September 28, 2023

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor, Box 55
Toronto, Ontario
M5H 3S8

Me Philippe Lebel
Corporate Secretary and Executive Director, Legal Affairs
Autorité des marchés financiers
Place de la Cité, tour Cominar
2640, boulevard Laurier, bureau 400
Québec (Québec) G1V 5C1

To whom it may concern,

Thank you for the opportunity to provide feedback on Proposed Amendments to Form 58-101F1 Corporate Governance Disclosure of National Instrument 58-101 Disclosure of Corporate Governance Practices and Proposed Changes to National Policy 58-201 Corporate Governance Guidelines. This is an important piece of policy and has the potential to make great strides in modernizing governance practices in corporate Canada.

Through this letter, the Diversity Institute will comment on the measures proposed in the draft amendments and suggest modest additional measures that could strengthen future governance reviews.

We applaud the commitment of the Canadian Securities Administrators to advancing diversity and inclusion and the concrete measures that you have already taken. These initiatives send a strong signal to Canadian investors and organizations, as research shows clearly that this type of policy both shapes and reflects values.

BACKGROUND

It's hard to overstate the benefits of diversity and inclusion in corporate leadership. The advantages are too many to count, ranging from enhanced innovation to improved governance practices. Yet, corporate leadership in Canada remains notably lacking in diversity. One key issue is the lack of robust tools for measuring, tracking, and holding companies accountable. Efforts to complement legislation with voluntary codes such as the 30% Club, Black North, the Responsible Investors Association (RIA) and, more recently, the 50 - 30 Challenge, attempt to use peer pressure to drive change.

However, an analysis by the Diversity Institute of 783 firms from the TSX and the S&P/TSX composite index paints a mixed picture of progress. From 2015 to 2022, female representation on S&P/TSX Composite Index boards exceeded 30%, though executive roles still fall short. Black leadership has witnessed growth but remains shy of BNI's 3.5% target.

For over 20 years, the Diversity Institute has led evidence based strategies to advance diversity and inclusion. Our work has provided a deep dive not just into the overall data but also the features which differentiate leaders and laggards, the practices that are effective in advancing diversity and inclusion and otherwise unavailable data on intersectionality – for example, the experience of racialized women in leadership. Some findings of our most recent studies show:

- Consistent with other studies, women and racialized people are under-represented in the boards and executive roles of Canada's largest corporations
- Some progress has been made but the pace of change is slow.
- The averages mask huge variances: some companies have more than 40% women on their boards, while others have none. The issue is not the pool of qualified applicants but the organizations' priorities and practices.
- There are regional differences. For example, the evidence suggests Montreal is ahead of Toronto in terms of the inclusion of women in leadership roles, but lags significantly in the inclusion of racialized people even when population differences are taken into account.
- 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 - Indigenous status, disability, sexual orientation and gender identity.
- Reported rates of these groups are directly affected by the level of comfort people have with disclosing these aspects of their identity, rather than actual 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.

We know diversity advances corporate performance, drives inclusion, aids in penetrating new markets, and creates happier and more engaged employees. We know equally well that failing to address these issues effectively can destroy an organization's reputation. One challenge we have observed is a lack of consistency in the diversity data being collected and reported on, or an overreliance on gender data to demonstrate commitment to principles of EDI. The result has been that progress has been made on gender-based inclusion, but other underrepresented groups are not part of the picture. For example in the Greater Toronto Area (GTA) where 51% of the population is racialized, white women outnumber racialized women 12:1 on corporate boards.

The Diversity Institute and the broad network of partners we work with advocate the consideration of other equity-deserving groups, inclusive of dimensions of diversity beyond gender. Our recent work developing a Publicly Available Specification for the 50-30 Challenge with the Standards Council of Canada provides a clear framework and definitions for diversity reporting at the organizational level.

Our research has shown:

- There is some evidence to link improved corporate performance to greater diversity although the causal relationships are not clear (i.e. high performing organizations may focus on diversity rather than higher performance being caused by diversity), which suggests this information has a high degree of relevance to investors.
- There is evidence to suggest that while more diverse teams and workforces present

coordination challenges, they produce more innovation.
- 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 people and immigrants, Indigenous people, people with disabilities and people with different gender identities and sexual orientation, pose a significant economic and social cost to Canada.
- There is a significant gap between the rhetoric and performance of organizations with respect to diversity such that measurement, transparency and accountability are key
- Clear and 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 300 partner organizations and experts across geographies and sectors, we want to offer some comments and suggestions on the proposed amendments.

RECOMMENDATIONS

Beyond the social impetus and competitive advantage that intentional EDI strategies respond to, investors need consistent, comparable data in order to evaluate the progress of companies that they are making decisions about to either vote for or against or to invest in or stop investing in. Current provincial regulations through securities commissions only address gender and are largely silent on other dimensions of diversity, making reliable data on performance in this area sparse.

We support, as a first step, the implementation of Form B's reporting requirements. Research has compared different frameworks in countries, for example, diversity 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 is 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 been slow, companies that are subject to Employment Equity legislation have better representation among leadership than those that are excluded. This may be a function of the sectors affected. Evidence from the US suggests that procurement, consumer power and set-asides have had significant impacts on marginalized populations. Other research suggests that while "what gets measured gets done" –there need to be consequences for not achieving diversity performance targets. Other research comparing the models of Canada's provincial securities regulators has suggested gaps in transparency, accountability, and enforcement limit the impact of regulation, particularly in "comply or explain" models.

We strongly urge the adoption of Form B as the necessary minimum requirement for reporting.

The proposed amendment has the support of a broad coalition of stakeholders and experts. 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 produce slow change, the pressure that it creates for laggards to improve is an important driver of behaviour. You have an opportunity to establish Canada as a leader globally with these new measures to advance both EDI, as well as the availability of

much-needed data for investors and we hope that you will take the opportunity to introduce the modest requirements of Form B to propel Canada into its rightful place as a global leader on diversity and inclusion.

Yours truly,
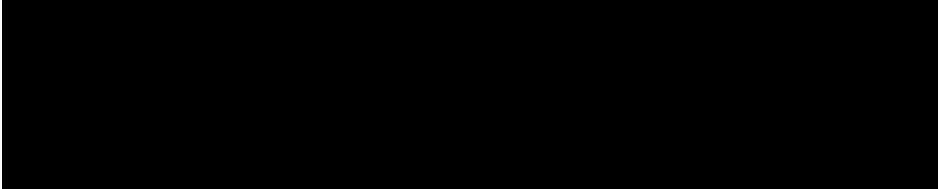
Wendy Cukier, MA, MBA, PhD, DU (Hon) LLD (Hon) M.S.C. (she/her)

Professor, Entrepreneurship and Strategy, Ted Rogers School of Management
Director, Diversity Institute

Diversity Institute, Ted Rogers School of Management, Toronto Metropolitan University
350 Victoria Street, Toronto, Ontario, M5B 2K3

DIVERSITY LEADS 2020: OVERVIEW

The 2020 instalment of the *DiversityLeads* study by the Ted Rogers School of Management's Diversity Institute analyzes the representation of women, Black people, and other racialized persons among **9,843** individuals on the boards of directors of large companies; agencies, boards, and commissions (ABCs); hospitals; the voluntary sector; and educational institutions. (Directors on the boards of educational institutions and other non-profits are legally responsible for the governance of their institutions.)[1] The report also explores the board-related experiences of people who identify as Indigenous, LGBTQ2S+ (lesbian, gay, bisexual, transgender, queer or questioning, and two-spirit), and persons with disabilities through qualitative analysis. Ultimately, the goal of the report is to provide a holistic view of diversity on boards through a quantitative analysis of diverse representation on boards and a qualitative deep dive that explores diverse individuals' experiences with pursuing and/or holding board positions.

In this report, we use gender (men–women) instead of sex (male–female) to distinguish the socially constructed aspects of male–female differences (gender) from biologically determined aspects (sex).[2] This distinction has been well established in academia since the 1980s. We also use the term "racialized person" instead of "visible minority". As the Ontario Human Rights Commission states, the use of "racialized person/group" is preferred to the outdated and inaccurate term, "visible minority". "Visible minority" sets white or Caucasian as the norm, and identifies people based on "deviation" from that "norm". It also indicates that the racialized group is fewer in number than the non-racialized population, which is not always true. Additionally, the term "racialized person" recognizes race as a social construct.[3] However, it should be noted that this term encompasses all non-Caucasian persons. It is a blanket term that does not capture the varied experiences of different racialized groups (e.g., a person of East Asian descent may experience racialization differently than a Black Canadian). This is why we supplement this report with a separate section that includes data specifically tracking the representation of Black individuals in governance across Canada. Finally, we also use the term "Indigenous peoples" in this paper, which includes First Nations, Inuit, and Métis peoples.[4] We use a blanket term here due to data constraints. In an ideal study, the experiences of each Indigenous group would be looked at separately.

Methodologically, since the coding process in the quantitative component of this study was based on photographs, it was possible to code for gender, racialized, and Black identity status in most cases, but not for sex, due to the lack of publicly available self-identification information.

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[1] Community Literacy of Ontario. (2014). *Board governance resource guide for nonprofit organizations*. http://www.communityliteracyofontario.ca/wp/wp-content/uploads/2014/07/Board-Governance-Manual-June-2014.pdf; Ontario Trillium Foundation (2018). *Framework for board governance*. https://otf.ca/framework-board-governance

[2] This report uses the term LGBTQ2S+, which is more inclusive and considers identities that are not covered in the term LGBTQ2, which is used by the federal government. (Hill Notes. (2018). *Gender equality week: Understanding gender and sexual diversity terminology*. Library of Parliament. https://hillnotes.ca/2018/09/24/gender-equality-week-understanding-gender-and-sexual-diversity-terminology/)

[3] Ontario Human Rights Commission. (n.d.). *Racial discrimination, race and racism (fact sheet)*. http://www.ohrc.on.ca/en/racial-discrimination-race-and-racism-fact-sheet.

[4] Statistics Canada. (2020). *Statistics on Indigenous Peoples*. https://www.statcan.gc.ca/eng/subjects-start/indigenous_peoples

As such, coders used "man" to indicate that the individual captured in the photograph was a man, and "women" to indicate that the individual in the photograph was a woman, and "unsure" to represent uncertainty of gender or race caused by insufficient information. A multi-rater visual identification process (i.e., multiple raters attempt to code the same individual to ensure consistency and accuracy) was also used to code the racialized status of board members. This method was used because governments and (most) organizations do not currently track race-based data. If organizations truly applied a diversity lens to their leadership recruitment and development strategies, they would be collecting race-based data already. Unfortunately, this is not the case. Thus, our methodology attempts to overcome this shortcoming in publicly available data. Moving forward, governments and institutions should endeavor to track race-based data, as it would help them to make more informed policy decisions.

The quantitative section of this report analyzes data from Toronto, Montreal, Vancouver, Calgary, Halifax, Hamilton, London, and Ottawa. Researchers reviewed **9,843** individuals on boards of directors across five sectors, which include: municipal and provincial ABCs, the corporate sector, the voluntary sector, the hospital sector, and the education sector (consisting of both university and college leaders and elected board members who govern school boards) (see Appendix A).

While the quantitative section provides important information, there are limits to quantitative methodologies, as it becomes much more difficult to not only track diverse identities, but also to understand the unique experiences of individuals based on their identities. In order to better understand the barriers faced by diverse groups, a more in-depth exploration of those experiences is needed.

As such, this study also includes interviews with 36 individuals recruited through community organizations (see Appendix B) who identify as Indigenous, as members of the LGBTQ2S+ community, and/or as persons with disabilities.[5] An intersectional lens is applied to understand their experiences as diverse board members.

This study shows that women are underrepresented on boards of directors. Overall, women occupy 40.8% of board positions in the cities and sectors studied. There were variations across regions and sectors. For example, women hold the highest percentage of board positions (46.6%) in Halifax, Nova Scotia and the lowest (33.7%) in Calgary, Alberta. School board directors in the education sector and provincial ABCs tend to have the highest level of representation of women in board positions (47.3% and 46.2%, respectively). Women hold the majority of board roles in the education sector among university and college leaders in London (69.2%) and Ottawa (58.3%). In contrast, the corporate sector shows lowest levels of representation: only 19.9% of leadership roles in Calgary are held by women, and in Toronto, only 28.6% are held by women.

For racialized people, the situation is far worse. While racialized people represent 28.4% of the population across the jurisdictions studied, they occupy only 10.4% of board positions overall. There are significant differences in the proportion of racialized people in the cities studied. For example, racialized people are the majority in Toronto (51.4%) and nearly half the population in

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[5] This report uses the Canadian Disability Survey by Statistics Canada definition, which "includes anyone who reported being "sometimes," "often" or "always" limited in their daily activities due to a long-term condition or health problem, as well as anyone who reported being "rarely" limited if they were also unable to do certain tasks or could only do them with a lot of difficulty." (Statistics Canada. (2019). *Gender and sexual diversity glossary.* https://www.btb.termiumplus.gc.ca/publications/diversite-diversity-eng.html)

Vancouver (48.9%), while in Halifax they represent only 11.4% of the population. The level of representation of racialized people on boards of directors varies dramatically from the proportion of racialized people living in these cities. Toronto and Vancouver have the highest proportions of board positions held by racialized people (15.5% and 12.3%, respectively). In Montreal, where racialized people represent 22.6% of the population, they occupy only 6.2% of board positions. This is less than the proportion of racialized people in board positions in Halifax (6.7%), a city where racialized people represent only 11.4% of the population. Universities and colleges in the education sector have the highest level of representation of racialized people in board roles (14.6%), while the corporate sector has the lowest level of representation (4.5%). When we consider the data from an intersectional lens, we see that non-racialized women outnumber racialized women by a substantial margin. For example, in Toronto, where there are more racialized women than non-racialized women in the population, non-racialized women still outnumber racialized women in corporate leadership roles 12:1 (as of 2018).
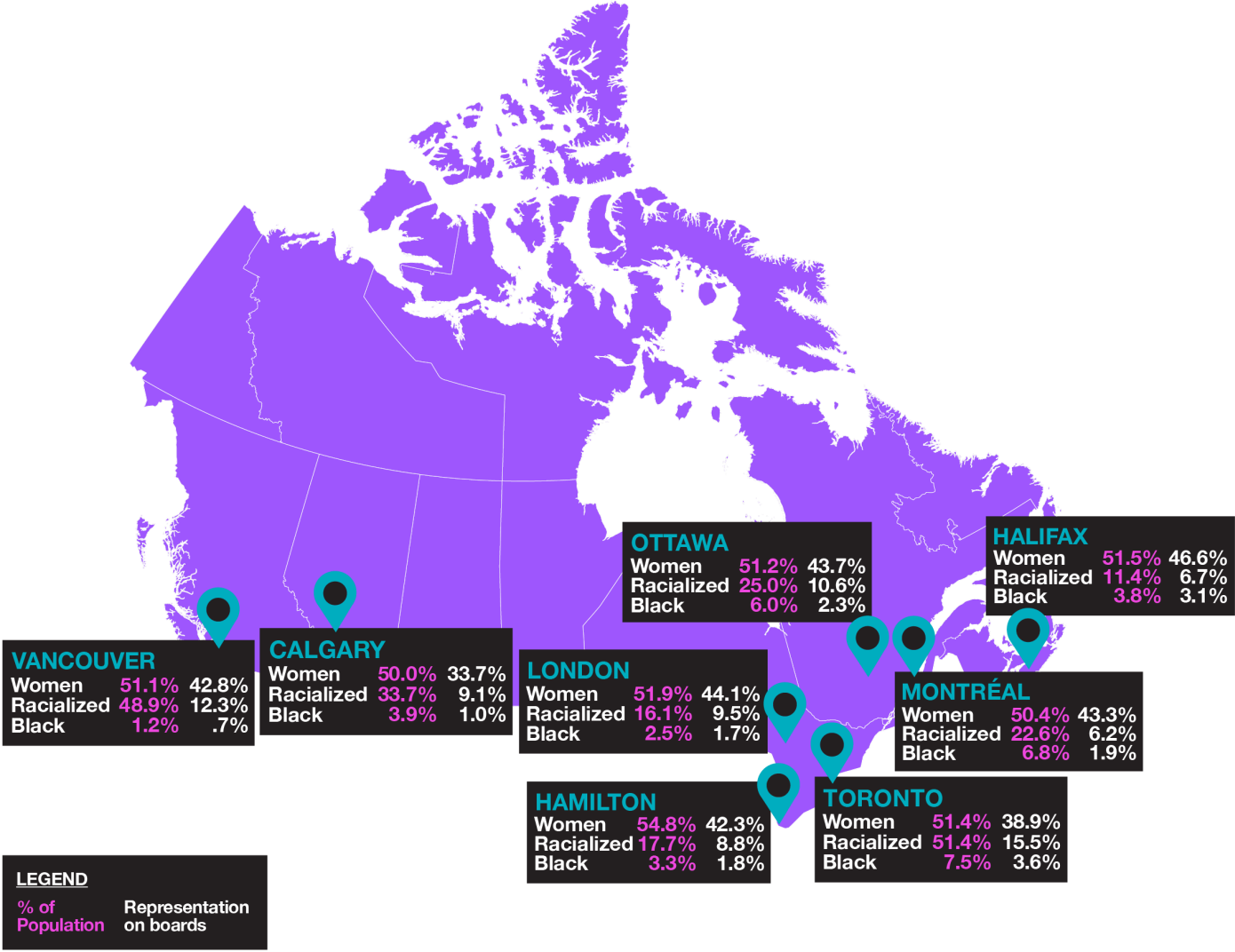
This study also shows that Black leaders are deeply underrepresented on boards across Canada and are even outnumbered by other racialized groups, highlighting a need to continue tracking this population as a distinct group. For example, Black individuals hold only 3.6% of all board positions in Toronto despite comprising 7.5% of the Greater Toronto Area population. The picture of Black representation on corporate boards in particular is even bleaker, where only 0.3% of board members are Black. Black board members in Montreal are also starkly underrepresented, holding only 1.9% of board positions despite making up 6.8% of the population in Greater Montreal—in fact, the study found no Black board members at all in the corporate sector, the voluntary sector, the hospital sector, or the education sector in Montreal. In Calgary, Black individuals make up 3.9% of the population but represent only 1.9% of members on corporate boards. London also has a major issue in terms of representation; Black board members are outnumbered by other racialized members 4.4:1.

Research has shown that Indigenous peoples, members of the 2SLGBTQ+ community, and persons with disabilities are rarely members of boards.[6] Interviews with these groups reveal the barriers to inclusion that they face, particularly in obtaining board positions. Some of the barriers that were identified were corporate culture, lack of social networks, discrimination (which is compounded for people who face multiple grounds of discrimination), pressures to refrain from self-identification, and a lack of mentorship or support.

Barriers to the advancement of women, racialized people, and other diverse groups are complex and exist on multiple levels. Barriers exist on the macro (societal) level, the meso (organizational) level, and the micro (individual) level. Consequently, an integrated strategy is needed to advance inclusion in our workplaces. On the macro level, we need to combat stereotypes and promote policies and legislation that advance inclusion. On the meso level, organizations need to address diversity and inclusion strategically, ensuring that leaders communicate its importance and make it a priority in governance through setting targets, embedding diversity and inclusion in skills matrices, and embarking on intentional strategies tied to measurable outcomes. Diversity and inclusion need to be supported with progressive human

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[6] Nourafshan, A. M. (2018). From the closet to the boardroom: Regulating LGBT diversity on corporate boards. *Albany Law Review*, *81*(2), 439–487; Zochodne, G. (2020). Visible minorities vastly underrepresented in the boardroom, new disclosures suggest. *Financial Post.* https://business.financialpost.com/news/fp-street/the-lifting-of-all-boats-is-clearly-not-happening-boardrooms-of-big-canadian-companies-still-mostly-white-and-still-mostly-male; Everly, B.A. & Schwarz, J. L. (2015). Predictors of the adoption of LGBT-friendly HR policies. *Human Resource Management*, 54: 367–384. doi:10.1002/hrm.21622

resources practices and inclusive cultures. They also need to be reinforced with performance goals and accountability and embedded in every step of the value chain from procurement to marketing, as well as in philanthropic activities. Additionally, at the micro level, we can shape and improve individual knowledge, attitudes, and behaviour to advance diverse representation on boards.

OTTAWA

	% of Population	Representation on boards
Women	51.2%	43.7%
Racialized	25.0%	10.6%
Black	6.0%	2.3%

HALIFAX

	% of Population	Representation on boards
Women	51.5%	46.6%
Racialized	11.4%	6.7%
Black	3.8%	3.1%

VANCOUVER

	% of Population	Representation on boards
Women	51.1%	42.8%
Racialized	48.9%	12.3%
Black	1.2%	.7%

CALGARY

	% of Population	Representation on boards
Women	50.0%	33.7%
Racialized	33.7%	9.1%
Black	3.9%	1.0%

LONDON

	% of Population	Representation on boards
Women	51.9%	44.1%
Racialized	16.1%	9.5%
Black	2.5%	1.7%

MONTRÉAL

	% of Population	Representation on boards
Women	50.4%	43.3%
Racialized	22.6%	6.2%
Black	6.8%	1.9%

HAMILTON

	% of Population	Representation on boards
Women	54.8%	42.3%
Racialized	17.7%	8.8%
Black	3.3%	1.8%

TORONTO

	% of Population	Representation on boards
Women	51.4%	38.9%
Racialized	51.4%	15.5%
Black	7.5%	3.6%

LEGEND

% of Population — Representation on boards

THE 50-30 CHALLENGE

Efforts for diversity, equity and inclusion within organizations, particularly in decision-making and leadership roles, can have positive impacts on an organization's ability to access qualified talent and diverse markets, as well as the ability to drive innovation and improve organizational performance. Recognizing these benefits, the Canadian Government's 50 – 30 Challenge (the Challenge) aims to promote increased diversity and representation on boards and/or in senior management within organizations across Canada.

Co-created with the Diversity Institute, the Challenge is voluntary and encourages organizations to strive towards two goals:

1. Gender parity (50% women and/or non-binary people) on Canadian boards and/or in senior management, and
2. Significant representation (30%) on Canadian boards and/or senior management of members of other equity-deserving groups, including those who identify as:
    a. Racialized, Black and/or People of colour ("Visible Minorities")
    b. People with disabilities (including invisible and episodic disabilities)
    c. 2SLGBTQ+ and/or gender and sexually diverse individuals
    d. "Aboriginal" and/or Indigenous Peoples. The program and participants recognize Indigenous Peoples, including First Nations, Métis and Inuit, as founding Peoples of Canada and underrepresented in positions of economic influence and leadership.

The 50 – 30 Challenge ultimately aims to promote diversity, equity and inclusion in leadership roles across Canada, and encourage organizations to take concrete actions toward diverse representation in leadership. Existing supports, resources, and tools are available to support Challenge participants in their efforts towards achieving and maintaining Challenge goals.

As an ecosystem partner to the Challenge, DI helps signatories to the 50 – 30 Challenge and other organizations achieve gender parity and increased diversity on their boards and senior management teams. The Diversity Institute is particularly focused on supporting SMEs with training and tools and will provide a database of women and diverse leaders.

 In addition, working with the Standards Council of Canada, DI developed the [Publicly Available Specification (PAS)](#), which defines the terminology of the Challenge.

To help organizations striving to meet the Challenge goals, DI also hosts the [What Works Toolkit](#), which KPMG developed. It offers strategies and recommendations for incorporating equity, diversity and inclusion.

THE DIVERSITY INSTITUTE

Founded in 1999, the Diversity Institute (DI) has established a cross-sectoral reputation for advancing evidence-based strategies that promote Equity, Diversity and Inclusion (EDI) to address systemic inequality, harassment, and racism in a way that creates lasting change. We have extensive experience conducting equity assessments for policies and programs with private sector companies, government organizations, and non-for-profits to identify systemic racism, barriers to access, and the disparate impacts on racialized groups. Our work focuses on supporting equity of access and outcomes and advancing opportunities for women, Indigenous peoples, persons with disabilities, and racialized people, with a particular focus on the Black community, and the 2SLGBTQ+ community as well as immigrants, newcomers and faith based groups. With more than 130 full-time staff, 100 research associates from around the world, and 200 government, community and industry partners, DI works through 10 regional hubs across Canada and with partners around the world. Our large and diverse team brings unique expertise and lived experience to inform our work. We have experience running large national bilingual programs and offer services in French and English.

Based on Canada's largest English-speaking business school, the DI's unique approach to

gender and diversity assessment is informed by both a commitment to social justice and an understanding of the need for effective equity assessment to embed EDI into organizational strategy. EDI and anti-racism cannot be bolted on but must be embedded at every stage of the value chain and understood as supporting core objectives - attracting and retaining talent, serving diverse stakeholders, driving innovation and avoiding risk and reputation damage. We also recognize the interplay between large macro issues (culture, infrastructure, policy), organizational issues (strategy, culture, metrics, practices) as well as individual knowledge, attitudes and behaviours.

DI's has a suite of industry-tested and evidence-based organizational assessment tools, including the new Diversity Assessment Tool which has been applied in over 100 organizations and is the basis of an app supported by the Digital Supercluster and tested in more than 100 SMEs. Our Diversity Assessment Tool is informed by a deep understanding of Canadian and international standards for continuous improvement. We examine organizational policies, practices and processes through the value chain to consider ways in which assumptions shape conceptualizations and definitions, design and implementation. Using its unique methodology, DI has led a number of custom diversity assessment and EDI strategy projects for large corporations such as Starbucks and Rogers Communications. DI has also analyzed policies and practices in the Incubate Innovate Network of Canada (I-INC) and has assisted with devising EDI strategies for accelerators and incubators to help level the playing field for women and diverse entrepreneurs. DI has also undertaken Diversity and Inclusion Assessments and the development of EDI and Anti-Racism Action Plans for the City of Markham, the City of Vaughan, the Canadian Museum of History, the Education Quality and Assurance Board of Ontario (EQAO), Mitacs, and others. DI has expertise in conducting detailed strategy, policy and process reviews for government agencies applying a gender and diversity lens to identify systemic racism, barriers to access, and inequity in outcomes. As the research lead for the Future Skills Centre, we have well-developed competency frameworks and assessment techniques that equip us to assess EDI skills, knowledge and behaviours and programming to build EDI capacity.