

Brief Concerning: Bill C-25, Canada Business Corporations Act

BACKGROUND

Bill C-25 is very timely. Two dimension of the legislation which are particularly welcome are 1) the introduction of term limits for directors, which will create additional opportunities to bring in fresh thinking and diversity and 2) the introduction of diversity tracking and reporting requirements.

Our research, over 20 years, has confirmed the “business case” for diversity and inclusion and the need for additional measures to drive corporate action. There is evidence to suggest that while more diverse teams and workforces present coordination challenges, they produce more innovation. Immigrants (often also visible minorities) are over represented among entrepreneurs. Our research also shows links between levels of diversity and employee engagement and satisfaction, which in turn are linked to higher performance. The under-utilization and exclusion of skilled talent – women, racialized minorities and immigrants, aboriginal people, people with disabilities and people with different gender identities and sexual preferences, poses a significant economic and social cost to Canada. Through strategic use of instruments including Bill C-25, Canada has an unprecedented opportunity to create a “brain gain” attracting and retaining the best and the brightest from around the world by creating a welcoming and inclusive environment.

The Diversity Institute collects data on representation on boards and in executive positions in major sectors of Canada. DiversityLeads is a multi-year study which uses content analysis to analyse the composition of boards and executive teams across sectors. This addresses problems created by survey methodologies which are based on self-reported data because boards with lower levels of diversity are less likely to self-report. Our approach defined as a best practice by the Ontario Human Rights Commission, provides very high levels of validity and reliability and also allows for us to assess certain features of intersectionality. This research shows

- Women are under –represented in leadership roles. In 2015, women accounted for 52% of the population in the GTA but only 37.5% of leadership roles, a substantial increase from 2009 (30.6%).
- The corporate sector has the lowest proportion of women (19.9%) But this was a substantial increase (29.5%) in women on boards and a 13.0% increase in women on senior management teams.
- Visible minorities are even more under represented. While over 50% of the population are visible minorities, they accounted for only 12% of leadership roles, virtually unchanged in 5 years. The corporate sector had (4.5%) visible minorities among its senior leadership positions.
- The variance among companies is important: there is a dramatic difference between companies that make diversity a priority and those that do not. Companies subject to Employment Equity legislation (in regulated industries) tend to have higher levels of representation. While 11.9% of companies have at least 50% women on their senior management teams, 16.7% of companies have none.
- While progress has been made on gender-based inclusion, diverse women are not part of the picture. For example in the Greater Toronto Area (GTA) where roughly 50% of the population is racialized, white women outnumber racialized women by 7:1 on corporate boards.
- There are regional differences. For example, the evidence suggests Montreal is ahead of Toronto in terms of the inclusion of women in leadership roles, it lags significantly in the inclusion of racialized minorities even when population differences are taken into account. About 20% of the population in the Greater Montreal area are visible minorities but they were only 2% of leaders. Only 3 of 60 companies headquartered there had any visible minority board members and only 9 of 60 companies had any in senior management.

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- There is much less data on the representation of other groups in leadership roles in part because of methodological issues - the numbers are smaller and these demographic characteristics are not easily observable - and in part because of the need to disclose. While visible minority status and gender are difficult to conceal, individuals may choose not to disclose other aspects of identity - aboriginal status, disability, sexual orientation and gender identity.
- Our research shows clearly that reported rates of these groups are directly affected by the level of comfort people have disclosing these aspects of their identity rather than levels of representation. We maintain that this actually makes reporting even more important - reported rates are often an indicator of the extent to which an organization has an inclusive climate and practices.

RECOMMENDATIONS

Specifically, we wish to comment on the clauses which address diversity and to take this opportunity to offer some suggestions. Policies and laws signal as well as reflect values and no one should underestimate the value of C-25 in signaling to the world our values and commitment to inclusion. There is a significant gap between the rhetoric and performance of organizations with respect to diversity so measurement, transparency and accountability are key. Clear definitions, measurable targets, bold leadership, linking diversity to corporate strategy and leveraging consumer purchasing power, corporate and government procurement are among the most effective ways of driving change. Based on this extensive work and our deep collaborations with more than 50 organizations across sectors, we want to offer some comments and suggestions on proposed Bill C-25.

First, we support, as a first step, comply or explain legislation. Research has compared different frameworks in countries, for example quotas in Iceland, Finland, Norway and Sweden with employment equity legislation in Canada and affirmative action legislation in the USA and UK. The evidence suggests that the impact of these measures are mixed and context dependent. For example sanctioned quotas in Norway have had a big impact on gender balance on boards but that does not have trickle down effects on women broadly. Our work in Canada suggests that while progress has undoubtedly been slow, companies subject to Employment Equity legislation have better representation among leadership than those that are excluded. We take to heart the Minister's commitment: "**We want to send a clear signal that diversity is important...But in a few years, if we do not see meaningful results – then we will re-evaluate our position and look at all other options at that time.**" "While what gets measured, gets done" implementation is key: Robust tracking, rigorous evaluation and transparency are critical. Additionally, we should define and share best practices to ensure success.

Second, while groups across the country have advocated strongly for increased gender diversity, we maintain, respectfully that this is necessary but insufficient. We will not create an inclusive Canada if we simply replace white men with white women. Our research in the Greater Toronto Area (GTA), one of the most diverse communities in the world, shows that in leadership roles white women outnumber racialized women by a ratio of 7:1 in spite of being roughly equal in the general population. The under representation of aboriginal people, persons with disabilities and people with different gender identities and sexual orientations is far worse. Therefore we recommend that the definition of diversity for the purposes of the regulations mirror the definitions of groups included in our Employment Equity legislation, ideally with the addition of sexual orientation and gender identity. In this way, Canada will truly establish itself as a leader.

Third, in addition to reporting on the statistics regarding diversity on the board and in senior management positions, we would recommend, as with the Employment Equity Legislation that corporations be asked to define targets and outline their strategy for increasing diversity.

Fourth, we applaud the requirement of reporting to the Director. While reporting to the annual meeting of shareholders is important, the impact that this will have on promoting diversity and inclusion depends largely on the views of those stakeholders. Research shows clearly that transparency and reporting of diversity data is critical to motivating action and, therefore, ensuring that the data are made publically available is key.

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Suggested Amendments to the Legislation

We propose therefore, an amendment to make explicit that that information will be published annually. We understand that this requires resources, but we view it as critically important. Therefore we propose a small amendment to the Act to clarify the intent to make the information publically available:

172.1 (1) 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 well as a report on the corporation's diversity goals and strategy as defined by regulation.

(2) The corporation shall send the information referred to in subsection (1), along with the notice referred to in subsection 135(1), to each shareholder, except to a shareholder who has informed the corporation in writing that they do not want to receive that information. The corporation shall concurrently send the information to the Director and it will be published on an annual basis

Suggested Amendments to the Proposed Regulations

With respect to the regulations, we recognize that the Federal regulations were designed to mirror the provincial regulations established by the Ontario Securities Commission (OSC). But the OSC model while perhaps an advance reflected the advocacy efforts of women's organizations without regard to other dimensions of diversity. We feel that Canada should be bold and instead of focusing just on gender diversity, the regulations should what is already clearly laid out in the Canada's Employment Equity legislation which regulated industries and Federal contractors already comply with.

For the purpose of subsection 172.1(1) of the Act the prescribed information:

a. Diversity or "Diverse Members" are synonymous with the "designated groups" defined by The Employment Equity Act and includes, as a minimum:

women;

Aboriginal peoples – people who are Indian, Inuit or Métis;

persons with disabilities – people with a long-term or recurring physical, mental, sensory, psychiatric or learning impairment who consider themselves to be disadvantaged in employment by reason of that impairment or who believe that an employer or potential employer is likely to consider them to be disadvantaged in employment by reason of that impairment, as well as individuals with functional limitations due to their impairment that have been accommodated in their current job or workplace;
and

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

with the addition of other groups such as persons with diverse gender identities and sexual orientations.

b. information required by Items 10 to 15 of Form 58-101F1 established by National Instrument 58-101 of the Canadian Securities Administrators, entitled Disclosure of Corporate Governance Practices, and known in French as Information concernant la gouvernance, published in both official languages and came into force on December 31, 2014, amended as follows

10. Director Term Limits and Other Mechanisms of Board Renewal (Alberta, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Ontario, Québec, Saskatchewan and Yukon only) — Disclose whether or not the issuer has adopted term limits for the directors on its board or other mechanisms of board renewal and, if so, include a description of those director term limits or other mechanisms of board renewal. If the issuer has not adopted director term limits or other mechanisms of board renewal, disclose why it has not done so.

11. Policies Regarding the Representation of Diversity on the Board (Alberta, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Ontario, Québec, Saskatchewan and Yukon only) —

(a) Disclose whether the issuer has adopted a written policy relating to the identification and nomination of diverse directors. If the issuer has not adopted such a policy, disclose why it has not done so.

(b) If an issuer has adopted a policy referred to in (a), disclose the following in respect of the policy:

(i) a short summary of its objectives and key provisions,

(ii) the measures taken to ensure that the policy has been effectively implemented,

(iii) annual and cumulative progress by the issuer in achieving the objectives of the policy, and

Form 58-101F1

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(iv) whether and, if so, how the board or its nominating committee measures the effectiveness of the policy.

12. Consideration of the Representation of Diversity in the Director Identification and Selection Process (Alberta,

Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Ontario, Québec, Saskatchewan and Yukon only) — Disclose whether and, if so, how the board or nominating committee considers the level of representation of diversity on the board in identifying and nominating candidates for election or reelection to the board. If the issuer does not consider the level of representation of diversity on the board in identifying and nominating candidates for election or re-election to the board, disclose the issuer's reasons for not doing so.

13. Consideration Given to the Representation of Diversity in Executive Officer Appointments

(Alberta, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Ontario, Québec, Saskatchewan and Yukon only) — Disclose whether and, if so, how the issuer considers the level of representation of diversity (by category) in executive officer positions when making executive officer appointments. If the issuer does not consider the level of representation of diversity (by category) in executive officer positions when making executive officer appointments, disclose the issuer's reasons for not doing so.

14. Issuer's Targets Regarding the Representation of Diversity on the Board and in Executive Officer Positions (Alberta, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Ontario, Québec, Saskatchewan and Yukon only) —

(a) For purposes of this Item, a "target" means a number or percentage, or a range of numbers or percentages, adopted by the issuer of diversity (by category) on the issuer's board or in executive officer positions of the issuer by a specific date.

(b) Disclose whether the issuer has adopted targets regarding diversity on the issuer's board. If the issuer has not adopted targets, disclose why it has not done so.

(c) Disclose whether the issuer has adopted a target regarding diversity in executive officer positions of the issuer. If the issuer has not adopted a target, disclose why it has not done so.

(d) If the issuer has adopted a target referred to in either (b) or (c), disclose:

(i) the target, and

(ii) the annual and cumulative progress of the issuer in achieving the target.

15. Number of Diverse Members on the Board and in Executive Officer Positions (Alberta, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Ontario, Québec, Saskatchewan and Yukon only) —

(a) Disclose the number and proportion (in percentage terms) of directors on the issuer's board who are diverse (by category)

(b) Disclose the number and proportion (in percentage terms)

b. respecting policy

i. indicate whether the corporation has adopted a written policy relating to diversity amongst the directors and members of senior management;

ii. if the corporation has adopted such a policy, a short summary of its objectives and key provisions

iii. if the corporation has not adopted such a policy, why it has not done so.

New For the purpose of subsection 172.1(1) of the Act, the members of senior management are defined as the executive officers as defined by subsection 1.1(1) (Definitions and Interpretation) of National Instrument 51-102 of the Canadian Securities Administrators, entitled Continuous Disclosure Obligations, and known in French as Règlement 51-102 sur les obligations d'information continue, published in both official languages on December 19, 2003, as amended from time to time.

CONCLUSIONS

Many feel that it does not go far enough – that we have reached the point where quotas, as are used in Norway, need to be introduced in Canada. Our research certainly shows that while voluntary regimes and reporting, as with our Employment Equity legislation, do produce change, it is at a slow pace. Part of this is because of the lack of visibility given to these issues and the erosion of funding for equality seeking groups, including the erosion of funding for evidence based, rigorous research. We have an opportunity to establish Canada as a leader globally with robust new measures to advance diversity and inclusion. We hope

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that the Committee will take this opportunity to introduce small modifications to the language of the law regarding reporting and develop a clear definition of diversity consistent with related Federal Legislation. Gender diversity is critically important. However, we also know that visible minorities, aboriginal people and persons with disabilities are growing segments of our population and it would be a missed opportunity if the new legislation ignored these groups. While there are always issues with definitions and categories Canada's Employment Equity legislation have served us well and referencing the designated groups from that legislation seems appropriate to Canada in the 21st Century.

SIGNATORIES (As of 20/11/2017)

<p>Toronto Region Immigrant Employment Council (TRIEC) The Mosaic Institute Information and Communications Technology Council (ICTC) Paulette Senior, CEO, Canadian Women's Foundation Roundtable of Diversity Associations (RODA) Global Diversity Exchange (GDX) Phil Fontaine, CEO, Ishkonigan Group Pam Palmater, Chair, Indigenous Governance, Ryerson University Councillor Kristyn Wong-Tam, Ward 27, (City of Toronto) Donna Walwyn, President of the Canadian Association of Black Lawyers (CABL) Pauline Christian, President, Black Business and Professional Association Sandra Noe, President of the Federation of Muslim Women Trevor Massey, Chair, Lifelong Leadership Institute Monica Linares, President, Toronto Hispanic Chamber of Commerce Maria Saras-Voutsinas, Executive Director of the National Ethnic Press and Media Council of Canada Mehreen Javid, President, Canada Pakistan Chamber of Commerce Arpana (Ana) Vora, President of the Jain Society</p>	<p>Rabia Khedr, Executive Director of the Canadian Association of Muslims with Disabilities Asha Luthra, Former President of the India Canada Chamber of Commerce (ICCC) Rosemary Sadlier OOnt, Immediate Past President: Ontario Black History Society (OBHS) Jayashree Goswami, Past President of the South Asian Bar Association Ruby Latif, Past President of the Network of Indian Professionals Tim Rose, CEO, Disability Positive Consulting, Disability Kathreen Pascual-Binday, Community Leader, Executive Vice President, Philippine Independence Day Council Sumeet (Sonu) Dhanju-Dhillon, Community Leader, Associate Lawyer- Torkin Manes LLP Jennifer Lynn, CEO of the Diversity Advantage International Nadine Spencer, CEO BrandEQ Agency, Community Leader Sarbjit Kaur, CEO of Kaur Communications, Community Leader Farheen Khan, Writer, Consultant, Community Advocate Elke Rubach, Community Leader, Principal of Rubach Wealth - R&A Financial Group Inc. Fatema Dada, Community Leader Fabiola Sicard, Community Leader</p>
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THE DIVERSITY INSTITUTE

For over 15 years the Ted Rogers School of Management's Diversity Institute (DI) at Ryerson University has been an authoritative voice and thought leader in interdisciplinary knowledge and practice of diversity with respect to gender, ethnicity, abilities, and sexual orientation with a focus on evidence-based strategies. Wendy Cukier, Professor of Information Technology Management and founder of DI is coauthor of the best-seller Innovation Nation is an internationally recognized expert on innovation processes. She has received many awards for her leadership - a YWCA Woman of Distinction, one of the top 25 Women of Influence, one of 100 Alumni who shaped the Century by the University of Toronto, recipient of the City of Toronto's Bob Marley award and most recently, winner of the Black Business Professional Association's Harry Jerome Award for Diversity. The Diversity Institute team includes representation from across Diversity groups and a commitment to inclusive research approaches – "nothing about us, without us" and a focus on the assets diversity offers.

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