

BBOT POLICY BULLETIN

ENCOURAGING AND SUPPORTING MORE WOMEN ON CORPORATE BOARDS

Canada continues to lag the rest of the developed world in terms of gender diversity in our corporate boardrooms.¹ Some reviews have found as many as 45% of Canada's publicly-traded companies have no women on their boards and overall representation of women on boards is as low as 12%.² In BC, 50% of the largest publicly-traded companies either have no female directors at all or refuse to reveal that information.³

The predominance of research regarding this issue suggests that companies which have more female board directors perform better, with greater gender diversity on boards being linked to everything from better returns on equity, higher stock prices, and overall better financial returns.⁴ Studies have found board gender diversity to be "empirically associated with higher returns on equity, higher price/book valuations and superior stock price performance,"⁵ and that "companies in the top quartile of gender diversity were 15 percent more likely to have financial returns that were above their national industry median."⁶ The business case for having women serve on corporate boards is clear and their continued under-representation is likely costing us economically and it should be a priority to find ways of encouraging and supporting more women to sit on boards.

However, while the business case may be clear, most BC and Canadian firms have made small progress in welcoming more women into these positions and there are several policy solutions which could help facilitate this needed change.

The BC Government itself is a leader in board diversity as it already achieves a laudable 41% overall level of women on government-appointed boards. The BC government can build on that leadership by taking several courses of action to help BC companies encourage and support more women to sit and serve on boards.

Adopting Existing Comply-or-Explain Regulations at the BC Securities Commission

At the end of 2014, the securities regulators in seven provinces and three territories adopted amendments to National Instrument 58-101 *Disclosure of Corporate Governance Practices* that require "reporting non-venture

¹ Catalyst, *Gender Diversity on Boards in Canada*, (Ontario, Canada: Queen's Printer for Ontario, 2016)

² CSA Multilateral Staff Notice 58-308, Staff Review of Women on Boards and in Executive Officer Positions -Compliance with NI 58-101 Disclosure of Corporate Governance Practices, (September 28, 2016)

³ The Minerva Foundation for BC Women, *The Face of Leadership – BC Scorecard 2016*, (June 22, 2016)

⁴ Catalyst, *The Bottom Line: Connecting Corporate Performance and Gender Diversity*, (New York: Catalyst, 2004); Credit Suisse Research Institute, *The CS Gender 3000: Women in Senior Management* (Zurich, Switzerland: Credit Suisse Research Institute, 2014); McKinsey & Company, *Diversity Matters*, (McKinsey & Company, 2014)

⁵ Credit Suisse Research Institute, *The CS Gender 3000: Women in Senior Management* (Zurich, Switzerland: Credit Suisse Research Institute, 2014);

⁶ McKinsey & Company, *Diversity Matters*, (McKinsey & Company, 2014)

issuers” annually disclose the number and proportion of women occupying board and executive positions, as well as disclose their corporate policies regarding:

- term limits for the directors on its board or other mechanisms of board renewal
- the identification and nomination of women directors
- whether and, if so, how the board or nominating committee considers the level of representation of women on the board in identifying and nominating candidates for election or re-election to the board
- whether and, if so, how the issuer considers the level of representation of women in executive officer positions when making executive officer appointments
- whether the issuer has adopted a target regarding women on the issuer's board and in executive positions ⁷

Companies which do not have such policies must explain why they have not been adopted, a regulatory model known as “Comply-or-Explain.”

Comply-or-Explain regulations are able to shed light on the issue of gender diversity and encourage behavior change by the business community by forcing discussion and consideration of the issue. One review of the impact of the new comply-or-explain regulations found that more than half of all issuers “have adopted formal policies addressing the representation of women on the board” and that this was “a good example of disclosure rules driving corporate behavior.”⁸

British Columbia was one of three hold-out provinces which did not sign on to these regulation amendments.⁹ On December 31st, 2016 the Alberta Securities Commission enacted the regulations in that province following a short consultation process in the fall, leaving BC as a laggard in this important area.

Admittedly, BC is a party to the new *Cooperative Capital Markets Regulatory System* which is already expected to include these diversity disclosure regulations. However, that system is not expected to launch for at least another year, and is facing calls from some for further delay. Instead of waiting, BC can act now to join the rest of Canada in promoting greater gender diversity on boards by implementing the above comply-or-explain regulation amendments.

Requiring the Consideration of Women for Board Vacancies

While comply-or-explain regulations have had some positive impacts and have driven corporate behavior in the right direction, the results have been admittedly limited.

⁷ A “reporting issuer” means a company whose securities are publicly-traded and has issued securities/stocks/shares. A “non-venture issuer” is a reporting issuer that has its securities listed/quoted on any of the Toronto Stock Exchanges, a US marketplace or any marketplace outside of Canada/US. In Canada, “venture issuers” tend to be junior companies listed instead on the TSX Venture Exchange or the Canadian Stock Exchange.

⁸ Torys LLP, *Women in the C-Suite: Can Securities Law Advance Gender Equality?* (June 16, 2015)

⁹ Holdouts included BC, Alberta and PEI

In its September 26, 2016 review of the regulations, the Canadian Securities Administrators found that while “the number of women on boards has increased in all size categories of issuers” the actual improvements were modest with a 1% increase in the number of total board seats occupied by women in 2016 compared to 2015 (to 12%) and a 6% increase in the number of issuers with at least one woman on the board (55%) compared to 2015.¹⁰

One major reason for the lack of women on boards is the recruitment process; male board members and male executives search their often male-dominated networks of compatriots and contacts for potential candidates, thus perpetuating the gender gap. Mandating that companies actively consider women for board vacancies would force companies to broaden their search, get creative in their recruitment efforts, and go beyond their traditional networks to find candidates.

Requiring targets for women at the consideration and interview stage of the board nomination would ensure that women are being considered fairly while still having the opportunity to demonstrate skill and merit to receive a directorship.

The existing amendments to National Instrument 58-101 *Disclosure of Corporate Governance Practices* include a requirement for disclosure of the representation of women in the director identification and selection process (Item 12 of Form 58-101F1). However, following the comply-or-explain model, this only requires companies to describe whether they have a policy on women representation on the board or explain why they do not have one. It does not mandate such a policy exist nor does it require the policy to have any specific targets or objectives.

BC could implement regulations requiring companies to have a policy regarding the representation of women in the director identification and selection process, and require such policies mandate that at least one qualified woman is fully considered for all board vacancies. Such consideration should be required to be meaningful, conducted in good faith, and include any requisite interview or assessment process. Regulations such as these would have the benefit of forcing a change in mindset in Canada’s boardrooms and would be a catalyst for progressive changes in corporate governance rules and in greater gender diversity outcomes.

Such a requirement could be enforced through the BC Securities Commission on issuers registered with that agency, and could be adopted more broadly by including such regulations in the *Cooperative Capital Markets Regulatory System* which is currently under negotiation by the governments of British Columbia, New Brunswick, Ontario, Prince Edward Island, Saskatchewan, Yukon and Canada.

Implementing Goals for Women on Boards

¹⁰ CSA Multilateral Staff Notice 58-308, Staff Review of Women on Boards and in Executive Officer Positions -Compliance with NI 58-101 Disclosure of Corporate Governance Practices, (September 28, 2016)

At the current rate of change, it is estimated to take 75 years to achieve boardroom gender parity in BC.¹¹ If we are to see faster change and overcome the significant headwinds of the status quo, then more aggressive goals for inclusion of women on boards should be considered.

In an effort to more significantly increase the representation of women on corporate boards, many countries have implemented quotas which require a specific percentage or number of board seats be filled by women. Imposing quotas, while arguably effective, is a blunt method for encouraging gender diversity.

BC could instead implement goals for businesses which move us towards gender parity on corporate boards. These goals should be developed in consultation with the business community and should be designed to be both realistic but also aggressive enough to result in meaningful change if achieved.

These goals should be made public to encourage not only greater discussion and awareness of the issue of gender diversity, but also to create both peer and public accountability to drive action.

THE CHAMBER RECOMMENDS:

That the provincial government build on its leadership role in gender diversity and:

1. Adopt, via the BC Securities Commission, the “comply or explain” amendments to NI 58-101 “Disclosure of Corporate Governance Practices” regarding Gender Diversity and Term Limits.
2. Implement, via the BC Securities Commission, regulations that mandate reporting non-venture issuers to have board recruitment policies that require at least one qualified woman is fully considered for all board vacancies, and advocate for the inclusion of similar regulations in the *Cooperative Capital Markets Regulatory System* currently being instituted. Such consideration should be meaningful, conducted in good faith, and include any requisite interview or assessment process.
3. Commence a consultation with businesses and other stakeholders on implementing in BC clear goals for women’s inclusion on corporate boards which moves them towards gender parity.

¹¹ The Minerva Foundation for BC Women, *The Face of Leadership – BC Scorecard 2016*, (June 22, 2016)