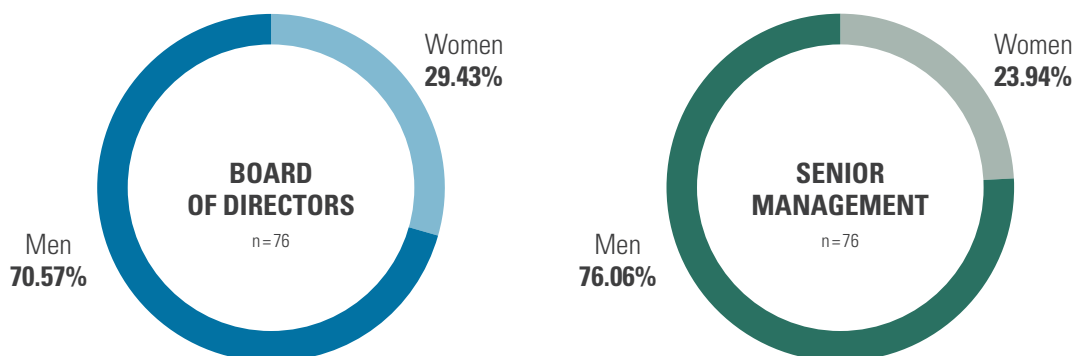
Figure 1**Average percentage of women on the board and senior management**

Table 5 presents the detailed statistics disclosed by the companies. The median is interesting, because we can see that more than half of the companies subject to the obligation have at least 30% of women on their boards, and more than a quarter of the members of their senior management (although defined more broadly than stipulated in the regulation) are women.

Some 11 of 76 companies had 40% or more women on their boards, or 14.47% of the companies surveyed. In addition, 6 companies had more than 40% of women in their senior management, i.e., 7.89% of the companies subject to it.

Four companies had no women in their senior management.

Table 5

Proportion of women on the board and in senior management according to the percentages disclosed by companies subject to the CBCA

	Board of directors	Senior management
Mean	29.43%	23.94%
Median	30.00%	25.00%
Maximum	50.00%	50.00%
Minimum	9.09%	0.00%
n (companies)	76	76

Presence of members of visible minorities on the boards and among senior management of the companies studied

Unlike the data presented to date, detailed information on designated groups other than women was not always available in full in the management proxy circular of the companies studied. However, through extensive research and corroboration of the data obtained using additional material posted on company websites, it was possible to locate the desired information, except in two cases. One company did not disclose information on other designated groups, and another did so for the board of directors but not for senior management.

As noted previously, businesses use self-identification to determine the makeup of designated groups, including members of visible minorities. As an example, for the application of such a formula, Dollarama Inc. indicates: “[i]n connection with these new diversity disclosure requirements, directors and executive officers of the Corporation were asked to disclose, on a voluntarily basis, whether they self-identify with one or more of the ‘Designated Groups’. When a particular individual chose not to respond, the Corporation did not make assumptions or otherwise assign data to that individual.”²

As can be seen in Table 6, 4.47% of directors were, on average, from the members of visible minorities designated group (using this method of identification). This proportion is 7.94% for members of senior management.

The distribution is very uneven however, with 3 companies having a senior management composed of more than 40% of individuals from visible minorities, but 37 others have no representative of this designated group among their most senior officers. This reality (absence of a representative) is also observed for 50 boards of directors (66.67% of them).

Table 6

Proportion of members of visible minorities on the board and in senior management according to the percentages disclosed by companies subject to the CBCA

	Board of directors	Senior management
Mean	4.47%	7.94%
Median	0.00%	1.09%
Maximum	33.33%	66.67%
Minimum	0.00%	0.00%
n (companies)	75	74

2 Dollarama Inc., 2020 Management Proxy Circular, p.66.

Presence of Aboriginal peoples on the boards and among the senior management of the companies studied

Very few companies disclosed an Aboriginal presence on their board or senior management, as can be seen in Table 7. In fact, 94.67% of boards and 95.95% of senior management had no members from Indigenous peoples.

Table 7

Proportion of Aboriginal peoples on the board and in senior management according to the percentages disclosed by companies subject to the CBCA

	Board of directors	Senior management
Mean	0.60%	0.14%
Median	0.00%	0.00%
Maximum	15.38%	5.56%
Minimum	0.00%	0.00%
n (companies)	75	74

Presence of persons with disabilities on the boards and among the senior management of the companies studied

As in the case of Aboriginal peoples, few companies disclosed a representation of persons with disabilities on their board or senior management, which is reflected in the statistics presented in Table 8. Thus, 96.00% and 93.24% of the companies surveyed had no disabled person on their board of directors and senior management, respectively.

Table 8

Proportion of persons with disabilities on the board and in senior management according to the percentages disclosed by companies subject to the CBCA

	Board of directors	Senior management
Mean	0.49%	0.35%
Median	0.00%	0.00%
Maximum	20.00%	11.11%
Minimum	0.00%	0.00%
n (companies)	75	74

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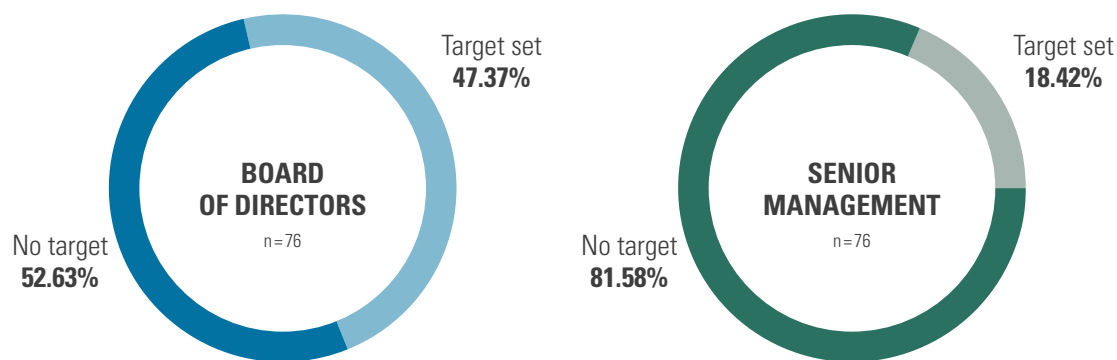
Diversity targets

Since the regulations came into force, companies subject to the CBCA are now required to provide “for each group referred to in the definition designated groups, adopted a target number or percentage, or a range of target numbers or percentages, for members of the group to hold positions on the board of directors”³ or as members of senior management.

In addition, in a “comply or explain” approach⁴, companies must also specify “for each group for which a target has been adopted, the target and the annual and cumulative progress of the corporation in achieving that target”, and, “for each group for which a target has not been adopted, the reasons why the corporation has not adopted that target.”⁵

As can be seen in Figure 2, 47.37% of the companies observed have set a target for the representation of women on the board of directors. This proportion decreases to 18.42% for representation within the senior management of these same companies.

Figure 2
Percentage of firms that have established a target for the representation of women on the board and senior management



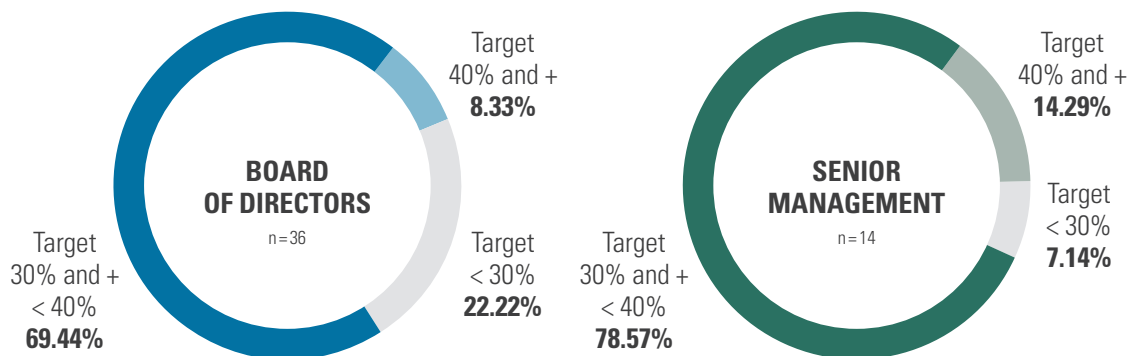
3 Canada Business Corporations Regulations, Part 8.2, 72.2 (4)

4 Under this approach, the government relies on investor reaction as a potential consequence of non-compliance. Thus, a company which does not respect disclosure standards, or which does not respect what is considered to be good practice in terms of representativeness, for example, would possibly suffer the wrath of investors who would sell the title, or would be subject unfavorable media attention.

5 Ibid. note 3

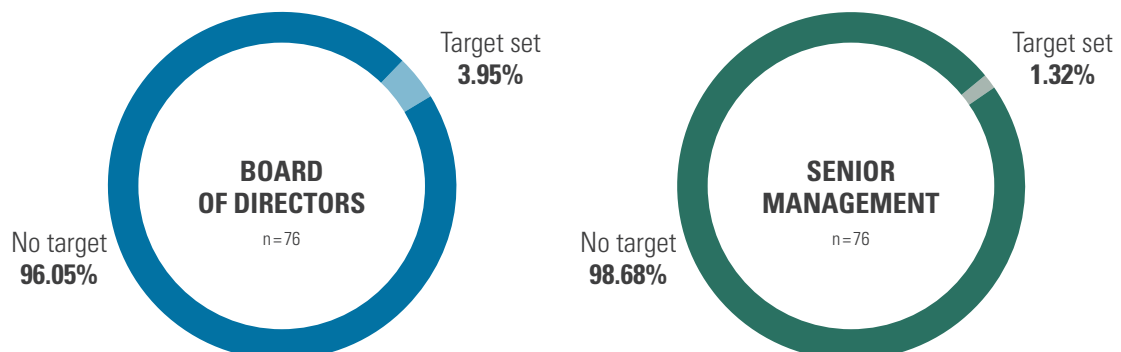
For both boards of directors and senior management, the majority of companies that have set a target want to achieve a proportion of women between 30% and 40%, as can be seen in Figure 3.

Figure 3
Distribution of firms by target range to be achieved, among firms that have determined a target for the representation of women on the board and senior management



When it comes to representation of designated groups other than women, the proportion of companies that disclosed that a target has been set declines significantly. Indeed, for all other groups combined, only 3.95% and 1.32% of companies had established a target for their board of directors and senior management respectively (see Figure 4).

Figure 4
Percentage of firms that have set a target for representation of one or other of the designated groups other than women on the board and senior management



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In terms of number of firms, we see in Table 9 that the establishment of a target to be reached for the various designated groups other than women is an exceptional case.

Table 9

Number of CBCA companies that have adopted a diversity target for certain groups

	Board of directors	Senior management
Visible minorities	2	1
Aboriginal peoples	3	0
Persons with disabilities	2	0
n (companies)	76	76

Note that some of the firms in Table 9 have chosen not to provide specific targets for each of the designated groups. These companies have instead opted for more inclusive wording than that used in previous years, which only mentioned women. For example, Cenovus Energy Inc. disclosed in 2019 that “[t]he Board Diversity Policy includes an aspirational target to have at least one-third female independent members of the Board by 2020”⁶.

In 2020, Cenovus Energy was more inclusive, noting that “[t]he Board Diversity Policy includes an aspirational target to have at least 40 percent of independent directors be represented by women, Aboriginal peoples, persons with disabilities and members of visible minorities (together, “Designated Groups”), with at least three independent members of the Board being women, by 2025.”⁷

Such wording does not make it possible to establish the specific percentage retained for each of the designated groups, especially since it incorporates the percentage already targeted for women. However, the concept of diversity is being broadened as prescribed by law, and consideration for other designated groups is built into the company’s diversity policy.

6 Cenovus Energy Inc., *2019 Management Information Circular*, Schedule C-6.

7 Cenovus Energy Inc., *2020 Management Information Circular*, Schedule B-6.

REPRESENTATIVENESS

The federal government's obvious social engineering goal is, through amendments to the CBCA, to achieve deemed fair representation of designated groups on the boards and senior management of large Canadian corporations.

Table 10 uses the data we presented in Table 3 in the introduction and shows the number of persons belonging to each of the designated groups, by adding the results of each of the businesses in the sample. Thus, 29.58% of the 764 directors observed are women, 4.58% of them are representatives of visible minorities, and less than 1% are Aboriginals or persons with disabilities.

26.10% of senior management in the companies observed are women, a lower proportion than for boards of directors. However, members of visible minorities make up 8.65% of senior executives, almost twice as high as for boards. As with directors, less than 1% of those who self-identified as Aboriginal or disabled are senior executives of these companies.

Table 10

Proportion of representatives of designated groups out of the total number of people^a making up the boards of directors and senior management of the 76 companies studied

Designated groups	Board of directors		Senior management ^b	
	Number	Board %	Number	Management %
Women	226	29.58%	314	26.10%
Visible minorities	35	4.58%	104	8.65%
Aboriginal peoples	5	0.65%	3	0.25%
Persons with disabilities	4	0.52%	7	0.58%
Total	764	100.00%	1 203	100.00%

^a A person can be found in more than one group as a result of self-identification;

^b Senior management presence is overstated due to the fact that companies have adopted a definition that is often broader than that in the regulations.

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Naturally, as we did in the introduction, we will want to compare the data in Table 10 with the proportion of the population represented by each of the designated groups, as shown in Table 11 (using the data in Table 2). There is an under-representativeness for each of the designated groups compared to the total population. This is what motivated the government to amend the law.

Table 11
Percentage of the total population in Canada for each of the designated groups

Women ^a	50.31%
Members of visible minorities ^b	22.27%
Aboriginal peoples ^c	4.86%
Persons with disabilities ^d	22.30%

^a Statistics Canada, Estimated total population of women in Canada as of July 1, 2020 ^b Statistics Canada, Estimated total population, visible minorities, 2016 census, Feb 2019 update

^c Statistics Canada, Estimated total population, Aboriginal peoples, 2016 census, May 22, 2020 update

^d Statistics Canada, *Canadian Survey on Disability Reports*, 89-654-X2018002

However, it should be considered that the individuals who occupy the positions of directors and/or members of senior management of the largest Canadian companies constitute a relatively small group of individuals. As can be seen in Table 10, fewer than 2,000 people held such positions in the 76 companies observed, which represents 0.005% of the total Canadian population. The selection of individuals appointed to these functions is based on a set of criteria specific to each company. Several companies justify the absence of diversity targets for this reason, especially for senior management positions. Here are some examples of disclosure in this regard:

While the Board recognizes the value of the contribution of members of the Diverse Groups in executive officer positions, the Corporate Diversity Policy does not establish specific diversity targets in respect of the Diverse Groups at the executive officer level due to the small size of this team and the need to carefully consider a broad range of criteria, most importantly, the appropriate matching of business needs to drive long-term value for the Corporation's stakeholders. **Aecon Group Inc., 2019 Management Information Circular, p.65**

We do not have a formal policy that specifically targets the representation of women, Aboriginal peoples, persons with disabilities or members of visible minorities in executive officer positions. While we believe that diversity is an important consideration in determining the makeup of our executive team, it is only one of a number of factors (which include merit, talent, experience, expertise, leadership capabilities, innovative thinking and strategic agility) that are considered in selecting the best candidates for executive positions. **Restaurant Brands International, 2020 Proxy Statement, p.29**

We do not have a formal policy that specifically targets the representation of women, Aboriginal peoples, persons with disabilities or members of visible minorities in executive officer positions. While we believe that diversity is an important consideration in determining the makeup of our executive team, it is only one of a number of factors (which include merit, talent, experience, expertise, leadership capabilities, innovative thinking and strategic agility) that are considered in selecting the best candidates for executive positions. **Power Corporation of Canada, 2020 Management Proxy Circular, p.58**

Age and college education as drivers of representation?

It is therefore useful to assess the representation of the different designated groups, taking into account some significant variables. Indeed, without this being an absolute rule, we can nevertheless consider that the great majority of directors and senior executives are aged 45 or over and hold a university degree. Table 12 shows the percentage of each of the designated groups with a university education, in addition to comparing these statistics between two age groups.

Table 12
Percentage of the total population of designated groups with a university education^a, by age groups

	25 to 44 years	45 to 64 years
Women	39.05%	23.39%
Visible minorities	47.06%	35.19%
Aboriginal peoples	12.12%	9.57%
Persons with disabilities	24.62%	16.64%
Total population in Canada	34.20%	23.31%

^a University certificate, diploma or degree at bachelor level or above, Statistics Canada

Not surprisingly, a greater proportion of the 25-44 age group have achieved a university education as compared to 45-64 age group. As the designated groups are not mutually exclusive, the data should be further clarified. To do this, we also observed the fields of study in addition to separating the different groups in order to make the totals mutually exclusive. These data are presented in Tables 13 to 15.

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Fields of academic study

Tables 13A and 13B show the percentage of the total population of the designated groups having attained a university level of education, by field of study, and compare the two age groups defined previously, namely 25-44 years and 45 -64 years old.

These initial comparisons thus make it possible to see which fields of study are particularly popular within each of the designated groups⁸.

Although it is not possible to establish a perfect correlation between fields of study and the functions of administrator or senior executive, these positions generally have a much higher concentration of graduates from the fields of administration, engineering, and law (dominant disciplines).

We note that these three disciplines are chosen more by men than by women, with the exception of graduates in commerce and administration among visible minorities where there is parity, and this, in the two age groups. This field of study is also the one most frequently found among members of this designated group, especially in the next generation (25-44 year olds).

There is a greater propensity to opt for fields related to social sciences and education among graduates from Aboriginal peoples, especially among women included in this designated group. We also note that the number of people included in this group is quite small - especially in the 45-64 age group (23,175 women and 13,310 men) - compared to the sum of the other graduates. The pool from which companies can draw for their recruitment is therefore limited compared to other designated groups.

A particularly striking observation is how the number of female graduates dramatically exceeds the number of men - regardless of designated group - among the rising generation (25-44 years). Thus, even if some disciplines are less popular with women, the number of them completing a diploma among the three fields that are found more in boards and senior management will be similar to the number of men. If we only considered this single variable, we should therefore expect that full gender parity will be achieved naturally over the next few years.

The different fields of study

Tables 14A and 14B present the percentage of the population of the designated groups with a university education in a given field of study, out of the total population with a university education in that same field of study. In other words, each row of the tables tells us how the graduates of a given field of study are distributed among the designated groups identified.

For example, if a company wished to recruit a person with a degree in administration, aged between 45 and 64, and had the possibility of recruiting from among all graduates, 16.51% of candidates would be men from visible minorities.

⁸ With the exception of persons with disabilities, for whom these statistics were not directly available in Statistics Canada's Cansim Tables.

We observe that the three dominant disciplines are mainly composed of men among the 45-64 age group, with a very significant difference compared to women in the fields of engineering. It can be seen that the majority of law graduates are women in the 25-44 age group, and that a balance is emerging for this age group in areas related to administration. The gap remains significant for engineering fields, although it is narrowing slightly.

University graduates

Finally, Tables 15A and 15B show the percentage of the population of designated groups having attained a university level of education in a given field of study, out of the total population having attained a level of university education. In these tables, each cell is unique. For example, of all university graduates aged 45 to 64, 1.73% are visible minority women with a degree in the social sciences and behavioral sciences.

We can see how visible minority groups (men and women) represent a significant proportion of university graduates among the two age groups (27.66% for 45-64 year olds and 36.73% for 25-44 year olds), so much so that they will constitute a more important recruitment pool than other men or women in the near future.

The data observed for visible minorities in the 45-64 age group show an under-representation when we compare them to the data drawn from our sample (Table 10), whereas, as we recall, only 4.58% of directors and 8.65% of senior executives were from this designated group.

The sum of the percentages in Table 15B for women and men from Aboriginal peoples with a degree in either dominant discipline adds up to 0.32%. In terms of representativeness, the directors of the companies studied who identify themselves as belonging to this designated group represent 0.65% of all persons occupying this function (0.25% for senior executives). If these percentages seemed low, they are in fact a reflection of a small number of individuals making up the recruitment pool.

REPRESENTATION - THE ISSUE OF SELF-IDENTIFICATION

Membership in one or the other designated group is based on self-identification. While it is difficult to impose another method of identification, it nevertheless raises two risks: 1° the risk of non-disclosure, and; 2° the risk of opportunistic disclosure.

The characteristics which define or not an individual belong to each one. Some therefore wish to keep silent about what would qualify as a handicap, for example, to avoid being labeled, categorized, or even simply out of embarrassment. Others will want to make sure that their application does not go through to meet diversity ratios. Intentionally broad definitions for inclusion within certain designated groups will necessarily create ambiguities in this regard. Mental health issues, for example, are often evaded or even obscured in some professional circles.

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At this time, designated groups are limited to those specified in the Employment Equity Act. These groups can change over time, and it is likely that there may be a desire to broaden the definition to include other groups, especially in terms of sexual diversity. Some will argue that sexual orientation is not a matter of public policy and may find it best not to disclose it.

In contrast, individuals might see this disclosure as a career opportunity.

In either case, these risks of disclosure will arise as much when compiling the self-identification forms as they do when recruiting, when these very personal questions can hardly be addressed when approaching potential candidates.

Table 13A
 Percentage of the total population of designated groups
 with a university education^a by field of study, 25 to 44 years old

	Aboriginal peoples		Visible minorities		Other women ^b	Other men ^c
	Women	Men	Women	Men		
Science and science technology	6.94%	10.66%	10.04%	8.99%	8.99%	10.43%
Engineering and engineering technology	1.26%	9.80%	6.44%	22.86%	2.44%	14.45%
Mathematics, computer and information science	0.87%	3.88%	6.26%	12.62%	1.57%	6.84%
Business and administration	9.85%	16.70%	24.68%	25.84%	14.11%	21.88%
Arts and humanities	11.90%	14.31%	11.43%	6.05%	13.39%	12.16%
Social and behavioural sciences	20.57%	15.86%	14.21%	9.04%	19.70%	14.68%
Legal professions and studies	2.95%	3.79%	2.16%	1.72%	2.62%	2.91%
Health care	15.18%	5.92%	15.16%	8.20%	14.03%	4.75%
Education and teaching	20.96%	11.90%	6.45%	1.72%	17.12%	6.84%
Trades, services, natural resources and conservation	9.53%	7.18%	3.16%	2.96%	6.03%	5.05%
Total	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
n	35,800	17,400	633,275	507,780	1,136,715	775,645

Table 13B
 Percentage of the total population of designated groups
 with a university education^a by field of study, 45 to 64 years old

	Aboriginal peoples		Visible minorities		Other women ^b	Other men ^c
	Women	Men	Women	Men		
Science and science technology	3.67%	7.55%	9.86%	10.55%	6.74%	9.87%
Engineering and engineering technology	0.65%	7.33%	7.09%	29.10%	2.59%	14.95%
Mathematics, computer and information science	0.93%	3.57%	5.15%	8.99%	2.38%	5.37%
Business and administration	10.46%	17.92%	22.48%	21.37%	13.78%	22.08%
Arts and humanities	10.40%	12.89%	14.94%	6.77%	14.53%	10.86%
Social and behavioural sciences	18.17%	16.19%	13.15%	8.04%	16.90%	13.55%
Legal professions and studies	2.80%	4.40%	1.57%	1.69%	2.61%	3.49%
Health care	9.77%	4.28%	13.37%	7.10%	12.61%	5.43%
Education and teaching	29.41%	16.83%	8.77%	2.18%	21.30%	8.30%
Trades, services, natural resources and conservation	13.74%	9.05%	3.63%	4.21%	6.56%	6.09%
Total	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
n	23,175	13,310	301,420	333,455	853,780	769,945

^a University certificate, diploma or degree at bachelor level or above, Statistics Canada.

^b Includes women who are not counted as Aboriginal women and women from visible minorities.

^c Includes men who are not counted as Aboriginal men and men from visible minorities.

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Table 14A

Percentage of the population of designated groups with a university education^a in a given field of study out of the total population with a university education in that same field of study, aged 25 to 44

	Aboriginal peoples		Visible minorities		Other women ^b	Other men ^c	Total
	Women	Men	Women	Men			
Science and science technology	0.84%	0.63%	21.43%	15.39%	34.44%	27.27%	100.00%
Engineering and engineering technology	0.15%	0.57%	13.64%	38.84%	9.29%	37.51%	100.00%
Mathematics, computer and information science	0.18%	0.38%	22.58%	36.48%	10.17%	30.22%	100.00%
Business and administration	0.56%	0.47%	25.05%	21.02%	25.71%	27.19%	100.00%
Arts and humanities	1.20%	0.70%	20.32%	8.63%	42.70%	26.46%	100.00%
Social and behavioural sciences	1.52%	0.57%	18.60%	9.49%	46.28%	23.54%	100.00%
Legal professions and studies	1.38%	0.86%	17.85%	11.43%	38.99%	29.49%	100.00%
Health care	1.60%	0.30%	28.20%	12.23%	46.84%	10.83%	100.00%
Education and teaching	2.45%	0.67%	13.31%	2.84%	63.44%	17.29%	100.00%
Trades, services, natural resources and conservation	2.31%	0.85%	13.59%	10.18%	46.48%	26.58%	100.00%

Table 14B

Percentage of the population of designated groups with a university education^a in a given field of study out of the total population with a university education in that same field of study, aged 45 to 64

	Aboriginal peoples		Visible minorities		Other women ^b	Other men ^c	Total
	Women	Men	Women	Men			
Science and science technology	0.42%	0.50%	14.84%	17.56%	28.73%	37.95%	100.00%
Engineering and engineering technology	0.06%	0.38%	8.32%	37.78%	8.62%	44.84%	100.00%
Mathematics, computer and information science	0.20%	0.44%	14.37%	27.78%	18.87%	38.34%	100.00%
Business and administration	0.56%	0.55%	15.70%	16.51%	27.27%	39.40%	100.00%
Arts and humanities	0.86%	0.61%	16.12%	8.08%	44.40%	29.92%	100.00%
Social and behavioural sciences	1.31%	0.67%	12.33%	8.35%	44.88%	32.46%	100.00%
Legal professions and studies	1.07%	0.96%	7.79%	9.30%	36.62%	44.25%	100.00%
Health care	1.05%	0.26%	18.63%	10.95%	49.78%	19.33%	100.00%
Education and teaching	2.36%	0.78%	9.16%	2.52%	63.03%	22.14%	100.00%
Trades, services, natural resources and conservation	2.41%	0.91%	8.26%	10.61%	42.35%	35.46%	100.00%

^a University certificate, diploma or degree at bachelor level or above, Statistics Canada.

^b Includes women who are not counted as Aboriginal women and women from visible minorities.

^c Includes men who are not counted as Aboriginal men and men from visible minorities.

Table 15A

Percentage of the population of designated groups with a university education^a in a given field of study out of the total population with a university education, aged 25 to 44

	Aboriginal peoples		Visible minorities		Other women ^b	Other men ^c	Total
	Women	Men	Women	Men			
Science and science technology	0.08%	0.06%	2.05%	1.47%	3.29%	2.60%	9.55%
Engineering and engineering technology	0.01%	0.05%	1.31%	3.74%	0.89%	3.61%	9.62%
Mathematics, computer and information science	0.01%	0.02%	1.28%	2.06%	0.57%	1.71%	5.66%
Business and administration	0.11%	0.09%	5.03%	4.22%	5.16%	5.46%	20.09%
Arts and humanities	0.14%	0.08%	2.33%	0.99%	4.90%	3.04%	11.47%
Social and behavioural sciences	0.24%	0.09%	2.90%	1.48%	7.21%	3.67%	15.57%
Legal professions and studies	0.03%	0.02%	0.44%	0.28%	0.96%	0.73%	2.46%
Health care	0.17%	0.03%	3.09%	1.34%	5.13%	1.19%	10.96%
Education and teaching	0.24%	0.07%	1.31%	0.28%	6.26%	1.71%	9.87%
Trades, services, natural resources and conservation	0.11%	0.04%	0.64%	0.48%	2.20%	1.26%	4.74%
Total	1.15%	0.56%	20.38%	16.35%	36.59%	24.97%	100.00%

Table 15B

Percentage of the population of designated groups with a university education^a in a given field of study out of the total population with a university education, aged 45 to 64

	Aboriginal peoples		Visible minorities		Other women ^b	Other men ^c	Total
	Women	Men	Women	Men			
Science and science technology	0.04%	0.04%	1.30%	1.53%	2.51%	3.31%	8.73%
Engineering and engineering technology	0.01%	0.04%	0.93%	4.23%	0.96%	5.02%	11.19%
Mathematics, computer and information science	0.01%	0.02%	0.68%	1.31%	0.89%	1.80%	4.70%
Business and administration	0.11%	0.10%	2.95%	3.10%	5.13%	7.41%	18.80%
Arts and humanities	0.11%	0.07%	1.96%	0.98%	5.40%	3.64%	12.17%
Social and behavioural sciences	0.18%	0.09%	1.73%	1.17%	6.29%	4.55%	14.01%
Legal professions and studies	0.03%	0.03%	0.21%	0.25%	0.97%	1.17%	2.65%
Health care	0.10%	0.02%	1.76%	1.03%	4.69%	1.82%	9.42%
Education and teaching	0.30%	0.10%	1.15%	0.32%	7.92%	2.78%	12.57%
Trades, services, natural resources and conservation	0.14%	0.05%	0.48%	0.61%	2.44%	2.04%	5.76%
Total	1.01%	0.58%	13.13%	14.53%	37.20%	33.55%	100.00%

^a University certificate, diploma or degree at bachelor level or above, Statistics Canada.

^b Includes women who are not counted as Aboriginal women and women from visible minorities.

^c Includes men who are not counted as Aboriginal men and men from visible minorities.

LIMITS OF STATISTICAL ANALYSIS

The statistics used to establish a comparison in terms of representation offer only a limited perspective on a complex reality. Indeed, the context of each of the companies is idiosyncratic: sector of activity, nature and location of operations, skill requirement, promotion policies, i.e. internal promotion versus external recruitment, etc.

The distribution of the representative population therefore varies for each of the companies observed, and a granular analysis should be carried out by integrating all the above variables to obtain a fair comparison. It is important to keep this reality in mind when reading the data presented in this study.

Likewise, data on fields of study do not distinguish between levels of diploma, the university which issued the degree, degree equivalencies, etc. However, these limits are the same regardless of the designated group.

LEGAL AND REGULATORY MEASURES TO FOSTER DIVERSITY ELSEWHERE IN THE WORLD

As mentioned in the introduction, Canada, with the recent amendments made to the CBCA, took a pioneering position on the issue of diversity, when compared to a sample of various countries (Table 1). We also note that Canada has opted for a flexible approach when several other countries have imposed quotas, at least for gender diversity. The imposition of quotas is often accompanied by sanctions, sometimes in the form of monetary penalties.

Ontario established a Capital Markets Modernization Taskforce in 2020. This Taskforce presented its report in January 2021, which contains several recommendations dealing with diversity issues. Among other things, the Taskforce recommends “that publicly listed issuers set an aggregated target of 50 per cent for women and 30 per cent for BIPOC [Black, Indigenous and people of colour], persons with disabilities and LGBTQ+.”⁹ In their recommendation, the members of the working group insisted on the implementation of such targets within a five-year horizon for women, and seven years for the other diversity groups.

The United States is missing from Table 1, but initiatives are being put forward at the level of individual state law. We note among others the state of California, which had already adopted in 2018 a law requiring the presence of at least one woman on the board of directors of companies listed on the stock exchange and whose head office is located in California.

On September 30, 2020, California passed Law AB-979 which requires boards of directors of publicly traded companies in the State of California to appoint at least one director from an underrepresented community by December 31, 2021, and a minimum of 3 directors by December 31, 2022 for boards

9 Capital Markets Modernization Taskforce, *Final Report*, January 2021, p.64

with 9 or more members. For the purposes of California law, a person from an underrepresented community means “an individual who self-identifies as Black, African American, Hispanic, Latino, Asian, Pacific Islander, Native American, Native Hawaiian, or Alaska Native, or who self-identifies as gay, lesbian, bisexual, or transgender.”¹⁰

This definition is therefore intended to be broader than that of designated groups in Canadian law.

Diversity targets are not always set by laws but may be the subject of standards set out in the governance codes (principles or regulations) adopted in certain countries. Table 16 is a comparative summary of these codes or regulations for 13 countries.

¹⁰ California, Assembly Bill No. 979, SEC. 3., “Director from an underrepresented community”

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Table 16
Governance Codes, Principles or Regulations in Force
Comparison of 13 Countries in Terms of Quotas and Gender Diversity on Boards

Country	Governance Code, Principles or Regulations	Code or Regulation Date	Authority in Charge	Quota for Women	Target	Effective Date
Australia	Corporate Governance Principles and Recommendations	2019	ASX (Australian Securities Exchange) Corporate Governance Council	YES	30%	2020
Belgium	Belgian Code on Corporate Governance	2020	Corporate Governance Committee	NO	n.a.	2020
Canada	National Instrument 58-101 Disclosure of Corporate Governance Practices	2014	Canadian Securities Administrators (CSA)	NO	n.a.	2015
France	AFEP-MEDEF Corporate Governance Code	2010	French Association of Private Enterprises (AFEP) and the French Enterprise Movement (MEDEF)	YES	40%	2016
Germany	German Corporate Governance Code	2017	Regierungskommission (The Commission)	YES	30%	2017
Italia	Italian Corporate Governance Code	2018	Comitato per la Corporate Governance (Borsa Italiana)	YES	33%	2018
Japan	Japan's Corporate Governance Code	2018	Tokyo Stock Exchange (TSE)	NO	n.a.	2018
Netherlands	Dutch Corporate Governance Code	2016	The Dutch Corporate Governance Code Monitoring Committee	NO	n.a.	2017
Spain	The Unified Good Governance Code of Listed Companies	2015	Comisión Nacional del Mercado de Valores	YES	30%	2020
Sweden	Swedish Corporate Governance Code	2016	Swedish Corporate Governance Board	YES	40%	2020
Switzerland	Swiss Code of Best Practice for Corporate Governance	2016	Economiesuisse	NO	n.a.	2016
United Kingdom	UK Corporate Governance Code	2018	Financial Reporting Council (FRC)	NO	n.a.	2019
USA	Regulation S-K (Compliance and Disclosure Interpretations under Items 401 and 407)	2019	Securities and Exchange Commission (SEC)	NO	n.a.	2020

Thus, as can be seen in Table 16, almost half of the governance codes, regulations or principles provide for the imposition of a diversity quota.

On December 1, 2020, the Nasdaq made a proposal to the Security and Exchange Commission (SEC), the US regulatory authority, to require the boards of directors of companies listed on the Nasdaq to be composed of at least: 1° one director who self-identifies as a female; 2° one director who self-identifies as Black or African American, Hispanic or Latinx, Asian, Native American or Alaska Native, Native Hawaiian or Pacific Islander, two or more races or ethnicities, or as LGBTQ+.

The issue of expanded diversity certainly occupies a prominent place among the concerns of governments and regulatory authorities. The initiatives of California and the Nasdaq will most likely find echoes around the world in the coming months or years.

BEYOND THE BOARD OF DIRECTORS

The amendments to the CBCA also put emphasis on issues of diversity within senior management of publicly traded companies. While Canadian law is concerned with disclosure, other countries have begun to look at more stringent measures. For example, on January 6, 2021, the German government introduced a bill establishing a mandatory quota of at least one woman in executive committees of three or more people, for listed companies with more than 2,000 employees.

It was the second European country, after Switzerland, to adopt such a measure. Switzerland had indeed carried out a reform of the law of public companies, adopted in June 2020, which provides that listed companies must reach at least 30% of women on boards of directors, and 20% in management. As in Canada, the non-binding “comply or explain” format was retained.

For now, these measures are limited to gender diversity in senior management.

RATE OF CHANGE

The representation of women on the boards of publicly traded companies in Canada has been rising steadily for at least a decade. The rate of growth remains slow, as it depends on the rate of change of directors, combined with the rate of recruitment of women from among potential candidates to fill newly vacant positions.

As the government is aware of this reality, other regulatory information governs the application of the amended subsection of the CBCA (172.1 (1)). Thus, a listed company must indicate whether or not it has “adopted term limits for the directors on its board or other mechanisms of board renewal and, as the case may be, a description of those term limits or mechanisms or the reasons why it has not adopted them”.

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The diversity disclosure requirement therefore only establishes the state of play. The targets that will be set by the companies, paired with specific mechanisms for board renewal, will be the real levers or catalysts for achieving the goal of broadened diversity.

In the United States, corporate directors of large companies like Oracle, Facebook and Qualcomm were sued in July 2020, when they were accused, among other things, of having made false statements by pledging annually a firm commitment to diversity in their corporate documents, without these efforts being apparent (at least according to the plaintiff) within their board of directors or senior management.

Regardless of the outcome of such lawsuits, the risk to corporate reputations is very real as issues of broader diversity receive significant media attention. Companies that commit to quantified targets need to make sure that they are realistic and have concrete actions to achieve them.

Main findings and conclusion

The Canadian government is playing a pioneering role by expanding the definition of diversity beyond gender as well as adding disclosure requirements at the senior management level. Indeed, apart from a few initiatives by local jurisdictions (e.g. State of California), no other country has introduced such a broad definition of diversity. However, European countries have adopted legislative measures establishing quotas for female representation at senior management level, which is a more coercive approach than the “comply or explain” approach adopted by the Canadian government.

So, when it comes to the law itself, the Canadian approach is all about disclosure, and requires companies to justify their diversity choices and results. Presumably, the Canadian government expects investors, the media, and other external stakeholders or observers to act as gatekeepers of diversity and representativeness. Companies will thus be judged on the means deployed, the targets set, and the results obtained.

Number of members considered for senior management

The data on boards is in essence what was expected. Publicly traded companies already had a disclosure framework established for gender diversity and adapting that format to accommodate more designated groups did not appear to be a major issue. However, there is a much freer interpretation of the definition of senior management. Indeed, while the regulation provides a precise definition of senior management comprising 5 to 7 members, companies have instead chosen to give themselves a definition resulting in an average of more than 16 senior management members. With a median of 10 members, this means that more than half of the companies subject to the law have interpreted the regulation incorrectly, making comparability of data much more difficult. In fact, this may indicate that the regulations do not reflect the real situation of large corporations which may well reasonably deem that their senior management is in fact made up of a larger group of people.

Definitions of designated groups

The definition of designated groups is governed by the Employment Equity Act, which definition may change over time. First, we see that the designated groups are not mutually exclusive. Thus, a person can simultaneously meet the inclusion criteria for more than one designated group.

Some definitions of designated groups suffer from ambiguities and from the fact that a person may declare their membership in a given group by self-identification.

Main findings and conclusion

The definition adopted for a person to be considered disabled, for example, is very open. No distinction is made between the types of limitations, nor between the degrees of severity of the disabilities. Under these circumstances, it is difficult to determine with precision the desired or desirable target for representativeness, and the data disclosed by the companies regarding the presence of members of this designated group offers little clarification on the nature of the impairments or limitations, if applicable.

The use of self-identification introduces a clear risk of non-disclosure or a risk of opportunistic disclosure.

The question of the representativeness of women on boards of directors has been at the heart of diversity concerns for several years now. While much remains to be done with more than 20% under-representation, strong recruitment measures have been put in place by many companies and the desire to achieve a representative mix is palpable. The only obstacle remains essentially the rate of renewal of directors and senior managers, a rate that can sometimes be accelerated by measures aimed at limiting the duration of directors' term of office, for example.

The data obtained regarding the representativeness of members of visible minorities is sobering. When two variables are considered, age and education, there is a clear under-representation of members of visible minorities on the boards of directors and senior executives of publicly traded Canadian companies. Of course, the recruitment of directors and senior executives is based on many criteria beyond age and education, but can these justify the weak representation we observed?

The slow pace of increase in the presence of women on boards of directors illustrates the difficulties that will have to be overcome for a significant change to happen in terms of the representation of visible minorities. The work must therefore begin quickly upstream, to prepare the next generation.

Indeed, the growing popularity of so-called responsible investing will force companies to achieve relatively quick results. Funds like BlackRock, for example, have made it clear that they will make a strong commitment to boosting diversity and the presence of visible minorities in businesses in 2021. These investors feed off data based on ESG criteria (Environment, Social and Governance) and expanded diversity is now the new Holy Grail.

Having to disclose diversity data annually, Canadian companies will henceforth be closely monitored.

The laudable goal of increasing the diversity of representation on corporate boards and in the senior management of large corporations will not be achieved without much management goodwill as well as investors and government prodding, particularly so when that goal includes not only the representation of women but also that of various other groups making up a society.

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Appendix 1

RELEVANT DEFINITIONS

Excerpt from the Employment Equity Act (3)

designated groups means women, Aboriginal peoples, persons with disabilities and members of visible minorities; (*groupes désignés*)

Aboriginal peoples means persons who are Indians, Inuit or Métis; (*autochtones*)

members of visible minorities means persons, other than Aboriginal peoples, who are non-Caucasian in race or non-white in colour; (*minorités visibles*)

persons with disabilities means persons who have a long-term or recurring physical, mental, sensory, psychiatric or learning impairment and who

- a. consider themselves to be disadvantaged in employment by reason of that impairment, or
- b. believe that a employer or potential employer is likely to consider them to be disadvantaged in employment by reason of that impairment,

and includes persons whose functional limitations owing to their impairment have been accommodated in their current job or workplace; (*personnes handicapées*)

HOW TO ACHIEVE EQUITY AND THE NECESSARY ANALYSIS

Excerpt from the Employment Equity Act (9)

Analysis and review

9 (1) For the purpose of implementing employment equity, every employer shall

- a. collect information and conduct an analysis of the employer's workforce, in accordance with the regulations, in order to determine the degree of the underrepresentation of persons in designated groups in each occupational group in that workforce; and
- b. conduct a review of the employer's employment systems, policies and practices, in accordance with the regulations, in order to identify employment barriers against persons in designated groups that result from those systems, policies and practices.

Self-identification

(2) Only those employees who identify themselves to an employer, or agree to be identified by an employer, as Aboriginal peoples, members of visible minorities or persons with disabilities are to be counted as members of those designated groups for the purposes of implementing employment equity.

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