Institut sur la gouvernance
d'organisations privées et publiques

Submission to all of the CSA jurisdictions

Consultation on the Draft *Regulation to amend Regulation 58-101 respecting Disclosure of Corporate Governance Practices* and the Draft Amendments to *Policy Statement 58-201 to Corporate Governance Guidelines*

July 2023

Pour une gouvernance créatrice de valeurs [MD]

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
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Manitoba Securities Commission
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Ontario Securities Commission
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Subject: Consultation on the Draft *Regulation to amend Regulation 58-101 respecting Disclosure of Corporate Governance Practices* and on the Draft Amendments to *Policy Statement 58-201 to Corporate Governance Guidelines*

To whom it may concern,

We would like to thank you for the opportunity to submit our comments on the CSA's Notice of Consultation, published on April 13, 2023.

Created in 2005 by two academic institutions (HEC Montréal and Concordia University – John Molson School of Business) and the Stephen Jarislowsky Foundation, the Institute for Governance of Private and Public Organizations ("the Institute" or "IGOPP") has become a centre for excellence in governance. Through its research activities, training programs, policy papers and involvement in public debates, IGOPP has established itself as an essential reference for governance issues in both the private and public sectors.

Our institute has been concerned with issues of diversity on boards of directors for many years. Already in 2008, IGOPP set up a working group to study the question of women on boards, which culminated in a formal policy paper[1] published in 2009. The inclusion of disclosure requirements in the *Canada Business Corporations Act* (***CBCA***), targeting four "designated" groups, with regulations coming into effect in 2020, was a turning point inviting in-depth discussion on diversity issues on boards of directors.

IGOPP then examined the issue through a compilation of factual data and an analysis that led to the publication of a first research report[2] in 2021. As part of this research, we compared the *CBCA* to the laws of other countries (we also compared the governance codes, principles or regulations in effect in these countries), and then collected the information disclosed in 2020 by companies subject to the law in order to compile an initial picture of the representation of designated groups on the boards and executive officers of these companies. We then compared these results with statistical data for the Canadian population, taking into account various factors such as age and level of education. This study yielded a number of findings concerning the application and interpretation of the regulations by Canadian issuers, which will be discussed in the answers to the consultation questions.

In order to measure the evolution of disclosure following the first year of adaptation to the new regulations, we published a second research report[3] in 2022. Once again, this study made it possible to observe the reaction of reporting issuers, and a number of those observations form the basis of the reflections submitted in response to the consultation questions.

In parallel with this latest study, IGOPP set up a working group in 2021 to address the question of broader diversity. Drawing on the literature from many disciplines and addressing many facets of diversity, the results were published in the form of a policy paper entitled "*Parity and Diversity on Boards of Directors*" [4] ("**IGOPP Policy Paper on Parity and Diversity**"), which included several recommendations. We invite you to take a look at this document, which is attached as Appendix 1. It forms the basis of the arguments put forward in response to the consultation questions on diversity issues.

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[1] Allaire, Y. *The Status of Women Corporate Directors in Canada: Pushing for Change*, Policy Paper no. 4, IGOPP, June 2009, 19p.

[2] Dauphin, F., Allaire, Y. and M. Sambiani. *The Quest for Diversity of Boards of Directors and in Senior Management of Public Corporations*, IGOPP, February 2021, 45p.

[3] Dauphin, F. *Diversité élargie à la direction et aux C.A. des sociétés ouvertes*, IGOPP, January 2022, 30p.

[4] Dauphin, F. *Parity and Diversity on Boards of Directors,* Policy Paper no. 12, IGOPP, July 2022, 53p.

Preamble

"Any organization governed by a board of directors must strive to constitute a board that is both *legitimate and credible*."[5] A board's credibility is indispensable to its effectiveness and "[its] credibility is measured not only by its in-depth knowledge of the company's industry and its markets, of its business model, and its value-creation drivers, but also by the integrity and the trustworthiness of its board members."[6]

Board members have responsibilities and must comply with obligations that are particularly important in a highly regulated environment. The resulting disclosure of information is analyzed by numerous stakeholders with sometimes divergent objectives and interests. The issue of diversity in the composition of a board is now a major concern, a criterion which can sometimes even influence the nature of the votes cast when electing certain members.

Beyond social recognition and legitimacy, a board consisting of members with varied social and personal attributes can contribute to a greater diversity of skills and perspectives. In addition, a diverse board has many potential benefits, such as: 1) helping to bring in more diverse knowledge and points of view; 2) mitigating the risk of groupthink; 3) demonstrating and fostering a more inclusive corporate culture; 4) helping provide a broader view of risk management, and; 5) contributing to better brand and corporate reputation by aligning its stated values with its actions.

The literature also shows that recruitment and employee retention are facilitated when the forms of diversity present are representative of employees and the population of the main communities in which a company operates—at its highest echelons.

Given the importance of this issue, it is essential for boards to ensure that diversity is fully integrated and encouraged at all levels of the organization by insisting on these aspects with management, making the latter accountable for achieving levels of representativeness—established jointly with management based on the company's reality—among employees and in management positions at every level.

In our research into diversity disclosure, the main benefit that emerged was a demonstrated willingness to consider diverse candidates when selecting new members. In fact, as early as the second year of mandatory disclosure, there was a notable increase in the percentage of new members from diverse backgrounds, particularly from visible minorities, among the largest listed companies. This determination is also evident in the explanatory texts accompanying the disclosed diversity data.

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[5] Allaire, Y. The *Independence of Board Members: A Quest for Legitimacy*, Policy Paper no. 3, IGOPP, September 2008

[6] Allaire, Y. *Board Members Are Independent but Are They Legitimate and Credible?* Policy Paper no. 10, IGOPP, 2018

The importance of “broader” diversity illustrates the evolution of civil society's expectations of its major institutions. Major listed companies are now observed and scrutinized through the prism of these new expectations, where their role and responsibilities toward stakeholders and civil society in general are now perceived (rightly or wrongly, depending on the case) much more widely. Some large institutional investors are also acting as watchdogs of listed companies in this respect.

The issue of board diversity is, however, not new. Academics have been interested in the question for several decades, especially if all the research into group dynamics is included. The benefits of diversity are obvious and go far beyond the simple desire for companies to retain a form of social legitimacy by conforming to minimum expectations. However, for these benefits to be fully realized, the issue of diversity needs to be approached thoughtfully; it needs to be contextualized.

Issuers need to take a pragmatic approach to this issue, in line with their organization's current and future strategy. Diversity must be fully embraced and instilled as a belief. This is how a real climate of inclusion will be fostered at all levels of society. It is also from this perspective that we have analyzed the question and the draft amendments submitted as part of this Notice of Consultation.

Question 1

The Draft Amendments to the Regulation would require the disclosure of the skills, knowledge, experience, competencies and attributes of candidates that are considered and evaluated. Does this requirement raise concerns for issuers regarding disclosure of confidential or competitively sensitive information? Please explain. (Please refer to the table entitled "Board Nominations" in Annex A for a description of this draft requirement.)

In an earlier policy paper,[7] IGOPP stressed that "any organization governed by a board of directors should strive to form a board that is both legitimate and credible."

> The *credibility* of a board hinges on its collective experience and expertise relevant to the specific issues and challenges of the organization. A director's individual credibility results from his or her specific expertise and experience, grounded in independent thinking. […] A credible director is an engaged one who is respected by other board members, who does not hesitate to raise difficult questions and to insist that key issues be addressed by the board. The credible director shares his or her experience with management, offers counsel but make sure to remain independent from management. Credibility cannot be measured.[8]

Although it cannot be measured, credibility remains an essential foundation for a board's effectiveness and its ability to create value for the organization. We therefore believe it is not only useful, but essential, to provide information on the characteristics that led to the selection of credible candidates.

> The conventional approach consists of drawing up a list of the different types of professional expertise which it is thought desirable to assemble on the board (accounting, finance, human resources, risk management, IT management, etc.). Prior experience in senior management and as a member of other boards of directors becomes a nearly universal prerequisite. IGOPP strongly suggests that, actually, the drawing up of this profile should begin by identifying industries with characteristics that closely tract those of the industry in which the target company operates: such as capital intensity, time horizon of investments, industrial vs. consumer markets, international scope of competition, key success factors, generic strategies.[9]

The proposed amendments would fully allow issuers to determine the approach best suited to them, including the one proposed above. The latitude granted to issuers in terms of disclosure requirements in this regard is sufficiently broad to avoid the pitfalls associated with the possible disclosure of confidential or competitively sensitive information. In fact, many issuers already provide quality information on these aspects, without any confidentiality issues or risks.

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[7] Allaire, Y. *The Independence of Board Members: A Quest for Legitimacy*, Policy Paper no. 3, IGOPP, September 2008

[8] Ibid.

[9] Allaire, Y. *Board Members Are Independent but Are They Legitimate and Credible?* Policy Paper no. 10, !GOPP, 2018.

Question 2

We are consulting on two alternatives with respect to the requirement to provide disclosure on the approach to diversity (Form A and Form B). Which approach best meets the needs of investors for making investing and voting decisions? Which Form best meets the needs of issuers in describing their approach to diversity at the board and executive officer level? Do either of the approaches raise concerns for issuers? Are there certain requirements in either form that you find preferable to the equivalent requirement in the other form? Please explain.

A review of the literature on diversity shows that the concept is multidimensional, while "representativeness" is often mistakenly considered to be the central element of diversity. An in-depth analysis of the literature, with theoretical underpinnings in numerous disciplines such as psychology, anthropology, sociology, pedagogy and management, reveals the following three dimensions:

1. **Diversity of social and personal attributes**, including differences in race, colour, country of origin, religion, language, sexual orientation, physical abilities (disabilities), age, etc.
2. **Diversity of skills and perspectives**, which includes differences in the knowledge bases and perspectives that members bring to the group, which are likely to occur because of differences in education, experience and expertise.
3. **Diversity of values,** i.e. the extent to which members of a group differ in their instrumental values, including, for example, the way they envision and understand the organization's role and purpose, the degree of control it exerts over its environment, its orientation vis à vis the market, customers, technology and products, its definition of success and its rules of performance, the nature and origin of its authority, its responsibility toward individuals and their duty toward the organization, the nature of interpersonal relations, etc.

The true form of diversity usually referred to in the decision-making process is diversity of "skills and perspectives." Not only is this form of diversity desirable, but it should be the primary foundation for all director recruitment and selection planning.

At the same time, a high degree of cohesion of values and ideologies must be maintained within the board of directors and executive-level positions. Therefore, the diversity that may be established on the board must involve people with compatible values.

Regardless of the relationship between the diversity of social and personal attributes and other dimensions, it is important to underscore that this form of diversity should not be overlooked. Indeed, there are numerous benefits associated with it: for example, it helps promote employee recruitment and retention and contributes to creating a climate conducive to inclusion, in addition to conferring social legitimacy.

In IGOPP's *Policy Paper on Parity and Diversity,* we recommend that boards of directors establish the diversity profile that is relevant to their organization. This profile is not systematically a reflection of the labour force of a given country. Indeed, there must be discussion about the composition and specifics of the company's various stakeholders (e.g. customers, employees, suppliers, host communities, countries targeted for possible geographic expansion, etc.). This diversity must support the company's strategy, and be conducive to an enhanced consideration of the long-term interests of a society's stakeholders, with the aim of creating sustainable value.

As well, with its concept of "identified group" and the flexibility afforded by the description of the "approach to achieving or maintaining diversity," **Form A best meets investors' needs for making investment and voting decisions, and is better suited for issuers to describe their approach to diversity on the board and at the executive level**. This flexibility makes it possible to extend disclosure to the level of executive officers.

Form B, which calls for the description of a written strategy and retention of the concept of "designated group" formally identifying minority groups, is more restrictive despite its "comply or explain" formula. Unlike Form A, it does not enable boards to develop a diversity strategy tailored to their organization's needs. Form B also raises a number of concerns for issuers (and board members), which will be described further in response to Question 4.

Distinction between "gender diversity" and "parity"

The high risk of confusing gender diversity with other forms of diversity calls for a more specific lexicon. When discussing gender diversity, IGOPP's *Policy Paper on Parity and Diversity* recommends referring to the **concept of parity**, which can be achieved by an acceptable range mix (pegged at between 40% and 60% in IGOPP's 2009 policy paper) that also takes into account the natural size of boards of directors (often a small odd number).

Women, who make up half of the population, are not a minority group, and their presence should therefore statistically represent half of all directors of the boards of listed companies.

The notable progress in female representation on boards, especially over the last decade, must not be held back by the pursuit of another goal for diversity, hence the importance of keeping the issue of parity a priority.

We therefore encourage you to distinguish between the concepts of "parity" and ""diversity," whichever form is ultimately chosen.

On the other hand, we note with interest that women are excluded from the concept of "identified group" in Form A of the draft amendments, so that the distinction in terms of disclosure is maintained. This approach fully meets the objectives of the above discussion, but is not reflected in Form B.

Question 3

Is information on the diversity approach and objectives of issuers with respect to executive officer positions useful for investors? Does this requirement raise concerns for issuers? Please explain. (Please refer to the table entitled "Approach to Diversity – Executive Officer Positions" in Annex A for a description of this draft requirement.)

In the course of our research, we noted certain limits to the application of the *CBCA* disclosure model with regard to the definition of "executive officers." Reporting companies have interpreted the regulations governing the number of executive officer members to be considered for disclosure purposes very liberally. The definition in the regulations provides for a composition of between five and seven members who are executive officers. Instead, companies reported an average of more than 16 executive officers, with a median of 10 executive officer positions. This means that more than half the companies subject to the law have interpreted the regulation inaccurately (but probably in line with their own definition of executive officer positions), making data comparability much more difficult in this respect.

In light of this observation, even if this aspect is not specified in the current versions of the draft amendments, it would be preferable to let issuers determine the perimeter of the organizational structure that is considered to define the executives who make up their senior management, but to maintain this perimeter in subsequent years to allow data to be compared year over year for the same entity.

The main question remains the collection of diversity data, with all the confidentiality and bias issues that can be introduced when providing answers (addressed in greater depth in response to Question 4). In all cases, a flexible approach should be preferred to avoid any form of drift, both in information collection and in candidate selection and appointment.

Question 4

Should issuers be required to disclose data about specified designated groups, consistent with the approach in Form B? Or should issuers be required to disclose data about women only and the identified groups for which they collect data, consistent with the approach in Form A? Please explain. (Please refer to the table entitled "Concept of Diversity" in Annex A for a description of "designated groups" and "identified group.")

Recommendation #3 in IGOPP's *Policy Paper on Parity and Diversity* is clear about the groups to be targeted: boards of directors should establish a diversity profile relevant to their organization. As mentioned previously in response to Question 2, this profile does not systematically reflect the working population of a given country. In fact, each issuer's senior management team needs to reflect on the composition and specific characteristics of the entity's various key stakeholders.

Trying to fill positions with the sole aim of meeting arbitrary expectations set by external actors is to be avoided. The average board comprises 11 to 13 members, which makes it impossible to systematically represent all types of minorities in the workforce.

Indeed, diversity is defined according to a range of attributes and qualities, including, but not limited to, differences in race, colour, country of origin, religion, language, sexual orientation, abilities, age, socio-economic status and geographic location. No board will ever be large enough to represent all minorities.

Although mandatory disclosure as set forth in Form B requires information to be provided about a few pre-established designated groups, there are many forms of diversity, and other minority groups may correspond more closely to the company's reality. These groups must not be discriminated against, neglected or omitted.

In addition, we note that many issuers, especially in the larger market capitalizations, *already disclose diversity information* and consider much broader forms of diversity than the designated groups included in the *CBCA* or Form B of the draft amendments. It would be very unfortunate if the adoption of amendments to disclosure requirements led some issuers to reduce or modify their disclosure, to the detriment of those who use this information, who are satisfied with its current form. Many issuers are, in fact, interested in a diversity of geographic representation, language, sexual orientation or age groups, for example, in addition to the designated groups already set out in the *CBCA*. They provide statistics to this effect in their management proxy circulars.

In our view, issuers should therefore only be required to provide information on women and identified groups for whom they collect data, in line with the approach proposed in Form A.

As for the information to be provided, recommendation #7 of IGOPP's *Policy Paper on Parity and Diversity* specifies what we consider to be sufficient disclosure.

We believe that the board should report annually on its efforts in the area of parity and diversity. Disclosure has already demonstrated its effectiveness as an incentive to achieve parity targets and should be maintained. As discussed in our answer to Question 2, there is a high risk of confusion, and the issue of women's representation on boards should be kept separate. As such, companies should, at minimum, disclose:

1) the percentage of female board members;
2) the desire to reach (or maintain) a parity target;
3) if the parity target has not been reached, an explanation of how the Board intends to reach the target (what steps are planned).

In terms of the diversity of social and personal attributes, *the information provided should not be personal*. The aim of the reporting is to promote diversity and demonstrate that it is reflected in the highest decision-making bodies of the company, not to single out individuals. If the situation requires, we recommend disclosing:

1) a description of relevant diversity specific to the organization;
2) for the board and executive officers:
    a. types of diversity represented (as a list, for example);
    b. the total number of board members and executive officers (separately) who represent one type of diversity or another, as well as;
    c. the percentages that these two numbers represent of the total number of board members and executive officers.

We feel this information is sufficient and relevant to achieving the objective.

The question of targets for representing diversity within the highest decision-making bodies (board of directors and senior management) remains a delicate issue. Indeed, the relevant diversity will naturally be multidimensional, which implies choices that will be made according to available candidates, among other things. However, the setting of targets by boards is a tool that has proved its effectiveness. We therefore *encourage boards to set such targets themselves*—as a percentage of the number of members—even if they encompass several forms of social and personal attributes, in order to demonstrate a firm commitment to achieving genuine diversity. Boards should disclose this percentage and provide a brief explanation of the steps taken to achieve this target.

Once again, Form A of the proposed amendments provides issuers with the flexibility they need to adapt to their specific circumstances, allowing them to disclose information as we recommend.

Form B of the proposed amendments would provide a standardized tabular format for the disclosure of diversity-related information by issuing companies, targeting only the diversity of <u>certain</u> social and personal attributes (as defined for "designated groups"). This also raises a number of issues, particularly when it comes to classification and identification.

Belonging to one or other of the designated groups is based on self-identification. While it is difficult to impose any other method of identification, it nonetheless raises two risks: 1) the risk of non-disclosure, and 2) the risk of opportunistic disclosure. Individual defining characteristics belong to each individual. Some prefer to exclude themselves from a group to avoid being labelled, categorized or even simply out of embarrassment or a desire to keep these characteristics confidential. Others will want to ensure that their application is not selected to meet diversity ratios. Intentionally broad definitions of inclusion within certain designated groups will necessarily create ambiguities in this respect. On the other hand, some may see disclosure as a career opportunity.

In both cases, these disclosure risks will arise both when compiling self-identification forms and when recruiting, whereas these highly personal issues are difficult to address when approaching potential candidates even if these will have to be implicitly considered in a desire to achieve pre-established diversity objectives (hence the importance of carefully selecting the disclosure obligations in this respect).

Question 5

Would it be beneficial to require reported data to be disclosed in a common tabular format? Does this requirement raise concerns for issuers? Please explain.

The advantage of allowing information users to quickly measure the presence and improvement of the presence of diversity is not sufficient to counterbalance the possibility of nominative identification of directors which would introduce direct issues of confidentiality, but also data reliability issues through the disclosure bias that these confidentiality issues might entail. Even if the use of a standardized table facilitates information processing and presentation, we have strong doubts as to the added value of this information, both for the entities required to disclose it and for the users of this information, since each issuer may have a very different definition of relevant diversity.

It is clearly preferable to offer the possibility of retaining a descriptive form (as provided for in Form A), which could be desirable to ensure the confidentiality of some of the data provided according to the nature of the "identified groups," in addition to allowing issuers to make a selection of the relevant diversity groups according to their own imperatives and particularities.

Question 6

For CBCA-incorporated issuers, are there issues or challenges in providing both CBCA disclosures and the disclosure proposed under either Form A or Form B? Please explain.

In a report published in February 2021, IGOPP provided an initial census of the information disclosed by federally incorporated companies that were among those that make up the S&P/TSX index. This data not only established the first milestone against which any progress in diversity would be measured, but also provided an excellent opportunity to observe how these companies interpreted their new obligations, while assessing the quality of the information disclosed. In 2020, 78 companies were covered by the new disclosure obligations, and 77 in 2021 (70 of them were the same, and we have retained them in order to make a direct comparison and assessment of the actual progress on the indicators for these companies).

In light of what we have been able to observe, we do not foresee any difficulty in providing the information required by both regimes if Form A were selected. Indeed, Form A and its concept of "identified group" is inclusive of the four groups designated by the *CBCA* regulations. The "comply or explain" formula used in the federal regulations, as well as the flexibility allowed in the descriptive forms, are well aligned with the requirements of Form A, including the characteristics required at the executive officer level.

Form B, with more "designated groups" and standardized reporting requirements, would force issuers to modify their disclosure and data collection methods, creating additional costs and difficulties in complying with both regimes.

Question 7

Should we consider developing similar disclosure requirements for venture issuers in a second phase of this project? If so, should any changes be made to the proposed disclosure requirements to reflect the different stages of development and circumstances of venture issuers? Please explain

The costs and the amount of work associated with compliance are becoming increasingly significant for issuers, especially venture issuers. There is no need to make these requirements any more onerous for smaller organizations. Many venture issuers have small boards of directors, often consisting of the founder-entrepreneur and a few members with specialized or complementary expertise and experience. With less ability to attract new members than larger companies, the challenges associated with board composition are sometimes high. At this stage of growth (and sometimes survival), it is inappropriate to add additional considerations and information requirements.

Conclusion

As can be seen in the preceding answers to the questions, Form A of the draft amendments appears to be clearly preferable to Form B in terms of the approach to diversity disclosure. We therefore strongly recommend that Form A be selected, and that the clarifications provided in the various answers also be taken into account in drawing up the final version.

We hope the information and answers in this document will be highly useful for your future considerations.

We are available to answer any questions you might have.

Best regards,

Institute for Governance of Private and Public Organizations (IGOPP)

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President and CEO, IGOPP

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Vice-President, IGOPP

APPENDIX 1

(IGOPP Policy Paper on Parity and Diversity)

Institute for governance
of private and public organizations

Parity and Diversity on Boards of Directors

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Policy Paper N°12

2022

Toward Value-Creating Governance®

Institute for governance
of private and public organizations

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Parity and Diversity on Boards of Directors

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Policy Paper N°12

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2022

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Message from the president and CEO

This is the twelfth time since it was created in 2005 that our Institute has taken a formal position on a governance issue.

Already in 2009, IGOPP took a stand and proposed reasonable and effective ways to increase the level of participation of women on boards. Since then, issues of representativeness have extended beyond gender, and the question of diversity in the makeup of boards is now a real concern.

This policy paper considers various aspects of the concept of “diversity” and makes recommendations that we hope will make a useful contribution to the debate on this issue.

I would like to offer my gratitude to the members of IGOPP’s Board who agreed to participate in the Working Group mandated to produce this policy paper. The quality of the dialogue and the fruitfulness of the discussions, attesting to the members’ extensive experience with various types of boards, contributed to an in-depth reflection while considering concrete aspects of the reality of boards.

The members of the Study Group, chaired by Guylaine Saucier:

- Louis Audet
- Mary-Ann Bell
- François Dauphin
- Robert Greenhill
- Isabelle Marcoux

I thank them sincerely for their astute as well as crucial contribution to developing this position.

I would also like to express my gratitude to all members of IGOPP’s Board of Directors, since it was the entire Board that received and discussed the Working Group’s report and unanimously[1] approved its final version in the form of this policy paper.

François Dauphin, MBA, CPA

1 With the exception of Louis Morisset who, as Chair and CEO of the Autorité des marchés financiers, is required to abstain and therefore recused himself from the vote on this text.

Executive Summary

In North America, the notions of diversity and inclusion have come to the forefront in recent years, and the issues of board representation have extended well beyond gender. Canada, acting as a pioneer in the matter, has incorporated into the Canada Business Corporations Act disclosure requirements targeting four “designated” groups. As of 2020, in addition to female representation, federally incorporated publicly traded companies are now required to disclose information about the participation of visible minorities, Aboriginal communities and people with disabilities to their boards and senior management.

The preliminary statistics collected in the wake of this new regulation have shown a clear under-representation of some of these groups on boards when compared to their presence in the labour force, and that while female representation has almost doubled in the last 10 years, parity is still far from achieved.

Pressures on boards to display diversity are multiple. Some classes of institutional investors are outspoken in this regard, using their shareholder clout to demand change.

With awareness of these issues rapidly evolving, it is to be expected that the tone will harden not only amongst these categories of investors, but also in the guidelines issued by proxy-voting advisory agencies, and that recommendations to abstain or vote “against” certain directors or committee members will be issued more systematically in the future for issues related to diversity or the insufficient representation of certain minorities on boards.

The concept of diversity, however, has many definitions, and the literature that addresses the concept has roots in the theoretical foundations of numerous disciplines. For the purposes of our analysis, we will distinguish three forms of diversity: 1) diversity of social and personal attributes, 2) diversity of skills and perspectives, and 3) diversity of values. While diversity is now considered an essential feature of board composition, it is primarily on the premise that diversity avoids the risk of a decision-making process that is vitiated by too much homogeneity and complacency.

The true form of diversity usually referred to in this regard is diversity of “skills and perspectives.” Not only is this form of diversity desirable, but it should be the primary basis for recruiting and selecting a director.

Furthermore, Boards should (will) seek to maintain a high degree of cohesion of values and ideologies amongst their members and within senior management.

Diversity of social and personal attributes provides different benefits: facilitating recruitment, promoting employee retention, helping create a climate beneficial to inclusion and enhancing social legitimacy.

The selection of new directors is therefore predicated on the evaluation of multivariate criteria, and each nomination must be thought through by weighing its effects on the various dimensions of the board’s diversity.

Based on our analysis, we therefore make the following seven recommendations:

1. Boards should promote diversity at all levels of the organization. Diversity and inclusion should not be limited only to the composition of a board, but should permeate every level of the organization;

2. "Parity" should be the target of women's representation on boards. Gender diversity should not be confused with other forms of diversity. Women, who make up half of the population, do not constitute a minority group and their presence on boards of directors should therefore statistically and quickly reach 50% for all the boards of listed companies;

3. Boards of directors should establish a board diversity profile relevant to their organization. The average board has 11 to 13 members, making it impossible to statistically represent all categories of minorities in the labour force. The level and type of diversity sought should support the company's strategy, and be conducive to an enhanced consideration of the long-term interests of a society's stakeholders;

4. Goals for diversity should be targeted in a way that respects the pace of change in board membership. Accelerating this pace may be achieved through various initiatives by the chair of the board or the governance committee, but without recourse to legislative or coercive measures (e.g., quotas);

5. Accelerated board renewal should not be sought through a mandatory retirement age for directors or through a limit on length of tenure. Such an approach is undesirable because the value of a board member is often independent of these types of criteria;

6. Each board should consider and decide on its optimal size before adding new members;

7. The board should report annually on its efforts to achieve parity, diversity and renewal.

The benefits of diversity are evident and go far beyond simply allowing companies to maintain some form of social legitimacy by complying with minimal expectations. However, for these benefits to be fully realized, the issue of diversity must be approached thoughtfully and in context.

This policy paper provides a set of recommendations to help boards address the issue in a pragmatic manner, consistent with their organization's current and future strategy. Implicit in the policy paper are strong suggestions that governments and regulators avoid any form of intervention that would force boards to artificially change their composition in the short term without taking into account their distinctive character.

Diversity must be fully embraced and instilled as a belief. This is how a real climate of inclusion will be fostered at all levels of society.

Introduction

For almost two decades, gender diversity has been a major focus in governance literature. It is more than just an academic issue: women were systematically underrepresented on boards of directors. This situation gave rise to a protest movement that regulators and legislators[2] in many countries could not ignore. Efforts were therefore made to remedy the situation or at least shed light on it.

Since then, significant gains have been made in female representation on boards of directors. However, the goals of establishing an acceptable range of gender balance have not been met overall, and much remains to be done.

In North America, questions of diversity and inclusion have become much more prominent in recent years, and issues of representativeness have expanded beyond gender. Canada has been a pioneer in this area, with disclosure requirements in the Canada Business Corporations Act (CBCA) targeting four "designated" groups, with regulations coming into effect in 2020. In addition to female representation, companies incorporated under the CBCA were required to disclose information about visible minorities, Aboriginal people and people with disabilities on their boards of directors and senior management.

Interest in this form of "broader" diversity has grown rapidly. In the United States, the state of California was the first to legislate it. In August 2021, the Securities and Exchange Commission (SEC) approved NASDAQ's proposed amendments to change its standards for companies listed there. Underrepresented minorities, defined by various characteristics, will now have to be considered when appointing new directors, since companies will be required to have a certain number of members from these communities on their board of directors, according to a set schedule.

There are numerous pressures on boards to be more diverse. Classes of institutional investors are outspoken in this regard, using their shareholder clout to demand changes of all kinds. In 2021, BlackRock CEO Larry Fink's annual letter was firmly focused on renewed diversity activism: "[a]s you issue sustainability reports, we ask that your disclosures on talent strategy fully reflect your long-term plans to improve diversity, equity, and inclusion, as appropriate by region."

Diversity is central to the ESG factors, the abbreviation for Environmental, Social and Governance (especially the "S" and "G" components), which in turn serve as evaluation elements for ESG rating agencies. The scores published by these agencies are important because they are used—by institutional investors, among others—to ensure the inclusion (or sometimes to explain the exclusion) of companies in the group of organizations considered "responsible." ESG assets (investments that are considered "responsible") represented over $3 trillion in Canada[3] at the beginning of 2020. This represented 61.8% of the country's assets under management.

In addition to institutional investors and ESG rating agencies, proxy advisory firms, such as Institutional Shareholder Services (ISS) and Glass Lewis, are also looking for broader diversity in the largest publicly traded companies and reviewing it in their analysis. With the fast-evolving sensitivity to these issues, it is expected that the tone of the guidelines issued by these agencies will harden, and that recommendations to abstain or vote "against" certain directors or committee members will be issued more systematically in future for issues related to (insufficient) diversity or representation of certain minorities (absence thereof) on boards.

2 Some legislators have acted directly, by imposing quotas, for example, and regulators have acted indirectly through specific disclosure requirements on the subject.

3 According to the *Responsible Investment Association* (2020), data from more than 100 Canadian asset managers and asset owners.

But what is the board's role in diversity? Should the composition of the boards of publicly traded companies reflect that of the labour force? How do we determine which minority groups should be considered for diversity? How can diversity be promoted on boards of directors?

To examine these fundamental questions, IGOPP has set up a Working group whose insights are presented in this policy paper, in the form of recommendations that take into account societal aspirations in terms of diversity, but also legal, practical and pragmatic aspects that aim to ensure an effective dynamic is maintained within existing boards.

Broader Diversity: The State of Affairs

In a research report[4] published in December 2021, IGOPP compiled data disclosed by the 70 S&P/TSX listed companies that had both filed their management proxy circulars at the time of data collection and were included among the companies that disclosed broader diversity information under the CBCA for the first time in 2020 (Appendix 1 outlines the key changes to the CBCA in this regard, as well as relevant excerpts from the regulations). This exercise therefore allowed for a direct comparison between 2020 and 2021, and an assessment of the actual progress on the indicators for the same companies.

The following statistics were compiled at the board level:

- The percentage of women with a seat on the board was 31.4% in 2021, compared to 30.0% in 2020;
- The percentage of directors who self-identify as members of visible minorities rose to 6.1% in 2021, compared to 4.4% in 2020;
- The proportion of directors from Aboriginal communities remained unchanged at 0.7% between 2020 and 2021;
- People who self-identify as having a disability represented 0.7% of directors in 2021, compared to 0.6% in 2020.

The following statistics were compiled at the senior management level:

- 26.3% of senior executives among the companies surveyed were women, compared to 25.5% in 2020;
- People who self-identify as members of visible minorities held 10.6% of senior management positions (8.7% in 2020);
- Only three members of Aboriginal communities held senior positions in the companies surveyed, or 0.3%, unchanged between 2020 and 2021;
- The percentage of senior executives self-identifying as having a disability was 0.9% in 2021, compared to 0.6% in 2020.

In comparing the data from the IGOPP study to the statistics for all companies subject to the CBCA (Table 1), it emerges that the largest companies in terms of market capitalization tend to have more women on their boards. For example, among the 389 companies analyzed by Corporations Canada, the percentage of women on boards was only 20% in 2021, a statistic that drops to 10% for the venture issuer subgroup.[5]

Table 1 shows a similar relationship in the United States, where S&P500 companies had an average of 30% of women on their boards in 2021. However, the percentage drops to 24.4% when the group is expanded to the Russell 3000.

4 https://igopp.org/diversite-elargie-a-la-direction-et-aux-c-a-des-societes-ouvertes-etat-de-la-situation-en-2021/ - [in French only]

5 According to Corporations Canada, a venture issuer "is an emerging company whose securities are listed on the TSX Venture Exchange or the Canadian Securities Exchange."

This difference by organization size, however, is not as pronounced at the level of the other designated groups, while the statistics remain relatively stable (and low) among the observed samples within the two countries.

Table 1

Changes in the proportion of representatives from designated groups on boards of directors in different samples

Canada and the United States, between 2020 and 2021

	IGOPP 70[b]		**CBCA**[c]		**S&P 500**[d]		**RUSSELL 3000**[e]	
	2020	*2021*	*2020*	*2021*	*2020*	*2021*	*2020*	*2021*
Women	30.0%	31.4%	17%	20%	28%	30%	21.9%	24.4%
Visible minorities	4.4%	6.1%	4%	7%	20%	21%	20.9%	21%
Aboriginal peoples[a]	0.7%	0.7%	0.3%	0.4%	<1%	<1%	N/A	N/A
Persons with disabilities	0.6%	0.7%	0.3%	0.4%	N/A	N/A	N/A	N/A

[a] Aboriginal refers to people identifying as First Nations, Métis and/or Inuit. For the S&P 500 Index, the term refers to people identifying as *Native American Indian* and/or *Native Alaskan*.

[b] Data from IGOPP report; 70 public companies listed on the S&P/TSX Index in both 2020 and 2021, and subject to the *Canada Business Corporations Act* (CBCA) that have filed their management proxy circulars at the time of the study.

[c] Data from Corporations Canada; for 2020, the sample consists of 669 companies subject to the CBCA with 469 proxy circulars reviewed. For 2021, the sample includes 536 reporting companies and 475 proxy circulars reviewed (389 with diversity data).

[d] Data extracted from the *2021 US Spencer Stuart Board Index*, by Spencer Stuart.

[e] Data extracted from *Corporate Board Practices in the Russell 3000. S&P 500, and S&P MIDCAP 400 | 2021 edition*.

Overall, Corporations Canada data for 2021 shows that of the 389 companies that disclosed diversity information, 27% had no women on their boards (19% among non-venture issuers, hence excluding the smallest companies), and 51% had no visible minorities on the board. In comparison with historical data, it was reported that in 1999, 58% of boards were all male, and 76% of boards contained no racial diversity (Daily & Dalton, 2003). Progress is steady but clearly slow.

Nevertheless, statistics from the IGOPP comparative study for the group of 70 S&P/TSX companies led to a number of observations:

- The disclosure requirement has had a seemingly immediate impact, especially on the percentage of members from visible minorities. Indeed, between 2020 and 2021, there was a relative increase of 45.2% for this designated group in the number of directors and 23.8% in the number of senior executives. This increase appears to be directly attributable to the new disclosure requirement.
- The significant effect observed for visible minorities was not as strong for women.[6]
- A number of companies have avoided the natural impediment of not having a mechanism for accelerated board turnover by expanding their board size to quickly accommodate at least one member representing diversity. For example, among firms that added a diverse member in the past year, the average board size increased from 10.17 directors in 2020 to 11.07 in 2021. This reality tends to be hidden when observing averages over larger sample sizes (Table 2).
- Despite the progress, there is still a clear underrepresentation of each of the designated groups when compared to data on the available labour force.
- A few companies used a broader definition of diversity than just the designated groups required by federal regulations. For example, 5.7% of the companies surveyed disclosed information regarding the presence (or absence) of LGBTQ+ community members on their board of directors and senior management.

BOARD RENEWAL MECHANISMS

As of January 1, 2020, the amendments to the *CBCA* require that targeted companies disclose information regarding the diversity of their senior management and board of directors under section 172.1(1) of the *Act*. The regulations specifying the diversity information to be provided under this section have not been limited to the disclosure of information regarding the composition of the board and management. Several other items must also be disclosed, including whether or not "the distributing corporation 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."[7]

6 A recent study casts doubt on the effectiveness of "comply or explain" disclosure requirements in increasing the number of women on boards (Black & al. 2021). However, there has been a significant increase in the representation of women on boards since the introduction of the CSA disclosure rules in 2015 in Canada. While the increase cannot be attributed exclusively to these disclosure requirements, it is important to qualify the results of studies that question their effectiveness.

7 *Canada Business Corporations Regulations,* Part 8.2, s. 72.2 (4) a)

The addition of members from designated groups or other underrepresented minorities will naturally occur at a rate dictated in large part by the board's turnover rate. This rate, which stood at 10% in 2021 for non-executive directors in the CSSBI 100 (Spencer Stuart, 2022), means that on average only one board member tends to be replaced annually on each board (Table 2). It should be noted that this turnover rate has been increasing for several years. In fact, 52% of the non-executive directors sitting on the boards of CSSBI 100 firms in 2021 have been in their position for five years or less. This indicates a relatively active renewal rate in recent years.

Nevertheless, since not all of the new directors are from diverse backgrounds, it is easy to see that the rate of increase in the representation of each of the designated groups will be naturally slow.

Table 2 shows a slight increase in the percentage of CSSBI 100 companies that had some form of board renewal mechanism in place in 2021, with the mandatory retirement age limit as the most common mechanism (this is also the case in the US for S&P 500 firms, to a very high degree, since 70% have adopted a mandatory retirement age policy).

These mechanisms are much less popular among smaller companies. Indeed, in Corporations Canada's extended sample (documents analyzed from 389 Canadian companies including venture issuers), only 19% have adopted at least one form of board renewal mechanism (age limit, 12%; term limit, 13%; other mechanisms, 0.5%).

Corporations Canada notes that the main reasons cited for not adopting a board renewal mechanism are: 1) it would reduce continuity or experience on the board of directors; 2) it would force experienced and knowledgeable directors to leave, and; 3) it is not required, because the corporation regularly assesses board members for effectiveness.

Table 2

Statistics on board size, age of directors and board renewal mechanisms
Canada and United States, 2020 and 2021

	Canada CSSBI 100*		United States S&P 500	
	2020	2021	2020	2021
Average board size (number of directors)	11	11	10.7	10.8
Term limits as exclusive mechanism, % of listed companies	12%	13%	6%	6%
Mandatory retirement age policy as exclusive mechanism, % of listed companies	20%	20%	70%	70%
Mandatory retirement mechanism, age limit or term limit, or both, % of companies	60%	62%	n.d.	n. d.
Average term of directors (years)	7.9	7.5	7.9	7.7
Average age of directors (years)	63.3	63.1	63.0	63.1

*Data extracted from Spencer Stuart's annual index, averaging data from the CSSBI 100 reports, for average term of directors and for average age of directors. The CSSBI 100 is a representative sample of the 100 largest publicly traded companies with annual revenues of more than $1 billion.

Interestingly, almost half (47%) of the new non-executive directors appointed in 2021 to CSSBI 100 boards were not Canadian residents (Spencer Stuart, 2022). We thus note a trend towards international recruitment, and that these non-residents have contributed to the increase the number of directors who self-identify as women and as visible minorities.

TARGETS FOR DIVERSITY

The regulations specifying the diversity information to be provided under section 172.1(1) of the CBCA provide that, for each of the designated groups, targeted companies must disclose whether or not they have "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."[8] If a target has been adopted, companies are asked to disclose the target and "the annual and cumulative progress of the corporation in achieving that target," or, "for each group for which a target has not been adopted, the reasons why the corporation has not adopted that target."

8 *Canada Business Corporations Regulations,* Part 8.2, s. 72.2 (4) f)

In IGOPP's comparative study, it was observed that the new regulations have prompted many reporting companies to set targets for the representation of designated groups, although these targets are often amalgamated (e.g., 30% diversity, i.e., women, members of visible minorities or Aboriginal communities, or people with disabilities). A similar finding can be found in the broader Corporations Canada sample (2022), where 18% of the emerging and non-emerging companies analyzed have set a target for female representation on their board of directors, up four percentage points from 2020 (14%). For the remaining designated groups, the percentages doubled between 2020 and 2021, averaging 3%. The different composition of the annual samples, however, makes it more difficult to attribute causation of this increase to the new disclosure regulations.

As with board renewal mechanisms, Corporations Canada has identified the main reasons given by reporting companies for not setting diversity targets for their boards of directors: 1) targets prevent the selection of the most qualified candidates; 2) informal procedures are already in place, and; 3) the company's size or stage of development makes it difficult to adopt targets at this time.

Several jurisdictions[9] have adopted more robust approaches to targets, particularly to ensure faster representation of women on boards. The use of quotas or targets set by law or regulation is not unanimously supported, and while the short-term effectiveness of such measures is undeniable, their impact in bringing about profound changes replicated at other levels within organizations remains to be validated.

This is also the observation of Marie-Pierre Rixain and Christophe Castaner in their recent proposed bill to accelerate economic and professional equality (France):

> Law N° 2011-103 dated January 27, 2011, known as the "Copé-Zimmermann Law," whose 10th anniversary we are celebrating this year, has had an impact: following the introduction of quotas, women now account for more than 40% of the boards of directors of major French companies. France can even pride itself on being in first place in the European Union. Nevertheless, the expected, or at least hoped-for, trickle-down effect of these quotas in the management bodies of companies has yet to materialize: women represent only 17.5% of executive committee members[10].

It should be noted that legislation applicable to public companies with headquarters in the state of California which required specific targets of persons from underrepresented minorities in the composition of the board of directors was recently declared unconstitutional[11].

More flexible approaches, such as Canada's, have ultimately produced very similar results for boards over a longer time period, but appear to have achieved greater buy-in that has also spilled over to the senior management level of large listed companies, but also more generally to many forms of organization within society, including the public service.[12]

9 These jurisdictions include countries such as Belgium, France, Germany, India, Italy, the Netherlands, Norway and Spain.

10 Translation from the explanatory statement, in Rixain, M.-P. and C. Castaner, *Proposition de loi visant à accélérer l'égalité économique et professionnelle*, N° 4000, March 23, 2021

11 *Crest c. Padilla* 20STCV 37513 Superior Court of California – County of Los Angeles, April 1, 2022 (Judge Terry A. Green) and *Crest c. Padilla* 19STCV 37561 Superior Court of California – County of Los Angeles, May 13, 2022 (Judge Maureen Duffy-Lewis).

12 According to the Treasury Board of Canada Secretariat, "[f]or several years, the vast majority of key indicators for women have shown representation rates that meet or exceed their [workforce availability] rates for all indicators across Canada. In 2021, women's share of hires in management positions reached 49.1% and their share of promotions reached 60.9%, exceeding their estimated [workforce availability] of 48.0%."

There has been considerable interest in academic circles for the effects of such binding targets, but the results are mixed when researchers attempt to relate them to a company's financial performance.

For instance, Eckbo et al. (2022) found that the constraints associated with meeting quota targets in Norway (40% women on the board) had no impact on the value of firms that had to comply with the quota. Alexiou et al. (2022) found that companies with a board of directors consisting of at least 40% women did not outperform other firms in economic terms, after analyzing 71 French listed companies for the period 2014-2019.

Fauver et al. (2021) examined the effect of reforms on board gender diversity and the monitoring role of institutional investors. Their results suggest that such reforms are associated with greater participation (ownership) by foreign institutional investors. Liang and Vansteenkiste (2022) found similar results, this time in the evaluation of firms with a minimum female representation of 30%. The authors looked at the campaign conducted by the sovereign wealth fund Norges Bank Investment Management (NBIM), which required all firms in its portfolio to have at least 30% women on their boards. After the campaign, firms that complied with NBIM's demand saw their institutional investor ownership increase and, according to the authors, their implicit cost of capital decrease, which would have positively affected the valuation of these firms.

However, the results of studies like these should be viewed with caution. Indeed, several of them are based on econometric analyses that present major methodological challenges. The often contradictory results observed betray this reality.

In the Canadian context, Black et al. (2021) find that firms that have adopted a target have, on average, a higher representation of women on their board. However, the authors note that while this representation is systematically higher for firms that adopt a target (and/or other practices, such as a written policy), it is not clear that this association is related to disclosure itself. Several companies that had adopted targets internally, without making public disclosure, saw their level of female representation increase as much or more than those that disclosed them.

DIVERSITY, INCLUSION, PARITY AND EQUITY

Several terms are used, sometimes interchangeably,[13] to address diversity issues. However, each of these terms has its own definition and it is important to clarify their meaning.

According to the World Economic Forum, **diversity** describes "the range of human differences and variations, whether they are inherent (by birth) or acquired (by experience)." Universities Canada, in deriving language from definitions adopted by various prominent institutions, defines diversity as reflecting the "presence of a range of human attributes and qualities, including but not limited to differences in race, colour, place of origin, religion, language, gender identity, sexual orientation, ability, age, socio-economic status, and geographies (rural vs urban)." Sherman Garr & al. (2014) distinguish

13 It should be noted that the terms used by reporting companies in their disclosure documents may differ from one company to another.

these characteristics based on whether or not they are visible, and specify that, according to Bersin by Deloitte, "organizations often define the diversity of their people according to unique and / or legally protected differences, such as race, gender, age, disability, sexual orientation, maternity status, and other 'non visible' qualities and backgrounds."

In an organizational setting, these differences can be the source of forms of exclusion and can lead to some forms of discrimination.

We will thus distinguish the concept of **inclusion**, which consists in "[c]reating an environment and culture where any individual or group can feel welcomed, respected, valued and supported." According to the Canadian Centre for Diversity and Inclusion, diversity is about the individual, while inclusion is about the collective. It is about creating a culture that strives for equity and embraces, respects, accepts and values difference. Inclusion is "a dynamic state of feeling, belonging, and operating in which diversity is leveraged and valued to create a fair, healthy, and high-performing organization or community" (Molefi et al., 2021).

According to the National Institute of Statistics and Economic Studies (INSEE – France), **parity** means that "each gender is represented equally. It is an instrument at the service of equality, which consists in ensuring the access of women and men to the same opportunities, rights, opportunities to choose, material conditions while respecting their specificities."

Lastly, according to Universities Canada, **equity** refers to the removal of "systematic barriers and biases so all individuals are treated fairly and have equal access to opportunities for education, employment and advancement.[14] Equity recognizes that some groups have been historically disadvantaged in accessing educational and employment opportunities. Equity takes differences into account to ensure fair processes and outcomes." The Ontario Human Rights Commission adds that it is a "distinct process of recognizing differences within groups of individuals, and using this understanding to achieve substantive equality in all aspects of a person's life."

GROUP DYNAMICS AND DECISION MAKING: THE IMPORTANCE OF DIVERSITY

The literature on diversity has multiple roots, with ramifications drawing on the theoretical foundations of many disciplines, such as psychology, anthropology, sociology, pedagogy, and management.

While diversity is now considered an essential feature of board composition, it is primarily on the premise that diversity avoids the risk of a decision-making process marred by too much homogeneity or complacency.

Irving Janis (1972, 1980), a researcher in psychology, described the phenomenon of groupthink when the search for consensus becomes so dominant that the members of a cohesive (homogeneous) group end up trying to avoid disagreement and debate, especially when making decisions. This can lead to a variety of behaviours or cognitive processes that result in individual or group thinking being

14 What was formerly termed "equal opportunity."

paralyzed by harmful mechanisms associated with the group dynamic itself.

Many researchers have studied the phenomenon of groupthink, and having more diversity in groups (making the group less ideologically homogeneous) is among the solutions proposed (e.g. Smith, 2020).

Jehn et al. (1999) have focused on the underlying aspects of diversity, noting that the creation of knowledge and the discovery of ideas by groups seem to depend on the presence of diverse opinions and perspectives. The authors therefore distinguish three types of diversity: 1) social category (explicit differences among group members such as race, gender and ethnicity); 2) informational (differences in the knowledge bases and perspectives that members bring to the group, differences that are likely to occur based on differences among group members in education, experience and expertise), and; 3) value (members of a workgroup differ in terms of what they think the group's real task, goal, target or mission should be). The authors further point out that social category diversity (often referred to as diversity that is not distinguished from other forms, and what other authors refer to as observable factors [e.g. Kang et al., 2007]) does not guarantee informational diversity or value diversity.

According to Jehn et al. (1999), for a group decision to be reached more effectively, members must collectively display high informational diversity and low value diversity. The latter probably explains why group cohesion—even if this characteristic carries a risk of groupthink—is also often associated with better performance (Hart, 1991). Value homogeneity among group members is in itself a determinant of the level of cohesion, but it is not opposed to social category diversity or informational diversity.

Mintz and Wayne (2016) argue that too much diversity can also lead to a phenomenon the authors termed 'polythink syndrome', "a group decision-making dynamic whereby different members in a decision-making unit espouse a plurality of opinions and divergent policy prescriptions, resulting in a disjointed decision-making process or even decision paralysis".

Van der Walt and Ingley (2003) agree that while boards should reflect their shareholder base and the broader social environment, diversity in itself is not enough to constitute effective boards. According to the authors, boards should focus primarily on merit criteria when selecting directors. Liepold and Viehweger (2022) concur, with their study showing that board diversity should be seen as diversity defined by different types of directors with a unique set of backgrounds, experiences, expertise and personalities. This diversity, which is more than the sum of the diversities of individual attributes, more adequately describes the complexity inherent in a board's processes and work.

The concept of diversity therefore is multidimensional, and each of these dimensions must be considered in order to measure it and ensure it is fully effective.

RESEARCH ON BROADER DIVERSITY

Few studies have focused specifically on diversity characteristics other than gender diversity. Authors have looked at race and ethnicity, and report that this form of diversity contributes to different cognitive perspectives and affects group dynamics and decision making, which in turn impacts firm-level outcomes (Johnson et al., 2013), although no statistical relationship can be found between increased board diversity and future financial performance (Carter et al., 2010). While the literature supports the idea of diversity for its moral and social value, the actual results for linking diversity to performance from a business perspective are less conclusive (van der Walt & Ingley, 2003; Kagzi & Guha, 2018).

Nevertheless, some studies conclude that demographic diversity in a group's composition confers benefits on organizations, especially when that group is required to participate in tasks leading to decision making (Watson et al., 1993; Davis, 2018). It also appears that transnational acquisitions almost systematically lead to a change in board composition, which then also tends to take on a multinational dimension (Staples, 2008). Boards composed in this way are then likely to maintain this diversity afterward, and companies with such boards tend to make more transnational acquisitions.

Elsass and Graves (1997) qualify these findings, however, stating that adding diversity to a group is at most a backdrop to potential change. Indeed, the authors add that it is only when each and every member of the group enjoys high quality task and social interactions can the full benefits of diversity be realized. Saint-Onge and Serret (2018) add that the diversity of a board of directors requires the ability to productively manage certain interpersonal difficulties or barriers that may undermine a healthy and necessary cohesion among its members.

All in all, as Milliken and Martins (1996) point out, the research findings "on heterogeneity in groups suggest that diversity offers both a great opportunity for organizations as well as an enormous challenge". Indeed, the authors note that diversity "appears to be a double-edged sword, increasing the opportunity for creativity as well as the likelihood that group members will be dissatisfied and fail to identify with the group".

Thinking about broader diversity must take into account the undeniable benefits that have been identified in the literature but must also consider the risks that have been raised, especially with respect to group dynamics.

DIVERSITY AS A TOOL FOR RECRUITMENT AND RETENTION

The growth observed in voluntary disclosure of diversity not only serves the expressed transparency needs of shareholders, but also informs other stakeholders, such as employees, suppliers, customers and the communities in which companies operate (Adediran, 2022). With this in mind, some companies place considerable value on diversity disclosure, and efforts to achieve board and senior management representation are seen as necessary to instill a true climate of inclusion within the organization.

A study by Ho Choi et al. (2022) found that job seekers were more likely to apply to firms that disclosed information about diversity and would be willing to accept a lower annual salary ($1,366 lower on average) for an equivalent job with a company that had a high diversity disclosure score.

Diversity in its representative form of minorities present among the main stakeholders would thus give a company a certain level of attractiveness, facilitating recruitment, access to a larger pool of candidates and employee retention, among other things, through a strong climate of inclusion.

DIVERSITY OR REPRESENTATIVENESS?

A review of literature on diversity shows that the concept is multidimensional. Figure 1 summarizes the main dimensions discussed, distinguishing the concept of representativeness, which is often mistakenly thought to be the central element in diversity. Drawing on the underlying elements examined by Jehn et al (1999), the following three dimensions can be identified:

- Diversity of **social and personal attributes**, which include differences in race, colour, country of origin, religion, language, sexual orientation, physical abilities (disabilities), age, etc.;
- Diversity of **skills and perspectives**, akin to what Jehn et al. (1999) termed informational diversity, which includes differences in the knowledge bases and perspectives that members bring to the group, which are likely to arise because of differences in education, experience and expertise;
- Diversity of **values**, i.e. how much the members of a group differ in terms of what Allaire and Firsirotu (1988) describe as instrumental values that include, for example, the way in which they perceive and understand the organization's role and aim, the degree of control it exercises over its environment, its orientation vis à vis the market, customers, technology and products, its definition of success and its rules of performance, the nature and the origin of its authority, its responsibility toward individuals, and their duty toward it, the nature of interpersonal relations, etc.

The true form of diversity that is usually referred to in support of decision making is diversity of "skills and perspectives." Not only is this form of diversity desirable, but it **should be the primary basis for all planning when it comes to director recruitment and selection**.

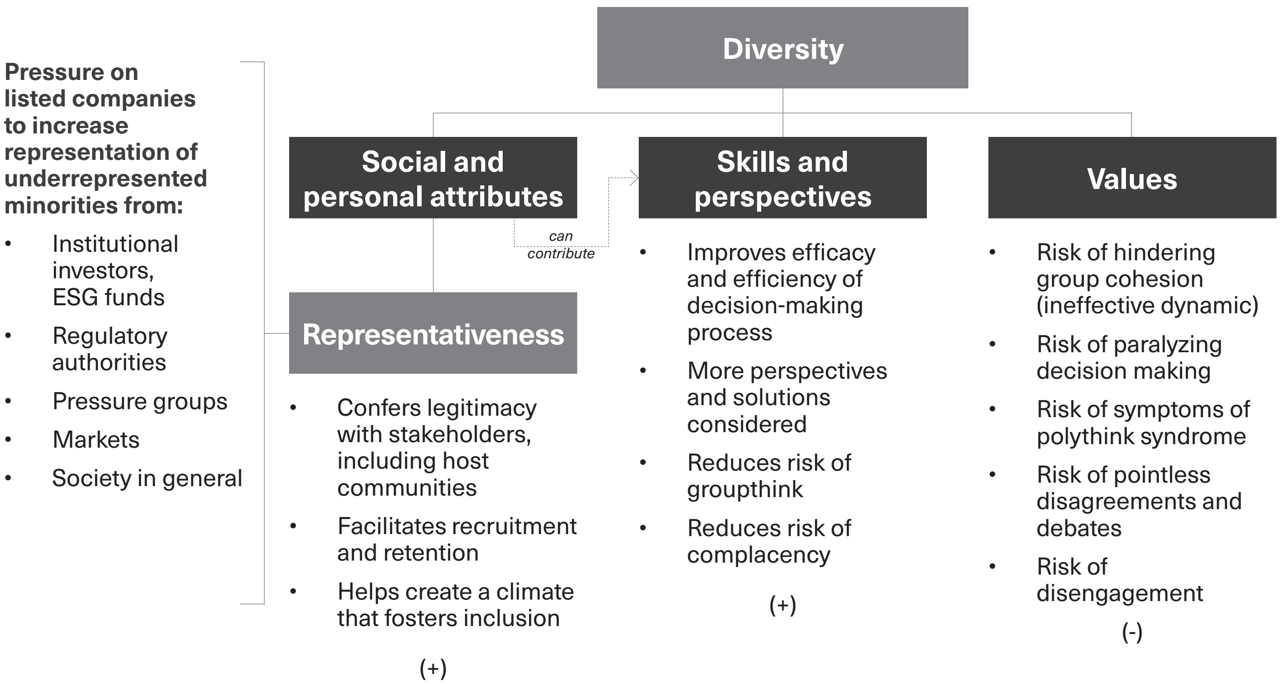
In addition, **a high degree of cohesion of values and ideologies will be sought within the board of directors and senior management**. Therefore, the diversity that can be established on the board must be done with people who have compatible values.

Figure 1 shows that the diversity efforts of many stakeholders indicate their confusion with the concept of "representativeness" and mistakenly view diversity of social and personal attributes as the only salient dimension of diversity.

Diversity of social and personal attributes may contribute to diversity of skills and perspectives or diversity of values, but it may also have no impact on any of the other dimensions of diversity. Regardless of the relationship between diversity of social and personal attributes and the other dimensions, it is important to note that this form of diversity should not be overlooked. Indeed, there are numerous benefits associated with it: for instance, it helps promote employee recruitment and retention, contributes to creating a climate that fosters inclusion, not to mention the social legitimacy it confers.

Figure 1

Dimensions of diversity



Recommendations

SOME RECOMMENDATIONS ON DIVERSITY

"Any organization governed by a board of directors must strive to constitute a board that is both *legitimate and credible*."[15] The credibility of the board is a prerequisite for its effectiveness, and this "is measured not only by its in-depth knowledge of the company's industry and its markets, of its business model, and value-creation drivers, but also by the integrity and the trustworthiness of its board members."[16]

In an earlier policy paper[17], IGOPP proposed that when a board is looking to select a new member, the drawing up of the profile of experience and expertise "should begin by identifying industries with characteristics that closely tract those of the industry in which the target company operates: such as capital intensity, time horizon of investments, industrial vs. consumer markets, [...], key success factors, generic strategies."

The board's credibility is therefore based on the diversity of skills and perspectives, the dimension of diversity that is essential to achieving the highest potential for decision making.

It might sometimes seem hard to find the qualities of independence and credibility in the same person and to add to the diversity of social and personal attributes of the board, while minimizing differences in values within the group to keep it cohesive and collegial.

The trade-off between the various qualities, all of which are desirable, **should not, however, be a compromise that would ultimately undermine the credibility of the board as a whole**. This is an essential premise that must be kept in mind before we make the following recommendations.

The selection of new directors is therefore predicated on the evaluation of multivariate criteria, and each nomination must be thought through by weighing its effects on the various dimensions of the board's diversity. It is becoming increasingly risky to limit the search for candidates to networks of existing directors. In this regard, recruitment firms should play a much more important role in building diversity pools that also meet the other criteria usually considered when selecting candidates.

15 Allaire, Y. *The Independence of Board Members: A Quest for Legitimacy*, Policy Paper N°3, IGOPP, 2008

16 Allaire, Y. *Board members are independent but are they legitimate and credible?* Policy Paper N°10, IGOPP, 2018

17 https://igopp.org/en/from-independent-to-legitimate-and-credible-the-challenge-facing-boards-of-directors/

RECOMMENDATION #1

Boards should promote diversity at all levels of the organization.

As such, they should ensure that their organization has inclusion policies[18] in place and that these policies are diligently applied. Diversity and inclusion should not be a boardroom issue, but a concern that is expressed and experienced at every level of the organization, including specifically senior management.

Large publicly traded companies must show that they reject all forms of racism and injustice and that they fight against the creation of internal systems that trivialize discrimination. Their legitimacy in civil society is now at stake.

Beyond social recognition and legitimacy, a board whose members have a variety of social and personal attributes can contribute to a greater diversity of skills and perspectives. In addition, a diverse board has many potential benefits, such as: 1) helping to bring in more diverse knowledge and points of view; 2) mitigating the risk of groupthink; 3) demonstrating and fostering a more inclusive corporate culture; 4) helping provide a broader view of risk management, and; 5) contributing to a better brand and corporate reputation by aligning its stated values with its actions.

The literature also shows that having forms of diversity that are representative of the employees and the population of the main communities in which the business operates at the highest levels of a company helps facilitate employee recruitment and retention.

Boards should not ignore such benefits.

Given the importance of this issue, it is therefore essential for boards to ensure that diversity is fully integrated and valued at all levels of the organization by emphasizing these aspects to management, making the latter accountable for achieving levels of representativeness—established jointly with management based on the company's reality—among employees and management positions at every level.

18 Although there is no legal requirement to do so in Canada.

RECOMMENDATION #2

The concept of "parity" should be used to describe the representation of women on boards.

The high risk of confusing gender diversity with other forms of diversity calls for a more specific lexicon. When discussing gender diversity, it would now be more appropriate to refer to the **concept of parity**, which can be achieved by an acceptable mix range (pegged at between 40% and 60% in a 2009 IGOPP policy paper) that also takes into account the natural size of boards of directors (often a small odd number). Women, who make up half of the population, are not a minority group and should therefore statistically represent half of the directors on all boards of listed companies.

The notable progress in female representation on boards, especially over the past decade, must not be held back by the pursuit of another goal for diversity, hence the importance of keeping the issue of parity a priority.

The board or nominating committee must therefore remain committed to systematically including women in the lists of candidates who meet the desired competency profile when replacing outgoing directors.

RECOMMENDATION #3

Boards of directors should develop a board diversity profile relevant to their organization.

This profile is not systematically a reflection of the labour force in a given country. Indeed, there must be discussion about the composition and specifics of the company's various major stakeholders (e.g., customers, employees, suppliers, host communities, countries targeted for possible geographic expansion, etc.). The level and type of diversity sought should support the company's strategy, and be conducive to an enhanced consideration of the long-term interests of a society's stakeholders.

Filling positions solely to meet arbitrary expectations set by external stakeholders should be avoided. The average board has 11 to 13 members, making it impossible to statistically represent all categories of minorities in the labour force.

Diversity is defined by a range of attributes and qualities including, but not limited to, differences in race, colour, country of origin, religion, language, sexual orientation, ability, age, socio-economic status and geographic location. No board will ever be large enough to represent the full range of minorities.

"To choose is to give up," to quote André Gide. However, the choice must be guided.

Although mandatory disclosure requires that federally incorporated companies provide information about a few designated groups as set out in the *Canada Business Corporations Regulations*, there are many forms of diversity and other minority groups that may be more relevant to the company's reality. These groups should not be overlooked or omitted.

In general, if all boards were to conduct this exercise in a meaningful way, the sum of the directors of all listed companies should form a group that tends to statistically reflect the diversity of the labour force.

An example of an approach to developing a relevant diversity profile for a board of directors is provided in Appendix 2.

RECOMMENDATION #4

Goals for diversity should be targeted in a way that respects the pace of change in board membership. Accelerating this pace may be achieved through various initiatives by the chair of the board or the governance committee, through incentives (e.g., through disclosure requirements), but without recourse to legislative or coercive measures (e.g., quotas).

Each company has its own characteristics. Its uniqueness is often the result of its history, its past and present successes or failures, contingencies associated with, for example, its form of ownership, level of competition in the industry, regulations governing the protection of intellectual property or dominant technologies, etc.

"[T]he quality of governance and a board's effectiveness result as much from subtle, dynamic, intangible factors as from strict observance of the fiduciary and formal aspects of governance. These factors take shape in social interaction among members, in the style of the Chair's leadership, in what happens before and after formal meetings and during discussions at board and committee meetings."[19]

Also, the pace of integration of new directors—**whether or not they represent diversity**—must respect the board's ability to maintain its collegiality, its own internal culture that fosters a constructive and productive dynamic among board members. This dynamic is very important and is probably the fundamental reason why boards should make changes at a pace that is appropriate for them. For this reason, it is essential to reduce the risks associated with increasing the diversity of values too much or too fast. The time needed for a new person to fully integrate into an existing group, to understand the nuances of what their peers are saying, the unspoken things that are sometimes more powerful than what is said, etc. is often minimized. While intangible, these elements are nevertheless crucial.

The promotion of diversity will gain support if it takes the form of incentives[20] that are consistent with each board's capacity to welcome and integrate them.

RECOMMENDATION #5

Accelerated board renewal should not be sought through a mandatory retirement age for directors or through a limit on length of tenure.

Such an approach is undesirable because the value of a board member is often independent of these types of criteria. It is also in line with the previous recommendation to respect the pace of integration of new directors specific to each company.

19 Allaire, Y. *Enhancing the Performance of Boards of Directors: An exchange with experienced board members*, IGOPP, 2016.

20 In addition to diversity disclosure requirements, there are a number of initiatives that contribute to the achievement of goals. The 50-30 Challenge launched in 2020 by the Government of Canada with various partners is a good example, with many organizations (including non-profits) signing up for the program. Through such initiatives, tools and resources are being created to help participating organizations adopt practices that enable them to be more diverse and inclusive.

This is not an implicit endorsement of the status quo—quite the contrary. Boards must ensure that they maintain an informed and contextual rate of turnover. The pitfalls associated with a board where there is little or no change are well known, including the risk of a group of directors becoming lax or complacent with management. Depending on various factors such as strategic directions and priorities, the time required for a director to fully master the ingredients needed for the success of the business model and the regulatory specifics of the industry, future skill and experience needs, etc., the board must determine the rate of turnover that ensures a healthy balance between existing wisdom and the strengthening or broadening of desired characteristics, attributes or expertise.

A thorough evaluation of the board can be helpful in the absence of a formal renewal mechanism, if such a mechanism is contraindicated by a given company's specific characteristics. In this regard, the board chair's role should not be underestimated; it is important for the chair to demonstrate courage when a member does not meet expectations in terms of their contribution or when their expertise is no longer aligned with future strategic priorities.

Renewal based on the actual contribution of current members, the board's overall effectiveness and the anticipated future need for skills and experience will always be more beneficial than forced replacement by a mechanical rule that lacks judgment.

As with its parity goals, the board or nominating committee should systematically include candidates representing diversity in the lists of those who meet the desired competency profile when replacing outgoing directors.[21]

RECOMMENDATION #6

Each board should consider and decide on its optimal size before adding new members.

Optimal size will depend on each board's circumstances. A larger board will often provide for fuller and more varied discussions, but too many directors will make it harder for all members to contribute individually to the discussion, sometimes because of time constraints, and may also make it harder to make decisions when requirements call for a prompt decision. In fact, many studies show that too many directors can hamper the exchange of ideas and lead to decisions being approved without any discussion (Saint Onge and Serret, 2018). Moreover, from a purely logistical perspective, the greater the number of directors, the harder it is to reach consensus on dates for meetings.

Increasing the size of the board to quickly make room for candidates representing diversity could be an attractive option if and only if the current size allows. Each board should consider and eventually decide on its optimal size, based on current and future needs. This size may vary over time, depending on the board's compliance requirements (sometimes determined by the nature and scope of the business).

Achieving a short-term diversity target at the expense of board effectiveness by expanding beyond optimal size is not a wise choice.

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21 Based on the recommendations for selecting directors in IGOPP's Policy Paper N°10, *Board members are independent but are they legitimate and credible?*; "the board should look for new members who are independent, add to the board's diversity, and are credible."

RECOMMENDATION #7

The board should report annually on its efforts relating to gender, diversity and renewal.

Disclosure has already proven to be an effective incentive for achieving parity targets and should be maintained. As discussed in Recommendation #2, there is a high risk of confusing the issue of women's representation on boards, and it should therefore be kept separate. As such, companies should, at a minimum, disclose: 1) the percentage of women on the board; 2) the willingness to reach (or maintain) a parity target; 3) if the parity target is not reached, explain how the board intends to reach this target (what steps are planned).

When it comes to diversity of social and personal attributes, *the information provided should not be personal*. The purpose of this reporting is to promote diversity and demonstrate that it is reflected in the highest levels of decision making in society. It is not about singling out individuals. Beyond the designated groups retained by government authorities for reporting companies, if called for by the situation, a description of the relevant diversity specific to the organization should be provided. For the board of directors and senior management, mention of the types of diversity represented (in list form, for example), the total number of directors and senior executives (separately) who represent one or another form of diversity, as well as the percentages that these two numbers represent of the total number of directors and senior executives, seem to us to be sufficient and relevant information to achieve the desired target.

The question of targets for representing diversity within the highest decision-making bodies (board of directors and senior management) remains a delicate issue. Indeed, the relevant diversity will naturally be multidimensional, which implies choices that will be made according to available candidates, among others. However, the setting of targets by boards is a tool that has proven its effectiveness. We encourage boards to set such targets—as a percentage of the number of directors—even if they encompass many forms of social and personal attributes, in order to demonstrate a strong commitment to achieving true diversity. Boards should disclose this percentage and provide a brief explanation of the steps taken to achieve the target.

A short report on the adoption or implementation of company-wide equity and inclusion policies should be included in the annual disclosure statement. To support this dimension, companies are encouraged to include data about diversity across the organization, not just at the board and senior management level.

Lastly, in the absence of a formal mechanism, the board should provide an explanation of how it addresses issues of renewal.

Conclusion

The importance of “broader” diversity illustrates the evolution of civil society’s expectations of its major institutions. Large publicly traded companies are now observed and scrutinized through the prism of these new expectations, where their role and responsibilities toward stakeholders and towards civil society in general are now perceived (rightly or wrongly, depending on the case) much more broadly. In this regard, some large institutional investors are also acting as watchdogs vis-à-vis listed companies.

Board diversity is nonetheless not a new issue. Academics have been interested in it for several decades, especially if all the research on group dynamics is included. The benefits of diversity are evident and go far beyond simply allowing companies to maintain some form of social legitimacy by complying with minimal expectations. However, for these benefits to be fully realized, the issue of diversity must be approached thoughtfully and in context.

This policy paper provides a set of recommendations to help boards address the issue in a pragmatic manner, consistent with their organization’s current and future strategy. Implicit in the policy paper are strong suggestions that governments and regulators avoid any form of intervention that would force boards to artificially change their composition in the short term without taking into account their distinctive character.

Diversity must be fully embraced and instilled as a belief. This is how a real climate of inclusion will be fostered at all levels of society.

References

- Adediran, A.O., “Disclosing Corporate Diversity.” Forthcoming. *Virginia Law Review*, Vol. 109, 2023 (February 14, 2022, issue).
- Allaire, Y. “Board members are independent but are they legitimate and credible?” *Policy Paper No. 10*, IGOPP, 2018
- Allaire, Y. “The independence of Board Members: a Quest for Legitimacy,” *Policy Paper No. 3*, IGOPP, September 2008
- Allaire, Y. *Enhancing the Performance of Boards of Directors: An exchange with experienced board members*. IGOPP, 2016
- Allaire, Y. and M. Firsirotu. « Un modèle multifactoriel pour l’étude des organisations », in *La Culture organisationnelle : Aspects théoriques, pratiques et méthodologiques*, Gaëtan Morin, chap. 4, 1988.
- Black, S., M. Giammarco & M. Yap. *All on Board: Does Disclosure Help Create More Inclusive Boardrooms?* Ottawa: The Conference Board of Canada, 2021.
- BlackRock, *Larry Fink’s 2021 Letter to CEOs*, 2021
- Cadoux, A., C. Alexiou, and S. Vogiazas, “Corporate Board Gender Quota and Performance of French Listed Companies” (January 1, 2022). Available at SSRN: https://ssrn.com/abstract=4016428
- Carter, D.A., D’Souza, F., Simkins, B.J. and W.G. Simpson. “The gender and ethnic diversity of U.S. boards and board committees and firm financial performance.” *Corporate Governance: An International Review*, vol. 18, 2010, pp.396-414.
- Canadian Centre for Diversity and Inclusion. “Defining Diversity.” From https://ccdi.ca/our-story/diversity-defined/, viewed February 24, 2022.
- Ontario Human Rights Commission. “Appendix 1: Glossary of human rights terms.” From https://www.ohrc.on.ca/en/teaching-human-rights-ontario-guide-ontario-schools/appendix-1-glossary-human-rights-terms , viewed February 24, 2022.
- Corporations Canada. “Diversity of Boards of Directors and Senior Management of Federal Distributing Corporations – 2020 annual report.” Innovation, Science and Economic Development Canada, 2021, 22 p.
- Corporations Canada. “Diversity of Boards of Directors and Senior Management of Federal Distributing Corporations – 20201 annual report.” Innovation, Science and Economic Development Canada, 2022
- Daily, C.M. and D.R. Dalton. “Are Director Equity Policies Exclusionary?” *Business Ethics Quarterly*, Vol. 13, No. 4 (Oct. 2003), pp. 415-432.
- Dauphin, F. et al., “The quest for diversity of boards of directors and in senior management of public corporations: the situation in 2021.” *IGOPP research report*, December 2021, 32 p.
- Davis, M.W. “Absence of Diversity at the Leadership Level.” *Journal of Practical Consulting*, Vol. 6, No. 1, 2018, pp.148-154.
- Debevoise & Plimpton, ESGAUGE, KPMG, Russel Reynolds, The conference board, Weinberg Center for Corporate Governance. “Corporate Board Practices in the Russell 3000, S&P 500, and S&P midcap 400 | 2021 edition.” *Esgauge Intangibles AI*, 2021, 38p.

- Eckbo, B.E., K. Nygaard and K.S. Thorburn. “Does Mandatory Board Gender-Balancing Reduce Firm Value?” *Tuck School of Business Working Paper N° 4039292*. European Corporate Governance Institute – Law Working Paper No. 629/2022, February 20, 2022, 41p.
- Elsass, P. M., and L. M. Graves. 1997. “Demographic diversity in decision-making groups: The experiences of women and people of color.” *Academy of Management Review 22*: 946-973.
- Fauver, L., M. Hung, A.G. Taboada and E.J. Wang, “Boardroom Gender Diversity Reforms and Institutional Monitoring: Global Evidence” (November 2, 2021). Available at SSRN: https://ssrn.com/abstract=4053062
- Griffin, Em. “Groupthink of Irving Janis,” Ch. 18 in *A First Look at Communication Theory*, 2006.
- Hart, P. “Irving L. Janis’ Victims of Groupthink.” *Political Psychology*, Vol. 12, N° 2, 1991, pp.247-278.
- Ho Choi, J., J. Pacelli, K.M. Rennekamp and S. Tomar. “Do Jobseekers Value Diversity Information? A Mixed Methods Investigation.” *SMU Cox School of Business Research Paper N° 22-04*, April 25, 2022, 57p.
- National Institute of Statistics and Economic Studies INSEE. “Parity and equality between men and women.” *Definitions, methods and quality*, May 2019, from https://www.insee.fr/en/metadonnees/definition/c1296, viewed February 24, 2022.
- Janis, I. *Victims of Groupthink – A Psychological Study of Foreign-Policy Decisions and Fiascos*. Houghton Mifflin, 1972.
- Janis, I. “Groupthink,” *Readings in Managerial Psychology*, Leavitt et al. University of Chicago Press, 3rd edition, 1980.
- Jeffrey, J., MacDougall, A. and J., M. Valley. “2021 Diversity Disclosure Practices – Diversity and leadership at Canadian public companies.” *Corporate & Investor Governance, OSLER*, 2021, 90p.
- Jehn, K.A., G.B. Northcraft, and M.A. Neale. 1999. “Why differences make a difference: A field study of diversity, conflict, and performance in work groups.” *Administrative Science Quarterly* 44: 741-763.
- Johnson, S. G., K. Schnatterly and A. D. Hill. “Board Composition Beyond Independence: Social Capital, Human Capital, and Demographics.” *Journal of Management*, Vol. 39, N° 1, January 2013, pp. 232-262.
- Kagzi, M. & M. Guha. “Board demographic diversity: a review of literature.” *Journal of Strategy and Management*, Vol. 11, N° 1, 2018, pp.33-51.
- Kang, H. Cheng, M., & S.J. Gray. “Corporate Governance and Board Composition: diversity and independence of Australian boards.” *Corporate Governance: An International Review*, Vol. 15, N° 2, 2007, pp.194-207.
- Liang, H. and C. Vansteenkiste. “Delegated Gender Diversity.” *ECGI Finance Working Paper No 814*/2022, February 2022, 60p.
- Liepold, C. & M. Viehweger. *The Whole is More than the Sum of its Parts: A Type-Based Board Diversity Approach*, March 7, 2022. Available at SSRN: https://ssrn.com/abstract=4039546
- Milliken, F.J. and Martins, L.L. “Searching for Common Threads: understanding the multiple effects of diversity in organizational groups.” *Academy of Management Review*, 21, 1996, pp.402–433.

- Mintz, A. & C. Wayne. “The Polythink Syndrome and Elite Group Decision-Making.” *Political Psychology*, Vol. 37, N° S1, February 2016, pp.3-21
- Molefi, N., J. O’Mara and A., Richter. “Global Diversity & Inclusion Benchmarks.” *Standards for Organizations Around the World*, 2021, 76p.
- Responsible Investment Association, *2020 Canadian RI Trends Report*, 2020.
- Rixain, M.-P. and C. Castaner, *Proposition de loi visant à accélérer l’égalité économique et professionnelle*, N° 4000, March 23, 2021
- Saint-Onge, S. and V. Serret. « La pensée groupale au sein des conseils d’administration : proposition d’un modèle, » *Finance Contrôle Stratégie*, Vol. 21, N°. 2, 2018.
- Treasury Board of Canada Secretariat. *Employment Equity in the Public Service of Canada for Fiscal Year 2020 to 2021*. Annual Report, 2022.
- Sherman Garr, S., K. Shellenback and J. Scales. “Diversity and Inclusion in Canada: the Current State.” *Bersin by Deloitte*, August 2014, 53p.
- Smith, K. “How Diversity Defeats Groupthink.” *Rotman Management*, Fall 2020, pp. 36-41.
- Spencer Stuart. “2020 Canada Spencer Stuart Board Index.” *Spencer Stuart*, 2021, 52p.
- Spencer Stuart. “2021 Canada Spencer Stuart Board Index.” *Spencer Stuart*, 2022, 57p.
- Spencer Stuart. “2020 U.S. Spencer Stuart Board Index.” *Spencer Stuart*, 2020, 58p.
- Spencer Stuart. “2021 U.S. Spencer Stuart Board Index.” *Spencer Stuart*, 2021, 66p.
- Staples, C.L. “Cross-border acquisitions and board globalization in the world’s largest TNCs, 1995-2005.” *Sociological Quarterly*, vol. 49, 2008, pp.31-49.
- UNESCO. “Article 4.1 of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions.” https://en.unesco.org/creativity/cultural-diversity-0, viewed February 24, 2022.
- Universities Canada. “Presidents’ Practices and Perspectives on EDI.” From https://www.univcan.ca/presidents-practices-and-perspectives-on-edi/, viewed February 24, 2022
- Van der Walt, N. & C. Ingley “Board Dynamics and the Influence of Professional Background, Gender, and Ethnic Diversity of Directors.” *Corporate Governance: An International Review*, Vol. 11, N°. 3, 2003, pp. 218-234.
- Watson, W.E., Kumar, K., & Michaelsen, L.K. 1993. “Cultural diversity’s impact on interaction process and performance: Comparing homogeneous and diverse task groups.” *Academy of Management Journal*, 36: 590-602
- World Economic Forum. “*Diversity, Equity and Inclusion 4.0: A toolkit for leaders to accelerate social progress in the future of work*.” June 2020, 20p.

Appendix 1

I. CHANGES TO THE CBCA

Since January 1, 2020, targeted companies are required to report on the diversity of their management and board of directors under section 172.1 (1) of the CBCA. This section, which was amended 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 new features is that diversity issues are now considered beyond the board of directors, as senior management is now considered for diversity reporting.

The regulation, issued in June 2019, specifies that for "For the purpose of subsection 172.1(1) of the Act, **members of senior management** means, in respect of a distributing corporation, the following individuals (i.e., 5 to 7 people):

A. the chair and vice-chair of the board of directors;

B. the president of the corporation;

C. the chief executive officer and chief financial officer;

D. the vice-president in charge of a principal business unit, division or function, including sales, finance or production; and

E. an individual who performs a policy-making function in respect of the corporation.

The changes also affect the scope of the term "diversity," previously considered only for gender diversity, as well as the scope of information that must be disclosed.

In the regulation that specifies the diversity information to be provided under section 172.1 (1), reporting companies must indicate "*whether or not the board of directors or its nominating committee considers the level of the representation of designated groups on the board in identifying and nominating candidates for election or re-election to the board and, as the case may be, how that level is considered or the reasons why it is not considered*".[22] They must also indicate "*whether or not the distributing corporation considers the level of representation of designated groups when appointing members of senior management and, as the case may be, how that level is considered or the reasons why it is not considered*."[23]

Furthermore, the regulation also requires companies to provide "*the number and proportion, expressed as a percentage, of members of each group who hold positions on the board of directors; and for each group referred to in the definition designated groups, the number and proportion, expressed as a percentage, of members of each group who are members of senior management of the distributing corporation, including all of its major subsidiaries*."[24]

22 *Canada Business Corporations Regulations,* Part 8.2, s. 72.2 (4)

23 *Ibid.*

24 *Ibid.*

Reference should be made to Section 3 of the Employment Equity Act for the definition of "designated groups." It specifies that these groups are women, Aboriginal peoples, people with disabilities and members of visible minorities. Specific definitions for each of the designated groups can be found in Section II of this Appendix.

To identify designated groups, employers use self-identification (the excerpt from the Employment Equity Act discussing this is presented in Section III of this Appendix).

Since the regulation came into effect, companies subject to the CBCA must now indicate "whether or not the distributing corporation has, 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"[25] or members of senior management.

Furthermore, in a "comply or explain" approach[26], 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."[27]

II. APPLICABLE DEFINITIONS

Excerpt from Section 3 of the *Employment Equity Act*

designated groups means women, Aboriginal peoples, persons with disabilities and members of visible minorities.

Aboriginal peoples means persons who are Indians, Inuit or Métis.

members of visible minorities means persons, other than Aboriginal peoples, who are non-Caucasian in race or non-white in colour.

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 an 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.

25 *Canada Business Corporations Regulations,* Part 8.2, s. 72.2 (4)

26 Under this approach, the government relies on investor reaction as a potential consequence of non-compliance. A company that fails to comply with disclosure standards, or fails to meet what is considered good practice in terms of representativeness, for example, would potentially face the anger of investors who would shun the stock, or be subject to negative media attention.

27 *Canada Business Corporations Regulations,* Part 8, art. 72.2 (4)

III. HOW TO ACHIEVE EQUITY AND ANALYSES REQUIRED

Excerpt from Section 9 of the *Employment Equity Act*

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.

Appendix 2

EXAMPLE OF HOW TO DEVELOP A RELEVANT DIVERSITY PROFILE FOR A BOARD OF DIRECTORS

Most boards of directors have already adopted the use of a competency and expertise matrix. This matrix must be well designed and thought out, taking into account the company's current and future needs, in particular with consideration for the strategic directions adopted.

In its usual form, it includes specialized functions, required experience and skills needed for the board to fully play its fiduciary and strategic role. In generic terms, the matrix resembles the example below.

	Directors						
Competencies, experience and expertise	A	B	C	D	E	F	G
Legal and regulatory affairs							
Governance							
Risk management							
Accounting expertise							
Human resources and compensation							
Knowledge of the industry							
Environment							
Other							

The matrix is used to establish the mix of competencies, skills and other qualities that will ensure a diversity of skills and perspectives to build a credible board.

However, it does not usually take into account diversity of social and personal attributes, while diversity in the usual sense is considered more from the perspective of representativeness of the labour force, and often according to pre-established groups (designated groups in Canada, for example).

The diversity of social and personal attributes should be seen as an opportunity to refine the process of building the competency matrix, focusing on those aspects that will support the current and future strategy of the organization, including a much more refined understanding of the perspectives of important components of the organization's stakeholder population.

Information therefore needs to be collected on several levels. Here are some examples of questions a board may wish to answer to further its understanding of diversity:

- What are the demographics of our customer base (ethnicity, age groups, mother tongue, etc.)? Is this composition similar among our employees? Does it reflect the host communities or does it differ in composition?
- Does the board represent the countries or geographic regions in which the company operates?
- Are we planning acquisitions or expansion into new countries or geographic regions?
- Do our company's operations result in negative externalities? Is a minority particularly affected by our operations? Is a minority dependent on our operations? How is our company perceived in terms of equity and inclusion?
- Will our ambitions and strategic directions change the answers to the previous questions?

The answers to these questions and any others that are deemed useful will then make it possible to establish a list of social and personal attributes that specifically reflect society's needs. A new matrix[28] (or an addition to the conventional matrix) can then be created to establish the relevant diversity profile of social and personal attributes, thus introducing a second dimension that supports, reinforces and deepens the diversity of skills and perspectives.

28 The disclosure of a matrix such as this should not be systematic or mandatory; it is intended primarily for internal use. The use of self-identification by board members to establish their membership in various groups representing diversity requires respect for privacy and an assurance of confidentiality. Recommendation #7 of this policy paper addresses disclosing characteristics of social and personal attribute diversity, including the importance of not targeting or naming individuals.

About IGOPP

Created in 2005 by two academic institutions (HEC Montréal and Concordia University – The John Molson School of Business), the Stephen Jarislowsky Foundation and the Autorité des marchés financiers, the Institute for governance (IGOPP), under the direction from 2005 to 2020 of Professor Yvan Allaire and Mr. Michel Nadeau, has become a centre for excellence about governance of public and private organizations. Through research, training programs, policy papers and participation in public debates, IGOPP has become a key reference on all issues of governance in the private and public sectors.

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- Assume intellectual leadership in the area of governance;
- Strengthen fiduciary governance in the public and private sectors;
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IGOPP's Policy Papers

The Case for Dual-Class of Shares
2019

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2018

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2017

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The Troubling Case of Proxy Advisors: Some policy recommendations
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Notes

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