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Will It Ever Be 50/50?: Diversity and Gender in the Law Firm and on Corporate Boards

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Abstract:

Today, women account for 50% of graduates from university programs in Canada and abroad. Traditional gender roles are a growing “thing of the past” with women taking on more responsibility and leadership positions within law and business. However, a gap still remains between the sexes in partner track and directorships. This paper explores regulatory bodies, both in law and finance, which have voiced for change and sparked conversation to bridge this gap. As one will find, major successes have occurred in recent years, however a commitment must be maintained in order to continue to advance gender diversity in law and business.

Keywords:

Women, boards, corporate, law, legal, executive, glass ceiling, gender diversity, partner, CEO, CFO, Chair

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WILL IT EVER BE 50/50?
Diversity and Gender in the Law Firm and on Corporate Boards

Kathleen Killin*

Abstract

Today, women account for 50% of graduates from university programs in Canada and abroad. Traditional gender roles are a growing “thing of the past” with women taking on more responsibility and leadership positions within law and business. However, a gap still remains between the sexes in partner track and directorships. This paper explores regulatory bodies, both in law and finance, which have voiced for change and sparked conversation to bridge this gap. As one will find, major successes have occurred in recent years, however a commitment must be maintained in order to continue to advance gender diversity in law and business.

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Traditionally seen as being a place for wealthy, white men, the face of law and business is rapidly evolving with individuals of different races, religion, class and sex populating the sectors. Specifically, the role of women in the workplace has amplified over the past century, with the proverbial “glass ceiling” being pushed higher and higher and more women than ever pursuing careers outside the home. Over the past thirty years, the amount of women in the Canadian workforce has doubled¹, with 47% of women earning over half of Canadian university degrees². Although women are entering the workforce at associate and junior level positions in droves, a large issue remains regarding retention and women achieving leadership positions within the firm or corporation. In fact, in 2012, women held only 10.3% of seats on Canadian boards³, 15.9% of boards seats on Financial Post 500 companies⁴, and 0% of seats on 40% of the Financial Post 500 boards⁵. Similar to the business community, in law, women account for 50% of Ontario law school graduates, but are less than 35% of Ontario lawyers and only 20% of partners at firms.⁶ The following discussion will explore gender diversity⁷ in law and business.

Part I speaks of women in law and explores the historical positioning of women in the

¹ Status of Women Canada, *Good for Business: A Plan to Promote the Participation of More Women on Canadian Boards*, (Ottawa: Government of Canada, June 2014), online: <<http://www.swc-cfc.gc.ca/initiatives/wldp/wb-ca/wob-fca-eng.html>>.

² “Canadian in Women Business” *Catalyst* (2013), online: <www.catalyst.org/knowledge/Canadian-women-business-0>.

³ “Women on Boards Survey” *GMI Ratings* (2013), online: <info.gmiratings.com/Portals/30022/docs/gmiratings_wo_042013.pdf?submissionGuid=05f4980d-638e-428e-b45c-69517342345c>.

⁴ “The 2013 Catalyst Census: Financial Post 500 Women Board Directors” *Catalyst* (2013), online: <www.catalyst.org/knowledge/2013-catalyst-census-financial-post-women-board-directors>.

⁵ “The 2011 Catalyst Census: Financial Post 500 Women Board Directors” *Catalyst* (2012), online: <www.catalyst.org/knowledge/2011-catalyst-census-financial-post-500-women-board-directors>.

⁶ Bruce Laregina, “Women, firms need to work together” *CanadianLawyerMag.com* (29 May 2014), online: <www.canadianlawyermag.com/legalfeeds/2111/women-firms-need-to-work-together.html>.

⁷ According to the United States Department of Agriculture Strategic Planning Task Force on Diversity, diversity is defined as: “[D]iversity is differences among people with respect to age, class, ethnicity, gender, physical and mental ability, race, sexual orientation, spiritual practice, and other human attributes” Source: Jean du Plessis, James O’Sullivan & Ruth Rentschler, “Multiple Layers of Gender Diversity on Corporate Boards: To Force or Not to Force?” (2014) 19 *Deakin L Rev* 1 at 3.

legal community and current initiatives to bridge the gender gap within the profession. Part II focuses on gender diversity in corporate governance addressing women on boards, specifically the Canadian perspective; a review of the Canadian securities regulators disclosure requirements; global initiatives for the advancement of women; and movement since the disclosure requirements were introduced. Part III concludes with a look towards the future and recommendations for both sectors. Overall, this paper will exemplify that positive movements are being made to elevate women in law and business, however equality has not yet been achieved. Firms and corporations must continue to develop and observe gender initiatives to ensure development and advancement of women.

PART I: Women in Law

"I would put within the range of possibilities though by no means a commendable one, the admission of a woman to the profession of solicitor or to that of avoué, but I hold that to admit a woman and more particularly, a married woman as a barrister, that is to say, as a person who pleads cases at the bar before judges or juries in open court and in the presence of the public, would be nothing short of a direct infringement upon public order and a manifest violation of the law of good morals and public decency."

– Mr. Justice Saint-Pierre in *Langstaff v Bar of Quebec* [1915], 47 RJQ 131 at 139, Superior Court.⁸

These words exemplify the Court's view of women in law one hundred years ago. Even prior to Mr. Justice Saint-Pierre's ruling, women were setting the stage for future generations. Although she was yet considered a "person" and could not attend classes at the Law Society, Clara Brett Martin obtained her law degree from the University of Toronto in 1899 and became the first female barrister in Canada and the entire British

⁸ "Before 1950", *The University of Toronto Faculty of Law*, online: <<http://www.law.utoronto.ca/about/brief-history/women-in-law-through-decades/1950>>.

Empire.⁹ In 1912, Mabel Penery French became the first woman to be called to the bar in British Columbia after petitioning the provincial government,¹⁰ and nearly twenty years later, trailblazer Nellie McClung and “The Famous Five” fought for women to be considered legal persons in the eyes of Canadian law¹¹. In the 1960s, women held only 3% of the positions in the profession with most of them being low-prestige areas¹² and in 1982, Pierre Trudeau appointed the first woman, Bertha Wilson, to the Supreme Court of Canada. Today, women account for fifty per cent of Ontario law school graduates, but are less than 35% of Ontario lawyers and only 20% of partners at firms.¹³ This discrepancy between graduates and those in leadership positions is attributed to a few causes. Linda Robertson, an experienced lawyer and advocate for women’s issues, suggests that female lawyers have issues climbing the ranks in firms due to the restrictive nature of the partnership structure. This is due to decision-making structure of partnerships and the constant turnover of associates and junior level employees. Further, lawyers are moving in house or to a corporation to find more flexibility for movement, as well as a release from the billable hour model. Robertson concludes that law firms must become more flexible with their workplace models in order to attract and retain the bright legal minds of the future.¹⁴ There are mixed reasons for leaving law, with “work-life balance” being number one according to Josée Bouchard, the equity advisor for the Law Society of

⁹ Ibid.

¹⁰ Lisa Vogt, “Gender Diversity: Preparing for the New Legal Environment” (2011) 44 UBC L Rev 55-69.

¹¹ “Nellie McClung”, *The Canadian Encyclopedia*, online:

<<http://www.thecanadianencyclopedia.ca/en/article/nellie-letitia-mcclung/>>.

¹² Deborah L. Rhode, “*Perspectives on Professional Women*” (1988) 40 Stan L Rev 1163, 1173 in Deborah L. Rhode, “*From Platitudes to Priorities: Diversity and Gender Equity in Law Firms*” (2011) 24 Geo J Legal Ethics 1041 at 1042.

¹³ *Supra* note 6.

¹⁴ Linda K. Robertson, “Law Firm Partnerships and the Retention of Women Lawyers” *Slaw.ca* (21 December 2011), online: <www.slaw.ca/2011/12/21/law-firm-partnerships-and-the-retention-of-women-lawyers/>.

Upper Canada (LSUC). Regardless of the reason, the fact of the matter is that a substantial amount of women are changing jobs or leaving law altogether¹⁵ although the amount of women graduating law school remains equal to males or slightly higher. Regulatory bodies governing the legal community have noticed this issue and are working to promote change.

Law Societies of Canada: The Justicia Project

The Law Society of Upper Canada initiated the Justicia project after a 2008 study “Retention of Women in Private Practice”. Justicia addresses “a lack of mentorship, inflexible hours, and not enough support for maternity and parenting” as being primary reasons for women leaving law.¹⁶ It has grown to include 57 firms across Ontario, and 75 nationally with other provincial law societies¹⁷ developing similar programs.¹⁸ This includes the Law Society of British Columbia who developed new model policies for firms to utilize. Seventeen large B.C. firms collaborated on the project, and in January 2015, benchers from the Law Society of British Columbia endorsed the policies and encouraged firms to adopt them. The policies include template letters similar to those provided by the LSUC, with attention given to practicalities of law firms, says Andrea

¹⁵ This is according to a 2009 survey by the LSUC entitled “change of status” completed by 1 257 Ontario lawyers who had changes jobs in that year. Source: Trish Crawford, “Women lawyers leaving in droves” *The Toronto Star* (25 February 2011), online:

<http://www.thestar.com/life/2011/02/25/women_lawyers_leaving_in_droves.html>.

¹⁶ *Supra* note 6.

¹⁷ See “Justicia Project” *Law Society of Alberta*, online:

<http://www.lawsociety.ab.ca/advisory_2012/advisory_volume_10_issue_3_Jul2012/news/justicia.aspx>;

“Justicia Project” *Law Society of Manitoba*, online: <http://www.lawsociety.mb.ca/equity/equity-ombudsperson/files/articles-1/Justicia_Project_debut.pdf> ; “Justicia Project” *Law Society of Quebec*, online: <<http://www.barreau.qc.ca/en/avocats/equite/justicia>>.

¹⁸ “Equity and Diversity - Justicia Project” *Law Society of Upper Canada*, online:

<http://www.lsuc.on.ca/uploadedFiles/Equity_and_Diversity/Justicia/Justicia14-factsheet-web-Eng-FINAL.pdf>.

Hilland a lawyer who coordinated the program.¹⁹ They also are adaptable for different sized firms, with the founding firms offering to share their policies for others to adapt.²⁰ In Ontario, the Law Society of Upper Canada has created a fund for smaller firms and sole practitioners that offers \$3000 a month maternity allowance for up to three months for lawyers who do not qualify for Employment Insurance.²¹ The Law Society of Upper Canada has also compiled a directory of contract lawyers who can manage a lawyers practice while they are on leave and a series of publications for firms on how to guide them on addressing pregnancy, maternity leave, flexible hours, etc.²² The project is considered highly successful within the legal community with law firms remaining committed to diversity initiatives, with a positive outlook to achieving their targeted goals.

Abroad

However, the retention of women in law is not one only within Canadian borders.²³ Our southern neighbours are also facing gender diversity issues within the legal landscape. A 2014 American survey by Working Mother and Flex-Time Lawyers found that at the fifty best law firms for women lawyers only 19% of equity partners are female.²⁴ This number is disappointing after a question from the study – “how many women are among the top 10 equity partners of the firm who are credited with generating the most gross revenue

¹⁹ Andrew Woo, “B.C. law society project tackles retention and advancement of women lawyers” *The Globe and Mail* (8 January 2015), online: <www.theglobeandmail.com/news/british-columbia/bc-law-society-project-tackles-retention-and-advancement-of-women-lawyers/article22372299/>.

²⁰ *Ibid.*

²¹ *Supra* note 15.

²² “The Justicia Project” *The Law Society of Upper Canada*, online: <http://www.lsuc.on.ca/justicia_project/>.

²³ See note 12.

²⁴ “Best Law Firms for Women 2014: Executive Summary” *Working Mother & Flex-Time Lawyers*, online: <www.wmmsurveys.com/2014_WorkingMother_and_Flex-TimeLawyers_Best_Law_Firms_for_Women_Executive_Summary.pdf>.

from clients” – found that 40% of firms who responded to this question (45 out of 50 asked) had two or more women in their “top 10 rainmakers” list. This was a 32% increase from the previous year.²⁵ Similar to LSUC and LSBC, the Bar Association of San Francisco initiated the “No Glass Ceiling” program in 2005 that committed to concepts of part-time partners and flexible hours. Furthermore, the Chicago Bar Association launched a “Call to Action” to address the lack of women holding positions of power within law.²⁶ The said initiatives are only a handful representing law firms and bar associations commitment to nurturing and promoting the advancement of women to leadership positions in law.

Overall, there has been a large shift within the legal community regarding the advancement of women and increase of diversity initiatives. With the implementation of the various *Justicia* projects throughout the country, signatory law firms have committed to adopting policies and mandates that will lead to the increase of women in leadership positions. Although *Justicia* is still fairly new, it is a positive movement towards sustainable gender equality within the legal community.

Part II: Women in Corporate Governance

Similar to the legal community, in business, the representation of women in leadership positions is staggering lower than their male counterparts. According to the report on corporate governance conducted by Davies Ward Phillips & Vineberg LLP in 2011, it

²⁵ Deborah L. Jacobs, “At Law Firms, Mommy Track Still Holds Women Back” *Forbes.com* (8 May 2014), online: <www.forbes.com/sites/deborahljacobs/2014/08/05/at-law-firms-mommy-track-still-holds-women-back/>.

²⁶ “Business case for the retention of women in the legal profession”, *Law Society of British Columbia: Benchers’ Bulletin* (May 2007), online: <www.lawsociety.bc.ca/page.cfm?cid=743&t=retention-of-women-in-the-legal-profession>.

found that directors of companies listed on the TSX are typically men in their early 60s. It found that women are making slow progress to get onto Canadian boards, with only seven of the 360 issuers had women as board chairs as of 2011. Carol Hansell, a former senior partner at Davies and founder of Hansell Advisory LLP states “little change has happened in Canada since 2005... we need a fresh perspective on governance in Canada”.²⁷ Academics, including Jean du Plessis, advocate that in increasing the representation of women in leadership roles, businesses will see clear advantages such as corporate performance²⁸, improvement of teamwork and has positive influences on the economy.²⁹ Studies also show that women bring new knowledge to the table and take fewer risks than men.³⁰ In 2013, women comprised 12.2% of directorships in the S&P/TSX index, with more than 40% of boards not having any women as directors.³¹ This call to action is exemplified through the various securities commission policies of late throughout Canada. Initiated by the Ontario Minister Responsible for Women’s Issues and the Minister of Finance in 2013, the Ontario Securities Commission (OSC) undertook a study and published a report in 2014 on gender diversity on corporate boards.³² The Ontario Securities Commission led the discussion in Canada with securities regulatory authorities in Manitoba, New Brunswick, Newfoundland and Labrador,

²⁷ Jennifer Brown. “Canadian boards need a facelift says governance report” *Canadian Lawyer Magazine* (20 December 2011), online: <<http://www.canadianlawyermag.com/legalfeeds/614/canadian-boards-need-a-facelift-says-governance-report.html>>.

²⁸ Catalyst found a strong correlation between *Fortune* 500 companies success and women in top leadership positions. Source: “Women in Business: The conundrum of the glass ceiling”, *The Economist* (21 July 2005).

²⁹ Jean J du Plessis, Ingo Saenger & Richard Foster, “Board Diversity or Gender Diversity? Perspectives from Europe, Australia and South Africa” (2012) 17 *Deakin L Rev* 207 at 225.

³⁰ Sheryl Sandberg & Adam Grant, “How Men Can Succeed in the Boardroom and the Bedroom”, *The New York Times* (5 March 2015), online: <<http://nyti.ms/1z0MkGu>>.

³¹ “Women on boards: 7 provinces on for new OSC disclosure rules” *CBC.ca* (15 October 2014), online: <<http://www.cbc.ca/news/business/women-on-boards-7-provinces-sign-on-for-new-osc-disclosure-rules-1.2799604>>.

³² “Women on Corporate Boards” *Ontario Women’s Directorate*, online: <<http://www.women.gov.on.ca/owd/english/leadership/women-on-boards.shtml>>.

Northwest Territories, Nova Scotia, Nunavut, Quebec and Saskatchewan following suit and imposing a “comply or explain” model requiring companies listed on the stock exchanges to disclose women in senior management positions.³³ The requirements were published by the OSC in January 2014 as amendments to National Instrument 58-101 *Disclosure of Corporate Governance Practices* and Form 58-101F1 *Corporate Governance Disclosure*, with them applying to disclosure filed on or after December 31, 2014. Information that must be disclosed includes:

- director term limits and other mechanisms of renewal of the board of directors (the board),
- policies regarding the representation of women on the board,
- the board’s or nominating committee’s consideration of the representation of women in the director identification and selection process,
- the issuer’s consideration of the representation of women in executive officer positions when making executive officer appointments,
- targets regarding the representation of women on the board and in executive officer positions, and
- the number of women on the board and in executive officer positions.³⁴

The OSC hopes that disclosure will increase transparency for shareholders to see how board members are being selected, as well as encourage companies to think about their practices and how they can improve representation of women.³⁵

³³ “CSA members adopt disclosure requirements in respect of women on boards” *Canadian Securities Law – Stikeman Elliott* (17 October 2014), online: <<http://www.canadiansecuritieslaw.com/2014/10/articles/continuous-timely-disclosure/csa-members-adopt-disclosure-requirements-in-respect-of-women-on-boards/>>.

³⁴ Canadian Securities Administrators, *Multilateral CSA Notice of Amendments to National Instrument 58-101: Disclosure of Corporate Governance Practices*, (15 October 2014), online: <https://www.osc.gov.on.ca/documents/en/Securities-Category5/csa_20141014_58-101_noa-national-instrument.pdf>.

³⁵ “Women on boards: the OSC nudges management” *The Globe and Mail* (19 January 2014), online: <<http://www.theglobeandmail.com/globe-debate/editorials/women-on-boards-the-osc-nudges-management/article16395975/>>.

Canadian Securities Commissions Policy Developments

“Comply or Explain” versus Quotas

While the Ontario Securities Commission was considering the model in which to present the diversity disclosure requirements, a decision had to be made as to whether it would be a “comply or explain” or quota model. Off hand, without quotas imposed, issues could arise in regards to lack of representation of women on boards with corporations not facing repercussions if they do not comply. The OSC relies upon public opinion and the media to criticize companies who do not adopt gender diversity policies. Further, quotas can act as mechanisms to force companies into adapting schemes focusing on women’s development and retention.

However, the advantages of a comply or explain system outweighs quotas since there cannot be a one size fits all policy due to the variety of public companies securities commissions regulate in Canada. Furthermore, criticisms of imposing quotas extend to whether there would be a representation of ‘empty suits’ at the table. This brings to light issues regarding directors fiduciary duties and their capacity to act in the companies best interest. Critics may present that if women must make up a specific percentage of board members, this will lead to companies rushing to have the seat filled with any woman, rather than the best candidate. Moreover, Canadian securities commissions tend to let the market take care of itself. In doing so, the “comply or explain” model suits Canada rather than the quota system. TD Economics has published a report on women in leadership roles and warns against setting quotas – “directors need to be appointed on the basis of merit. Quotas don’t support the concept of merit, and can be detrimental due to their impact on the morale of an organization and of women, which undermines the cause

being championed” says Beata Caranci who authored the report and is a Deputy Chief Economist of TD.³⁶ They also pointed to the diverse background of publicly traded companies similar to that mentioned by the OSC and how the comply or explain model will work better than forced quotas, with the market deciding whether corporate policies are sufficient or if companies need to be doing more to develop women into leadership roles.

Abroad

Canada is following in the footsteps of a global trend of diversity disclosure.³⁷ In the United States, as of 2010, the Securities and Exchange Commission requires companies to disclose considerations when electing board members.³⁸ This is similar in the United Kingdom where companies must describe diversity policies and their objectives.

According to a 2012 report by the Centre for Talent Innovation in New York, women in Britain account for 57% of employees entering the workforce, but are only 17% of executive directors and 4% of chief executives of FTSE’s 100 biggest companies.³⁹ In Australia, publicly traded companies must establish and disclose diversity policies, as well as annual objectives and progress to reaching them, and representation of women within the entire company, senior executive positions and on the board.⁴⁰ The rest of the world varies between the two models with “comply or explain” approach in Austria,

³⁶ “Corporate governance should shine a light on gender diversity on boards: TD Economics”, online: <http://www.td.com/document/PDF/economics/special/GetOnBoardCorporateCanada_PressRelease.pdf>.

³⁷ For an excellent overview of this global trend, see Viviane de Beaufort & Lucy Summers, “Women on Boards: Sharing a Rigorous Vision of the Functioning of Boards, Demanding a New Model of Corporate Governance” (2014) 4 J Res Gender Stud 101.

³⁸ Seletha R. Butler, “All on Board! Strategies for Constructing Diverse Boards of Directors” (2012-2013) 7 Va L & Bus R 61 at 72. See also Stephanie N. Shetler, “Women on Corporate Boards: Non-Quota Initiatives to Increasing Board Gender Diversity in the U.S.” (2014) 5 Grove City C J L Pub Pol’y 13.

³⁹ “Women in management: A word from your sponsor”, *The Economist* (16 June 2012).

⁴⁰ For further information on Australian schemes see note 7 and note 29.

Germany, Hong Kong, Luxembourg and Sweden. Countries including Norway⁴¹, Belgium, Denmark, Netherlands, Italy, Israel, France and Spain have taken the quota model with some countries demanding 50% of women on boards and the most common number being 40%. In France, women directors in public companies increased from 12.3% to 26% from 2010 to 2013, with a 40% quota that must be reached by 2017.⁴² It is also common for countries to impose sanctions onto companies who do not comply, with sanctions varying from directors not getting paid (France), inability to win state contracts (Spain), and refusal to register the board, dissolution of the company and fine until compliance (Norway).⁴³ Although seemingly quite extreme, in implementing sanctions an argument can be raised that this incentivizes companies to work to achieve the quota and remain progressive.

Recent Results of the Disclosure Requirements

Governmental Reports

Following the announcement by securities regulators throughout Canada, various publications were commissioned by governmental and nongovernmental organizations on this issue.

In June 2014, the federal government published *Good for Business: A Plan to Promote the Participation of More Women on Canadian Boards* that outlines the benefits corporations will have with a strong female representation on their boards. The report also provides issues including goals and timelines; private sector leadership; board

⁴¹ Norway was the first to implement the quota system through amendments to the *Norwegian Public Limited Liability Companies Act* in 2012. See note 40 at 14.

⁴² Andrew MacDougall and Michele Qu, "Gender Diversity on Boards and in Senior Management" *Osler, Hoskin & Harcourt* (19 January 2014), online: <<https://www.osler.com/uploadedFiles/Gender-Diversity-on-Boards-and-in-Senior-Management.pdf>>.

⁴³ Alla Segal, "Women on Boards" (Business Associations Lecture delivered at Osgoode Hall Law School, 22 July 2015).

governance; championing, mentoring and networking; and communications and engagement. It concludes that a goal of 30% over five years is a reasonable national threshold, with a long term goal of equality.⁴⁴

Similarly, Federal-Provincial-Territorial Ministers Responsible for the Status of Women commissioned The Conference Board of Canada to publish *The Business Case for Women on Boards*⁴⁵. Like *Good for Business*, this resource outlines the benefits of having women on boards in six steps: strong financial performance; top talent; heightened innovation; enhanced client insight; strong performance on non-financial indicators; and board effectiveness.⁴⁶ It also provides strategies for businesses to use when recruiting and developing female board members such as recruiting outside of traditional networks and the “C-Suite”; adopt formal board policies; and ensure nomination committee impartiality.⁴⁷

Both reports demonstrate a commitment by government to promote women into leadership positions. Further, they display how the movement by securities regulators has sparked discussion of this topic and incentivised governments to create and publish reports.⁴⁸

Non-Governmental Reports

In January 2015, the think tank Catalyst that aims to expand “opportunities for women and business” released its annual census on women and focused on a global census of women on boards. Unsurprisingly they found that women are under represented on

⁴⁴ *Supra* note 1.

⁴⁵ The Conference of Canada and Federal-Provincial-Territorial Ministers Responsible for the Status of Women, *The Business Case for Women on Boards*, (Ottawa: Government of Canada), online: <http://www.women.gov.on.ca/owd/docs/women_on_boards.pdf>.

⁴⁶ *Ibid*, 3 to 8.

⁴⁷ *Ibid*, 9 to 10.

⁴⁸ A “business case” for women on boards is also explored in Harry S. Gerla, “Afterword- Increasing Gender Diversity on Corporate Boards: It’s Gonna Be a Long War” (2011-2012) 37 U Dayton L Rev 91.

boards globally. However they have pioneered various schemes in support of the advancement of women such as the Catalyst Corporate Board Resource, that matches boards with candidates; Women on Board, that pairs women board candidates with board chair members; and the Catalyst Accord, a public initiative encouraging Financial Post 500 companies to have 25% of their boards by 2017 be represented by women.⁴⁹ Catalyst leads the fight from the non profit sector and continues to author reports and advocate for gender equality.

Industry Changes

In November 2014, seventeen companies that account for only 7% of the index disclosed having a diversity policy, with 4% disclosing targets for women on boards that typically aim to have 25 to 50% women on boards. For example, Royal Bank of Canada has reported that it has a 25% objective, while Emera Inc. states that its policy has a minimum of no less than 25%.⁵⁰ In May 2015, Torys LLP reviewed 179 companies (71% of the S&P/TSX index) that had filed by 10 May 2015. They reported that 56% of companies on the index had adopted policies to address women on boards, with others still working on creating their initiatives. Seven of the nine financial institutions had adopted policies, with an average of 34% women on their boards.⁵¹

Law firms have also acted as participants in the changing landscape of corporations. Since the OSC has not offered such policies, law firms have created

⁴⁹ Deborah Gillis, “Disrupting the Default: Gender Diversity on Corporate Boards” *Catalyst* (13 January 2015), online: <<http://www.catalyst.org/blog/catalyzing/disrupting-default-gender-diversity-corporate-boards>>.

⁵⁰ Janet McFarland, “A slow unveiling of gender diversity plans in Canadian companies”, *The Globe and Mail* (23 November 2014), online: <<http://www.theglobeandmail.com/report-on-business/careers/management/board-games-2014/a-slow-unveiling-of-gender-diversity-plans-in-canadian-companies/article21719847/>>.

⁵¹ Janet McFarland, “Canadian companies slow to set targets for female directors”, *The Globe and Mail* (25 May 2015), online: <<http://www.theglobeandmail.com/report-on-business/canadian-companies-adopting-gender-diversity-policies/article24599616/>>.

publications outlining the securities regulators disclosure requirements and provide advice as to how their clients can adhere to regulations. For example, McMillan LLP provides clients with step by step descriptions of each item for disclosure and guidelines what to do if they decide to disclose or not.⁵² These publications illustrate how firms and corporations are connected and work fluidly together.

Similar to the shift occurring within the legal community, the promotion of gender diversity by regulatory bodies is also found within business and corporate governance. The new disclosure requirements of 2014 have sparked conversation on this issue and forced the industry to take notice of the lack of female representation in leadership roles, with more and more women being promoted to hold directorships.

PART III: Conclusions & A Look Towards the Future

At present, equality amongst the sexes is more evident than in all of history. An increasing number of women are heading major multinational companies, holding positions of power, and are leading countries, with the potential for the “leader of the free world” having a female president next year. Within the legal and business sectors, this increase is also evident. Projects such as *Justicia* by legal regulatory bodies throughout Canada and securities regulators disclosure requirements have sparked conversation and encouraged change. However, there is still quite a lot to still be done. At present, there is not yet equal representation of women in leadership positions in both law and business.

As one has stated, within corporate structures, if companies do not adopt or

⁵² See “New Gender Diversity and Board Renewal Disclosure Requirements” *Mcmillan LLP* (1 December 2014), online: <http://www.mcmillan.ca/Files/178058_New%20Gender%20Diversity%20and%20Board%20Renewal%20Disclosure%20Rules.pdf>; Leslie McCallum and Patrice S. Walch-Watson, “Gender Diversity and Board Renewal” *Torys LLP* (16 October 2014), online: <<http://www.torys.com/insights/publications/2014/10/gender-diversity-and-board-renewal-new-canadian-disclosure-rules-for-the-2015-proxy-season>>.

disclose gender policies, there are no penalties from regulatory bodies. What may be interesting is for Canadian regulatory bodies to look towards imposing sanctions or penalties onto companies who do not provide satisfactory explanations if they do not comply with diversity disclosure, rather than leaving it to the market to dictate repercussions. It may be beneficial for regulators to take a more capitalist approach and add a price tag to their unsatisfactory explanation. This could create a higher standard to the “comply or explain” model, without applying strict quotas or relying upon public opinion.

Moreover, corporations can learn from law firms on how to implement gender diversity policies and initiatives. With firms publishing reports on how to write and provide disclosure, companies are provided with step-by-step instructions on how they can comply. On another note, law firms can learn from corporations about running themselves on an untraditional model not focused on billable hours in order to make it to the partner track. Law firms can step away from this model and encourage flex time and alternative work schemes that corporations have adopted.

Advantages of having women in leadership positions are copious. It has been proven that businesses and firms achieve greater successes with more women on boards or as partners. Industry leaders must continue to make progress to develop and promote women within their organizations. This is a serious task that must be nurtured and cultivated in order for it to succeed in the long term. For it is the responsibility of the people of today to continue to tear down barriers of gender inequality in order to continue to shatter the glass ceiling for future generations.

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