

**Pay Equity Commission**

Pay Equity Office  
180 Dundas Street West  
Suite 300  
Toronto ON M7A 2S6

Telephone: 416-314-1896  
1-800-387-8813  
TTY 416-212-3991  
1-855-253-8333  
Facsimile: 416-314-8741  
Website: [www.payequity.gov.on.ca](http://www.payequity.gov.on.ca)

**Commission de l'équité salariale**

Bureau de l'équité salariale  
180, rue Dundas Ouest  
Bureau 300  
Toronto ON M7A 2S6

Téléphone : 416- 314-1896  
ATME : 416-212-3991  
1-855-253-8333  
Télécopieur : 416-314-8741  
Site Web: [www.payequity.gov.on.ca](http://www.payequity.gov.on.ca)



The Secretary  
Ontario Securities Commission  
20 Queen Street West 22nd Floor  
Toronto ON M5H 3S8

October 2, 2013

Dear Mr. Stevenson:

It is my pleasure to provide the Pay Equity Commission's feedback on disclosure requirements regarding women on boards and in senior management.

From the Commission's perspective, improving gender equality on boards and in senior management will assist in breaking down many of the barriers faced by women at all levels of employment. For businesses, gender diversity on boards is a strategic and economic imperative in today's world.

We are pleased that Ontario's 2013 budget includes a commitment to broader gender diversity in corporate leadership and congratulate the government for initiating action on this issue.

We support a "comply or explain" model of disclosure moving forward. To strengthen this model, we suggest that the OSC require companies to set targets, accountabilities and consequences for achieving gender representation goals, within specified timeframes and to report on their progress. Such disclosures should help companies succeed in increasing the number and proportion of diverse women in leadership roles and throughout Ontario workplaces.

The Pay Equity Commission is uniquely placed to play a leadership role, in collaboration with external and internal partners, to ensure that this initiative becomes part of a broader strategy to address gender economic equality issues. I look forward to receiving the OSC's final report and invite you to contact me if you have further questions.

Sincerely,

Emanuela Heyninck  
Commissioner

Submission to the Ontario Securities Commission on

**DISCLOSURE REQUIREMENTS REGARDING  
WOMEN ON BOARDS AND IN SENIOR MANAGEMENT**

Submitted by the Ontario Pay Equity Commission

Commissioner: Emanuela Heyninck

October 12013

**DISCLOSURE REQUIREMENTS REGARDING  
WOMEN ON BOARDS AND IN SENIOR MANAGEMENT**

**About Pay Equity and the Commission**

Pay equity is equal pay for work of equal value. The Pay Equity Commission was established to implement and enforce Ontario's *Pay Equity Act* (the *Act*). The purpose of the *Act* is to redress systemic gender discrimination in the compensation of employees in predominantly female job classes.

The Pay Equity Office of the Commission is responsible for the enforcement of the *Act*. In addition to enforcement activities, the Office has legislated authority to conduct research and produce papers regarding pay equity and related subjects. The value of women's work, success and leadership is integral to our work of addressing one of the causes of the gender wage gap and workplace inequalities. This submission briefly summarizes the gender gaps in leadership and pay before responding to the OSC's questions posed in their consultation paper.<sup>1</sup>

**Gender Gap in Leadership and Compensation Still a Problem**

Businesses, governments and social justice groups alike have recognized the need to address workforce diversity issues. By now, increasing representation of equity-seeking groups in workplaces is no longer just a matter of human rights and equity; it is also a corporate strategy for businesses operating in globalized markets.

Organizations like Catalyst and others concerned about women in business have noted the slow progress made on women's advancement to senior management and on board of directors in Canada.<sup>2</sup> While they have urged businesses to take advantage of highly qualified women to diversify their leadership pool, low and inadequate gender representation in leadership roles has persisted in part due to individual, organizational and societal levels barriers which have been well-documented in research.<sup>3</sup>

Executive compensation and pay inequalities can act as barriers to women's advancement, as demonstrated by the continuing gender gaps in income and earnings. In Ontario, in 2011 women working full-time full year earned on average 74% of men's earnings. At the upper most

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<sup>1</sup> Ontario Securities Commission. July 30, 2013. *OSC Staff Consultation Paper 58-401: Disclosure Requirements Regarding Women on Boards and in Senior Management*. Retrieved September 24, 2013 from [http://www.osc.gov.on.ca/documents/en/Securities-Category5/sn\\_20130730\\_58-401\\_disclosure-requirements-women.pdf](http://www.osc.gov.on.ca/documents/en/Securities-Category5/sn_20130730_58-401_disclosure-requirements-women.pdf)

<sup>2</sup> Wohlbold, Elise and Chenier, Louise. 2011. *Women in Senior Management: Where Are They?* Conference Board of Canada. Retrieved September 24, 2013 from [http://www.conferenceboard.ca/temp/49fd49bb-7a00-4184-9880-7f591aef2c2f/12-055\\_womenseniormangement\\_rpt.pdf](http://www.conferenceboard.ca/temp/49fd49bb-7a00-4184-9880-7f591aef2c2f/12-055_womenseniormangement_rpt.pdf)

<sup>3</sup> Vachon, D.B. and Lavis, C. May 2013. *Women in Leadership: Perceptions and Priorities for Change*. Conference Board of Canada. Retrieved September 24, 2013 from [http://www.conferenceboard.ca/temp/0d8e8f92-e6d6-48d2-b2e3-5f6f89937a73/13-122\\_womenleaders.pdf](http://www.conferenceboard.ca/temp/0d8e8f92-e6d6-48d2-b2e3-5f6f89937a73/13-122_womenleaders.pdf)

income levels, women make up less than a quarter (23%) of those in the top 1% income group.<sup>4</sup> Ontario women make up 27% of senior managers. Women working full-time, full-year in this occupational group earned about 70% of men earnings.<sup>5</sup>

Human resources specialists know that pay is a motivating factor for employees and pay comparisons can be important for individuals' sense of fairness.<sup>6</sup> There is merit therefore to include disclosure of executive compensation by gender when considering how to address gender gaps in leadership.

Gender gaps in employment and pay experienced by particular groups of women—racial minority, Aboriginal women, women with disabilities—are worse than average.<sup>7</sup> Any initiatives to improve the state of women in leadership roles should recognize specific barriers to advancement for all women.

### **OSC's CONSULTATION QUESTIONS**

#### **What are effective policies for increasing the number of women on boards and in senior management?**

There is no shortage of policies or strategies for helping women achieve leadership roles. Three main categories of strategies<sup>8</sup> are:

- Approaches that increase individuals' leadership capacity (mentoring, leadership workshops, internal advisors or sponsors);
- Voluntary institutional initiatives (targeted diversity recruitment, retention and promotion targets, diversity training, commitment from business leaders, include measures of leadership diversity as indicator of corporate responsibility);
- Legal /legislative options (disclosure requirements, enforcement of anti-discrimination laws, quota laws like in Norway, Quebec's gender parity law for boards of crown corporations).

As is the case with most complex policy issues with many factors, stakeholders and perspectives, the most effective policy solution for advancing more women in senior management or on boards is likely one that draws on a range of interventions. Each policy option alone has strengths and weaknesses and any combination will produce outcomes based on interactions with Ontario's existing employment and labour market policies and programs as well as economic conditions.

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<sup>4</sup> Statistics Canada. Nation Household Survey 2011. Income and housing tables. Cat. No. 99-014-X2011036

<sup>5</sup> Statistics Canada. Nation Household Survey 2011. Income and housing tables. Cat. No. 99-014-X2011042

<sup>6</sup> Rynes, S., Gerhart, B., Minette, K. 2004. The Importance of Pay in Employee Motivation: Discrepancies between what people say what they do. *Human Resource Management*, 43(4):381-394.

<sup>7</sup> Block, Sheila. June 2011. *Ontario's Growing Gap: The Role of Race and Gender*. Canadian Centre for Policy Alternatives. Retrieved September 24, 2013 from <http://www.policyalternatives.ca/sites/default/files/uploads/publications/reports/docs/The%20Role%20of%20Race%20Ontario%20Growing%20Gap.pdf>

<sup>8</sup> Rhode, D.L. & Packel, A.K. September 2010. *Diversity On Corporate Boards: How Much Difference Does Difference Make?* Working Paper 89. Stanford University, Rock Center for Corporate Governance. Retrieved September 24, 2013 from [Http://Papers.Ssrn.Com/Sol3/Papers.Cfm?Abstract\\_Id=1685615](http://Papers.Ssrn.Com/Sol3/Papers.Cfm?Abstract_Id=1685615).

Leadership is key to the success of any policy. Strategic leadership on women's advancement to senior management and on boards must come from government and corporate leaders, working collaboratively to set priorities and make commitments.

**What type of disclosure requirements regarding women on boards and in senior management would be most appropriate and useful?**

Requiring businesses to disclose policies and considerations they have given to representation of women in senior management and on boards is a step in the right direction. The OSC's consultation paper however is not clear on whether applicable companies have to achieve any goals, who would be held accountable or what the consequences would be if little or no change in women's representation occurs.

More effective policies include goals and outcomes for women and organizations that go beyond disclosure of well-intended but vague policy statements. Leading experts in Australia suggest a "targets with teeth" approach that asks businesses to set voluntary targets that are specific, challenging, tied to an accountability and rewards system and aligned with corporate diversity strategies.<sup>9</sup> We strongly recommend that targets be part of the disclosure requirements.

**Are the proposed scope and content of the model disclosure requirements appropriate? Are there additional or different disclosure requirements that should be considered?**

The proposed model of disclosure would require non-venture issuers to provide information on policies, director selection and board evaluation processes and measurements regarding representation of women on the board and in senior management.

The Pay Equity Commission offers the following additional considerations to strengthen the scope and content for disclosure requirements:

- Require businesses to specify the gender goals (targets) they expect to achieve. Companies should set short- and long-term goals and provide measurement of their progress towards their specific goals, at regular intervals.
- Require that businesses provide an explanation and a plan of action including assigned accountabilities for achieving their goals in the short and long-term when initial targets are not met.
- Require that businesses disclose whether they have been the subject of any orders or findings of employment discrimination, human rights or pay equity violations under relevant legislation.

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<sup>9</sup> Wheelan, J. and Wood, R. 2013. "Increasing gender diversity through targets with teeth" in *Women in leadership: understanding the gender gap*. Committee for Economic Development of Australia. Retrieved September 24, 2013 from <http://www.ceda.com.au/media/310731/cedawiljune%202013final.pdf>.

**What type of statistics, data and/or accompanying qualitative information regarding the representation of women in their organization should non-venture issuers be required to disclose? Should such disclosure be reported for the non-venture issuer only or for all of its subsidiary entities also?**

The consultation paper proposes disclosure of measures in percentage terms of female employees in the whole organization, women in senior executive position and women on the board. While these basic indicators are essential, we offer the following recommendations for strengthening the data/statistics requirements for disclosure:

- Ask corporations to disclose benchmarking practices. Principle 7 of the UN Women/UN Global Compact's *Women's Empowerment Principles* (WEPs) calls on businesses to measure and report on their progress on gender equality in the workplace.<sup>10</sup> Business and Professional Women (BPW) Canada has developed a self-assessment tool to help businesses benchmark their progress according to the WEPs.<sup>11</sup> Internal benchmarking includes collecting and analyzing data on recruitment, retention, advancement rates by gender. External benchmarking involves identifying appropriate companies with which to compare workforce data and policies, and adopt appropriate best practices by considering factors such as organizational values, culture, family and human resources policies and capacities.<sup>12</sup>
- Require disclosure of executive compensation by gender.
- Consider measurements that indicate diversity among women in leadership roles.
- To address the issue of tokenism (boards with only one woman member) and to gain a "critical mass" of diversity, companies should indicate the number as well as the percentage of women on boards and whether women serve on more than one board.
- Analysis of the data by industry, company size, etc. would be useful to understand any trends occurring across the province.<sup>13</sup>
- Standardized definitions for senior executive positions should be used to facilitate comparisons between industries and reports on progress across the province.
- Requiring disclosure from non-venture issuers and their subsidiaries is a good start. We favour the option that increases the applicability of the requirements for the greatest number of enterprises to provide more opportunities for women to move into key leadership roles.

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<sup>10</sup> UN Women. 2012. *Women's Empowerment Principles: Reporting on Progress*. Retrieved September 24, 2013 from <http://weprinciples.org/files/attachments/61.pdf>

<sup>11</sup> Business and Professional Women. *Women's Empowerment Principles, Self-Assessment Tool*. Retrieved September 24, 2013 from [http://bpwcanada.com/images/stories/WEPs/Club\\_Getting\\_Started\\_Resources/05\\_28\\_2013\\_WEPs\\_Self-Assessment\\_Reporting\\_Tool.xls](http://bpwcanada.com/images/stories/WEPs/Club_Getting_Started_Resources/05_28_2013_WEPs_Self-Assessment_Reporting_Tool.xls)

<sup>12</sup> Mattis, M. 2001. "Advancing Women in Business Organization: Key Leadership Roles and Behaviors of Senior Leaders and Middle Managers" *Journal of Management Development*. 20(4): 371-388.

<sup>13</sup> For national data trends and analysis, see Rankin, P., Stewart, J. (2012). *Progress in Inches, Miles to Go: a Benchmarking study of Women's leadership in Canada*. Deloitte, Carleton University Centre for Women in Politics and Public Leadership. Retrieved September 22, 2013 from <http://www2.carleton.ca/cwppl/ccms/wp-content/ccms-files/12-2999-Woman-Leadership-EN.pdf>.

## **What practices should we recommend for facilitating increased representation of women on boards and in senior management?**

The OSC should recommend that non-venture issuers have a gender diversity policy. The content of the gender diversity policy should include at minimum the provisions set out in the consultation paper (p.18) and these provisions should be set out in the National Policy 58-201 *Corporate Governance Guidelines* (the Corporate Governance Policy).

The OSC should recommend that non-venture issuers be required to “comply or explain” with the requirements. We emphasize the importance of the “explain” portion and recommend including “targets with teeth,” timelines and next steps to meet compliance.

## **Other Practices to Facilitate Women’s Advancement into Leadership Roles**

### *Ongoing Debate on Legislated Quotas*

While the OSC consultation focuses on disclosure requirements and excludes discussion of quotas, legislated quotas for board membership of women remains a valid approach in many jurisdictions.<sup>14</sup> Most notably, Norway’s law, which was first proposed in 2002, required firms to have at least 40% women on their corporate boards. Several other European countries have passed similar legislation and the European Commission recently proposed the 40% objective for EU’s largest companies.<sup>15</sup> In Canada, Quebec introduced legislation requiring gender equity on the boards of Crown corporations by December 2011.<sup>16</sup>

Those opposed to gender quota laws argue that they are heavy-handed and possibly harmful to business. Studies of Norway’s law initially noted short-term negative effects on firm values among other unfavourable outcomes.<sup>17</sup> However, methodological challenges called into question the validity of these findings for assessing the success of gender quota laws for corporate boards.<sup>18</sup> Furthermore, the long-term effects of quotas are yet unknown. It may be argued that a longer term outlook provides a more sound assessment of the effects of quotas. Quite possibly the achievement of gender quotas in the short-term can affect attitudes i.e. seeing more women in positions of power may lead women to change their expectations of

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<sup>14</sup> Catalyst. *Legislative Board Diversity*. Retrieved September 23, 2013 from [http://www.catalyst.org/legislative-board-diversity#footnote3\\_sbg5zub](http://www.catalyst.org/legislative-board-diversity#footnote3_sbg5zub)

<sup>15</sup> Europa. November 14 2012. Press release. Women on Boards Commission proposes 40% objective. Retrieved September 22, 2013 from [http://europa.eu/rapid/press-release\\_IP-12-1205\\_en.htm](http://europa.eu/rapid/press-release_IP-12-1205_en.htm)

<sup>16</sup> Quebec, National Assembly. *Bill 53, An Act respecting the governance of state-owned enterprises and amending various legislative provisions (2006)*  
<http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=5&file=2006C59A.PDF>

<sup>17</sup> Ahern, K., & Dittmar, A. “The changing of the boards: The impact on firm valuation of mandated female board representation”, *The Quarterly Journal of Economics* 127, no.1 (2012): 137–197.

<sup>18</sup> Ford D, Pande R. 2012. *Gender Quotas and Female Leadership*. Washington DC, World Bank: World Development Report. Retrieved September 25, 2013 from <https://openknowledge.worldbank.org/bitstream/handle/10986/9120/WDR2012-0008.pdf?sequence=1>

themselves and others to update their notions about the competence and normalcy of women leaders.

The fact is that the quotas work: most companies complied and the 40% goal was achieved by 2008.<sup>19</sup> Given the pace at which Canadian women have been advancing to key leadership positions, it may be short-sighted to dismiss quotas outright. At the very least, they should be considered if disclosure requirements result in little or no change to the status quo.

### **FOCUSING DISCLOSURE REQUIREMENTS ON GOALS AND OUTCOMES**

The Pay Equity Commission acknowledges the efforts of all organizations working to address the issue of increasing women's representation in senior management and on boards. What is required now is leadership to ensure that intentions become action. We hope that by focusing on goals and outcomes the disclosure requirements will help to achieve:

- Increased number and percentage of diverse women on boards and participation in senior management positions within specified timeframes.
- Greater contribution of diverse women in key leadership roles to help businesses meet labour and skills shortages and productivity goals.
- Changes in attitudes of workers, employers, investors, consumers about women's capabilities and competence in leadership roles.
- Increased knowledge and organizational support for effective implementation of appropriate diversity management and anti-discrimination strategies to increase diverse women's representation in leadership roles and throughout the workplace.
- Increased corporate accountability for increasing representation of diverse women in senior management and on boards.
- Increased public awareness of the gender wage gap for women in senior management.

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<sup>19</sup>Braund, Clare. "Looking at the Big Picture on Gender Diversity" Retrieved September 25, 2013 from [http://www.womenonboards.org.au/pubs/articles/norway\\_bigpicture.htm](http://www.womenonboards.org.au/pubs/articles/norway_bigpicture.htm).