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Diversity on boards must change more quickly – Policy Options

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Women are starting to make inroads into the boardrooms of Canadian public companies. As detailed in Osler, Hoskin & Harcourt's third annual report on diversity disclosure practices, and in a notice from the Canadian Securities Administrators (CSA) issued on October 5, the percentage of board seats held by women has increased. But progress is far, far too slow. Relying on disclosure alone is not enough: we need to legislate a minimum standard of board diversity to jump-start change.

As detailed in our September 2017 report, women hold only approximately 14.5 percent of board seats, although this is an improvement compared with 12.6 percent last year. These results follow some extraordinary motivators for change.

For three years, most companies listed on the Toronto Stock Exchange have been subject to mandatory diversity disclosure on a comply-or-explain basis. Over this time, media interest in the representation of women on public company boards has been high. Almost two years ago, when asked why gender parity is important, the Prime Minister replied, "Because it's 2015." When we noted in our 2016 report the lack of any meaningful progress in public company board diversity, the public wondered whether corporate Canada was getting the message.

Late in 2016, Osler, in conjunction with the Institute of Corporate Directors, released a customizable, downloadable board diversity policy template. We hoped that this tool would initiate a meaningful discussion at the board level on the need to increase the representation of women on the board, and that it would lead to increased recruitment of women directors. We were pleased to see that the proportion of reporting companies that disclosed that they have a written board diversity policy increased to 47 percent, compared with 34 percent in 2016, although only 35.5 percent of reporting companies disclosed having a written board policy that specifically addresses identification and nomination of women directors.

In our 2016 report, we noted a budding interest in board diversity among investors. This interest blossomed in March of this year when the American financial services company State Street unveiled the Fearless Girl statue in front of the bronze bull of Wall Street and announced a new initiative focused on board diversity. The asset management firms BlackRock and Vanguard soon followed with similar announcements. And recently the New York City Comptroller began a letter-writing campaign asking 140 companies in which the city's pension funds are invested to provide disclosure on directors' skills, experience and attributes, as well as each individual's gender and race/ethnicity.

Despite all this attention to diversity, the percentage of Canadian board seats held by women increased year over year by less than 2 percent. At this rate, Canada won't achieve gender parity until at least 2035.

Board turnover alone is not going to get us there. The CSA reported in its notice that 505 board seats out of 674 vacancies were filled during the year. That represents a turnover rate of a little over 9 percent of the total board seats for 2017. But only 26 percent of those filled vacancies were filled by women. At those rates, turnover could have resulted in an overall 2.4

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percent increase in women directors, if not for rounding errors and the fact that some of the vacated positions were already held by women.

We need to speed up the pace of change, especially if we are going to begin focusing on other diversity characteristics. The question is how. Quotas are not a preferred long-term solution. But while there are many reasons to be concerned about the use of quotas, it is incontrovertible that countries that have adopted quotas have achieved a higher level of representation of women in the boardroom, and have done so more rapidly.

This year's diversity disclosure results suggest an alternative to requiring that women constitute a specified percentage of the directors on each board. Most of the increase in women directors this year came as a result of formerly all-male boards adding one woman. We reported that the percentage of companies without any women on the board fell to 37 percent in 2017, compared with 46 percent last year, while the proportion of boards with one woman or three women increased. As a result, the average number of women directors per company climbed to 1.13 (versus 0.96 at this time in 2016). It is safe to say today that any company without a single woman on its board is both below average and in the minority.

Now that over 63 percent of companies have at least one woman director, it is time to drag the rest along by mandating that every board with four or more directors have at least one woman director.

Over the years, I have observed a change in directors' behaviour when there is at least one woman on the board. Board process improves, directors become more task-oriented, confidence in outcomes increases and subsequently increasing board diversity becomes easier. Let's get all companies past the first hurdle and require Canadian public company boards to have at least one woman director.

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