

Client Advisory

Developments in executive compensation and governance, workforce rewards and pay equity, and inclusion and diversity – Fall 2022

November 14, 2022

Summary

Various workforce rewards and executive compensation developments have occurred since the publication of our last Client Advisory earlier this year. Key items of interest include:

Executive compensation and governance:

- Say-on-pay vote results
- Virtual corporate processes
- Tax changes in various jurisdictions
- Significant corporate control
- New director and officer obligations in Ontario
- Final US SEC proxy and clawback rules
- ESG developments
- Automatic Securities Disposition Plans in Québec

Workforce rewards and pay equity:

- Pay equity and pay transparency developments
- New federal prohibitions against wage-fixing and employing under-age workers
- Federal consumer protection
- Statutory holidays and minimum wage developments

Case law:

- Factors affecting the length of reasonable notice
- Bonus entitlements

- Failure to mitigate
- Employee misclassification class actions
- Directors and officers' liability insurance

Inclusion and diversity:

- Women on boards of directors and in executive officer positions
- Federal and provincial diversity initiatives
- International developments
- New research

Executive compensation and governance

Say-on-pay vote results

The 2022 proxy season marked the thirteenth year of voluntary say-on-pay in Canada. Overall, results were similar to past years, with average shareholder support remaining strong at 91%.

Four companies this year received less than 50% shareholder support (versus six in 2021 and one in 2020), with pay-for-performance misalignment and problematic pay practices likely factors in the voting results. The vast majority of issuers received support above 80%, generally indicating alignment between disclosed executive compensation levels and overall company performance. According to a WTW analysis as at August 12, 2022, 250 companies adopted say-on-pay, versus 241 in 2021 (52 constituents of the S&P/TSX 60 Index, and 175 constituents of the S&P/TSX Composite Index). Among the total sample, 225 companies held a vote (versus 223 last year).

2020		2021
241 / 223	Number of companies / number of votes held	250 / 225
91%	Average shareholder support	91%
6% (13)	ISS say-on-pay "against" vote recommendation	5% (11)
3% (6)	Failure rate (less than 50% shareholder support)	2% (4)

Virtual corporate processes

The federal government has [consulted](#) on granting federally regulated financial institutions (FRFIs), such as banks, credit unions and certain insurance companies, expanded use of electronic communications and virtual meetings (which currently require a court order) through amendments to the *Bank Act*, the *Insurance Companies Act*, and the *Trust and Loan Companies Act*. Regulations governing virtual shareholder meetings could address communication between participants, attendee authentication, shareholder questions and proposals, and publication of a post-meeting recording.

Effective July 4, 2022, British Columbia's *Business Corporations Regulation* was [amended](#) in Table 1 (prescribed set of Articles) to reflect *Business Corporations Act* amendments, implemented last year,

to permanently allow British Columbia corporations to hold fully or partially electronic meetings (see our [Client Advisory](#) dated November 10, 2021). Table 2 (Statutory Reporting Company Provisions) was also amended to add new Article S7.1(d) which requires that advance notice of a fully electronic meeting of shareholders to elect directors be published in a daily Vancouver newspaper.

Effective [May 31, 2022](#), Alberta's *Business Corporations Act* was [amended](#) to allow certain proxy votes to be held entirely by electronic, telephonic or other methods, and to require that most notices and other documents be sent or served electronically. Corporations can also now permit directors and officers to pursue corporate opportunities in their own right through corporate opportunity waivers, and move from unanimity to a two-thirds threshold for certain shareholder approvals.

Temporary amendments to Ontario's *Business Corporations Act* allowing electronic shareholders and directors meetings have been [extended](#) by one year, to September 30, 2023. For details on making these and possibly other reforms permanent, see our [Client Advisory](#) dated May 16, 2022.

Tax changes in various jurisdictions

Québec's *Taxation Act* and Newfoundland and Labrador's *Income Tax Act, 2000* have both been amended to adopt recent federal *Income Tax Act* (ITA) changes relating to employee stock options, with retroactive effect to July 1, 2022 (see our [Client Advisory](#) dated November 10, 2021).

Questions have also arisen whether restricted share units and similar rights that will never entitle the employee to the stock option tax deduction, should count toward their \$200,000 annual vesting limit that applies to stock option grants that can receive preferential tax treatment under the new stock option tax rules, or whether employers should be penalized for not notifying employees or filing an information return in such situations. As a result, the Department of Finance is considering [potential remedial measures](#). In the interim, employers can avoid these problems through a prior designation under section 110(1.4) of the ITA excluding non-qualified securities from the annual vesting limit.

The federal government has released [Legislative Proposals](#) and [Explanatory Notes](#) for technical amendments to the ITA and *Income Tax Regulations*. Section 144.2 of the Regulations would be amended to provide an alternative Employee Life and Health Trust (ELHT) benefit limit for key employees, provided certain conditions are met, with retroactive effect to February 27, 2018. For details of ELHT amendments introduced last year, see our [Client Advisory](#) dated June 10, 2021.

Significant corporate control

The *Canada Business Corporations Act* has been [amended](#) to require, on a future date to be fixed by proclamation, certain corporations to send the Director appointed under the Act (the regulator) information on individuals with significant control, on an annual basis or when a change occurs (currently, corporations are required to maintain a register of such individuals, but not provide that information to the regulator). An individual has significant control if they have any number of shares that carries 25% or more of the voting rights attached to all of the corporation's outstanding voting shares, or is equal to 25% or more of all of its outstanding shares measured by fair market value.

New Brunswick's *Business Corporations Act* has been [amended](#) to require a corporation to establish and annually review a register of individuals with significant control (those who control shares that

carry 25% or more of the voting rights attached to all outstanding voting shares, or at least 25% of all outstanding voting shares). Shareholders or directors can request access to this information, but only for purposes permitted under the Act, such as to influence shareholder votes or acquire shares.

New director and officer obligations in Ontario

Ontario's new financial sector [Whistle-blower Program](#) took effect on April 29, 2022. The Financial Services Regulatory Authority of Ontario can impose penalties (fines and/or imprisonment) against individuals, including corporate officers and directors, who participate in or fail to prevent reprisals such as termination or demotion. An arbitrator or court could also order that a whistle-blower be reinstated or receive other compensation.

Effective July 1, 2022, Ontario's *Occupational Health and Safety Act* (OHSA) was [amended](#) to provide that corporate officers and directors can be fined up to \$1.5 million if they fail to ensure compliance with the legislation or certain orders (previously, they could only be fined up to \$100,000 as "other individuals"). The fine against such other individuals was also increased, from \$100,000 to \$500,000; however, the maximum fine against a corporation remains \$1.5 million. The limitation period for prosecutions under the OHSA was extended also, from one year to two years.

Final US SEC proxy and clawback rules

The US Securities and Exchange Commission (SEC) has adopted final [Pay versus Performance Disclosure Rules](#). Effective for certain proxy and information statements for fiscal years ending on or after December 16, 2022, registrants must provide a table disclosing specified executive compensation and financial performance measures for their five most recently completed fiscal years, including their total shareholder return (TSR), the TSR of companies in their peer group, their net income, and a financial performance measure chosen by the registrant. Registrants must describe the relationships between executive compensation actually paid and each performance measure, as well as the relationship between the registrant's TSR and the TSR of its selected peer group. Compensation actually paid is a new concept, which takes Summary Compensation Table (SCT) compensation and adjusts equity compensation to reflect the change in fair value during the fiscal year and pension values to reflect service cost. Registrants must also provide three to seven of their most important financial performance measures for linking executive compensation actually paid to company performance. The final rules require many new calculations to be performed (with those numbers increasing in line with numbers of grants made, and vesting events occurring in each year), and with significant work required in the first year to provide historical information. They also potentially introduce a wide range of new performance measures which companies may not necessarily discuss in relation to their compensation and careful consideration will need to be given to how these will be incorporated into disclosure documents. The disclosure requirements will not apply to emerging growth companies, registered investment companies, or foreign private issuers; smaller reporting companies will be subject to scaled disclosure requirements. For details of the draft rules as originally proposed, see our [Client Advisory](#) dated November 24, 2015.

The SEC has [rescinded](#) conditions associated with two exemptions from the proxy rules' information and filing requirements requiring that registrants receive proxy voting advice relating to them in a

timely manner, and that their clients be informed of any written registrant responses. Guidance issued in 2020 to investment advisers regarding their proxy voting obligations was also rescinded, as were changes adopted in 2020 to the proxy rules' liability provision (see our [Client Advisory](#) dated May 16, 2022). However, proxy voting advice still remains generally subject to liability. The SEC has also released [draft amendments](#) that would allow a corporation not to include a current shareholder proposal in its proxy statement under Rule 14a-8 if either its “essential elements” have already been implemented, or if it substantially duplicates another previously submitted proposal.

The SEC has adopted new [Exchange Act Rule 10D-1](#) which directs national securities exchanges and associations to establish listing standards that require a listed issuer to:

- Adopt and comply with a written policy for the recovery (clawback) of erroneously awarded incentive-based compensation from its current or former executive officers
- File its policy as an exhibit to its annual report, and indicate whether the included financial statements reflect correction of an error to previously issued financial statements and whether any of those error corrections are restatements that required a recovery analysis
- Disclose any related compensation recovery actions

Issuers must adopt a compensation recovery policy within 60 days of the applicable listing standards taking effect, which will occur in approximately 15 months. For details of the SEC's initial proposal released in 2015 and subsequently amended, see our [Client Advisory](#) dated May 16, 2022. An SEC [memo](#) discusses the increase in voluntary adoption of compensation recovery policies by issuers and estimates the number of restatements that would trigger a compensation recovery analysis in certain situations.

ESG developments

The Canadian Securities Administrators (CSA) have launched an [analysis of key differences](#) between the climate-related disclosure rule it proposed last October, and similar proposals from the US Securities and Exchange Commission (SEC) – comment period subsequently [extended](#) – and the [International Sustainability Standards Board](#) (ISSB). Although all of these proposals were modelled on recommendations from the [Task Force on Climate-Related Financial Disclosures](#), there are some substantive differences (see our [Client Advisory](#) dated November 10, 2021). The CSA will therefore revisit the feedback it received last year, and review submissions by Canadian stakeholders directly to the SEC and ISSB. Its goal is to “support a comprehensive global baseline of sustainability disclosures, reduce market fragmentation and contribute to efficient capital markets while considering the needs and capabilities of issuers of different sizes”.

The Office of the Superintendent of Financial Institutions has released a [Draft Guideline on Climate Risk Management](#) for federally regulated financial institutions, which should “take into account climate-related risks in Senior Management compensation, as appropriate” (see also our [Client Advisory](#) dated May 16, 2022 for details of OSFI's expectations around “culture risk management”). The Canadian Association of Pension Supervisory Authorities has released a proposed Guideline on [Environmental, Social and Governance Considerations in Pension Plan Management](#). It discusses

how federally regulated pension plans should address investment selection, divestment decisions, and stewardship activities from an environmental and governance perspective.

A [Summary of Oversight and Regulatory Activities](#) from Québec's Autorité des marchés financiers summarizes ESG factors that companies must disclose. It will also monitor the work of the ISSB to develop stringent sustainability disclosure standards, starting with climate.

Automatic Securities Disposition Plans in Québec

As explained in its [Summary of Oversight and Regulatory Activities](#), Québec's Autorité des marchés financiers (AMF) closely examines new Automatic Securities Disposition Plans (which allow insiders to make pre-planned sales of securities through arm's length administrators according to pre-determined instructions) to assess compliance with CSA Staff Notice 55-317 (see our [Client Advisory](#) dated April 6, 2020). AMF can also assist companies and insiders manage market perceptions, and is monitoring similar US developments (see our [Client Advisory](#) dated May 16, 2022).

Workforce rewards and pay equity

Pay equity and pay transparency developments

The federal government has proposed amendments to the *Pay Equity Regulations* (see our [Client Advisory](#) dated November 10, 2021). A [discussion paper](#) addresses how to isolate wage increases for all job classes, update pay equity plans for workplaces without predominantly male job classes, align certain job classes with recent federal minimum wage requirements, and apply to form a group of associated employers. Administrative monetary penalties would also be introduced, with maximum fines set between \$30,000 and \$50,000 depending on workforce size.

Newfoundland and Labrador has passed [An Act Respecting Pay Equity for the Public Sector and Pay Transparency for the Public and Private Sectors](#). Its pay transparency provisions in Part II will take effect on proclamation, and require all employers in the province (private and public sector) to include information regarding pay in publicly advertised job postings and, in certain circumstances, to prepare pay transparency reports. Employers would also be prohibited from requesting pay history information from job applicants, or from penalizing employees or applicants for inquiring about or disclosing pay information or for requesting compliance. "Pay" would include "straight-time wages, salary and commissions". Additional pay equity provisions contained in Part I of the Act will take effect on April 1, 2023, and require public sector employers only with 10 or more employees to value jobs based on skill, effort, responsibility and working conditions (irrespective of gender).

Consultations will inform regulatory reporting requirements, timelines for implementing Part II, and future efforts to introduce pay equity in the private sector. Despite [recent improvements](#), women in the province earn on average only 89 cents for every dollar earned by men.

British Columbia plans to introduce [pay transparency legislation](#), though timing is not specified.

In [Toronto Hydro-electric System Limited v. Power Workers' Union, CUPE Local 1000](#), an Ontario Labour Arbitrator ordered the employer to solicit up-to-date job descriptions for *Pay Equity Act* purposes from a subset of employees, who had to be compensated for responding.

New federal prohibitions against wage-fixing and employing under-age workers

Effective June 23, 2023, the federal *Competition Act*, which applies to all businesses in Canada, will be amended to prohibit unaffiliated employers from agreeing to fix, maintain, decrease or control salaries, wages or other terms and conditions of employment (wage-fixing agreements); or to refrain from hiring or trying to hire one another's employees (no-poach agreements). Such agreements could be inferred from circumstantial evidence, without evidence of communications between employers. Possible penalties include fines and imprisonment for up to 14 years.

Draft regulations would support *Canada Labour Code* amendments (already passed) increasing the minimum age of employment from 17 to 18 in federally regulated industries and workplaces, by imposing employment restrictions on workers under age 18. A transitional Code provision will allow employees who are 17 to be treated as if they were 18, provided they remain employed in the same position when the amendments take effect (expected early next year).

Federal consumer protection

Effective June 30, 2022, the *Financial Consumer Protection Framework* under the *Bank Act* sets out new protections for customers of banks, authorized foreign banks and federal credit unions, including that their compensation practices not interfere with other new obligations to provide products and services that are appropriate for their customers, and to establish a whistle-blowing program (see our *Client Advisory* dated May 16, 2022). The Financial Consumer Agency of Canada can name banks that violate these obligations, impose higher penalties, and direct banks to take corrective actions.

Statutory holidays and minimum wage developments

Following last year's lead by the federal government, *Prince Edward Island*, the *Northwest Territories* and *Nunavut* have introduced a new paid statutory holiday observed each September 30th, called National Day for Truth and Reconciliation. *Manitoba* and *Newfoundland and Labrador* will institute a similar holiday following consultations with stakeholders, while *Nova Scotia* is considering one. *New Brunswick* has declared September 30th a provincial holiday for certain public sector workers only.

Effective October 1, 2022, the hourly minimum wage in *Manitoba* increased from \$11.95 to \$13.50 and will be followed by another increase, to \$14.15 on April 1, 2023. These amounts exceed the legislated annual increases tied to inflation. Manitoba will also phase in 62 increased minimum wage rates for 46 construction industry trades, between September 1, 2022 and April 1, 2024. Although many construction employees already receive more than the legislated minimum rates, costs will increase for some employers. These are the first mandated increases in almost seven years.

Effective October 1, 2022, the hourly minimum wage in *Newfoundland and Labrador* increased from \$13.20 to \$13.70, and will be followed by further increases to \$14.50 and \$15.00 on April 1 and October 1, 2023. Starting in 2024, the province's minimum hourly and overtime wage rates will be adjusted each April 1st by the percentage change in annual CPI for the immediately preceding year.

For other recent minimum wage increases, see our *Client Advisory* dated May 16, 2022.

Case law

Factors affecting the length of reasonable notice

In *Okano v. Cathay Pacific Airways Limited*, the British Columbia Supreme Court awarded a 61-year old middle-manager with 35 years of service, 24 months damages for wrongful dismissal. According to the Court, the plaintiff's status as a long-term management-level employee was not an "exceptional circumstance" that could increase the upper damages limit beyond 24 months, as recently confirmed by the Ontario Court of Appeal in *Dawe v. The Equitable Life Insurance Company of Canada* (see our [Client Advisory](#) dated October 26, 2020).

In *Leclair v. Patel Pharma Inc.*, the British Columbia Supreme Court awarded a 41-year old former retail manager with 10 years of service at a Shoppers Drug Mart franchise, 10 months reasonable notice on termination without cause. However, her previous eight years of service at other Shoppers franchise locations were not recognized to extend the reasonable notice period to 18 months.

In *Antchipalovskaia v. Guestlogix Inc.*, the Ontario Court of Appeal refused to recognize two separate periods of employment with the same employer as a single period of continuous employment for reasonable notice purposes at common law. The initial five-year period was therefore not counted, and her tenure was set at 2.75 years. However, because the employer had benefited from the employee's subsequent application of knowledge and experience gained during the initial period, she was entitled to enhanced reasonable notice of seven months (reduced from 12 awarded at trial).

Bonus entitlements

In *Battiston v. Microsoft Canada Inc.*, the Ontario Court of Appeal confirmed that a 53-year old middle manager with 23 years of service was entitled to damages representing 24 months' reasonable notice following termination without cause. However, the lower court's award of damages for stock options that would have vested during the notice period was overturned because Battiston had acknowledged, on 16 separate occasions, having "read, understood and accepted" Microsoft's Stock Award Agreement and accompanying Plan documents, which clearly excluded a former employee's right to unvested stock awards. Leave to appeal was [dismissed](#) by the Supreme Court of Canada on July 18, 2022, and therefore the Ontario Court of Appeal decision is now final.

In *Maynard v. Johnson Controls Canada*, the Ontario Superior Court of Justice refused to follow *Battiston* and awarded a terminated employee 14 months reasonable notice, calculated on the basis of his total compensation, including unvested Restricted Stock Units awarded during the previous two years with a value of \$188,335. Although the employer's Share and Incentive Plan disentitled participants to any unvested Units as at termination, Maynard was never provided a copy of this document and no equivalent provisions were included in his contract of employment.

In *Bowen v. JC Clark Ltd.*, the Ontario Court of Appeal held that employment contracts are presumed to include an implied term that the employer's discretion to award bonuses must be exercised "in a fair and reasonable manner". Two terminated investment managers were therefore awarded discretionary bonuses in the same range as those awarded to similarly-situated employees for the

year of termination. However, this amount was pro-rated for the seven months they worked for the employer during that year, resulting in individual damages awards of \$115,000.

In *Pavlov v. The New Zealand and Australian Lamb Company Limited*, the Ontario Court of Appeal upheld an award of 10 months reasonable notice in favour of a marketing and public relations director with three years' service (largely on account of the ongoing impact of COVID-19). The award included any bonus payment related to his remaining notice period during the following fiscal year (on a pro-rated basis) and the cost of attending mandatory mediation.

Failure to mitigate

In *Humphrey v. Mene Inc.*, the Ontario Court of Appeal initially upheld a lower court decision awarding a 32-year old Chief Executive Officer with three years service damages representing 12 months reasonable notice on termination without cause. However, it then reduced the award by six months because she rejected a Vice President E-Commerce position seven months after termination. Although terminated employees need only apply for comparable employment, this “does not mean identical employment”, especially when it holds out the possibility of future promotions.

Employee misclassification class actions

In *Suzic v. VIB Event Staffing et al*, the Ontario Superior Court of Justice approved a class action settlement involving damages for the employer's failure, between 2010 and 2021, to compensate 1,100 class members for withheld statutory benefits such as minimum hourly wage, overtime, vacation, and holiday and termination pay. Class members had been misclassified as independent contractors when they were, in fact, employees. The approved settlement amount, however, was approximately 10% of the \$1.1 million claimed, in part because most of the damages (those pre-dating 2020) could have been barred by the *Statute of Limitations*.

In *Curtis v. Medcan Health Management Inc.*, the Ontario Divisional Court certified a class action proceeding claiming entitlements to statutory vacation pay and public holiday pay. Certifiable causes of action were established alleging breaches of employment contracts and unjust enrichment, while individual actions were not required to establish liability. The Court noted that “class proceedings have repeatedly been found to be the preferable procedure for employment and ESA-related cases” especially in situations, like here, involving concerns over access to justice (both financial and psychological) and to ensure employer deterrence and behaviour modification.

Directors and officers' liability insurance

In *EPCOR Electricity Distribution Ontario Inc. v. Municipal Electric Association Reciprocal Insurance Exchange*, the Ontario Court of Appeal confirmed an insurer's obligation to reimburse almost \$600,000 in costs incurred by EPCOR's former President and CEO while participating in a public inquiry under the *Municipal Act* (a “proceeding under any statute” as defined in the Directors and Officers Liability policy). Therefore, when EPCOR reimbursed him following the insurer's denial of coverage, it became entitled to enforce the claim; however, EPCOR was not entitled to separate coverage for its own costs in related proceedings, as had been ordered by the lower court.

In *Cronos Group Inc. v. Assicurazioni Generali S.p.A.*, the Ontario Court of Appeal held that, where an excess policy providing additional coverage followed the form of the primary directors' liability policy, and the primary policy gave the insured the option of extending coverage, it was entitled, on behalf of two of its officers, to the same option under the excess policy as a "follow-form term".

Inclusion and diversity

Women on boards of directors and in executive officer positions

Highlights from the Canadian Securities Administrators' [Eighth Annual Review of Disclosures Relating to Women on Boards and in Executive Officer Positions](#), which summarizes the corporate governance disclosures of 625 TMX non-venture issuers in 11 participating jurisdictions as of May 31, 2022, include the following:

- 24% of board seats were held by women, up from 22% the previous year
- 45% of board vacancies were filled by women, up from 35%
- 87% of issuers had at least one woman on their board and 30% had at least three, up from 82% and 24% respectively
- 7% of issuers had a woman chairing their board, up from 6%
- 5% of issuers had a woman chief executive officer (no change)
- 19% of issuers had a woman chief financial officer, up from 17%
- 70% of issuers had at least one woman in an executive officer position, up from 67%

Data is also provided on variations within industries, policies and targets, diversity measures, and term limits.

Statistics Canada has released new data sets on [gender composition of corporate boards](#) and [representation of women in officer positions](#). In 2019, women's board representation stood 19.2% of 22,605 director positions at 7,165 corporations, with government business entities having the highest share (34%), followed by publicly traded companies (25.6%) and privately held corporations (20%). However, 62.3% of boards were still composed entirely of men, especially at smaller corporations. Except for Alberta, New Brunswick and Nova Scotia all jurisdictions experienced some improvement. Also in 2019, 30.7% of 19,044 corporate officers were women, a 5.8% increase since 2016. However, they were more likely to occupy lower top-level roles (only 1.9% of chairpersons). The executive vice-president position showed the highest growth (from 18.4% to 24.2%), whereas the auditor position showed the largest decline (from 43.3% to 30.0%).

According to the Autorité des marchés financiers' latest [Summary of Oversight and Regulatory Activities](#), 27% of all board seats at the 56 Québec companies listed on the TSX in 2021 were occupied by women, while 98% had at least one woman on their board, and 46% had at least three. Retail had the most women board members (34% of seats) and biotechnology had the fewest (18%).

Federal and provincial diversity initiatives

The federal government has [proposed](#) new diversity disclosure requirements for non-distributing federally regulated financial institutions (FRFIs) – i.e., whose shares are not listed on a stock exchange – such as credit unions, small and medium sized banks, and certain insurance companies, similar to new “comply or explain” requirements under the *Canada Business Corporations Act* (see our [Client Advisory](#) dated October 15, 2019). These would be implemented through amendments to the *Bank Act*, the *Insurance Companies Act*, and the *Trust and Loan Companies Act*, and could include a prescribed form to ensure data consistency and reliability; targets for directors and executive officers, and for director term limits; and compliance mechanisms such as penalties or incentives. Currently, most small and medium-sized banks do not provide any publicly available details on gender representation, diversity targets or related policies.

The federal government has released a [Disability Inclusion Action Plan](#). One of its four Pillars covers employment and will include actions to address long-standing barriers facing persons with disabilities, including supports for employees and employers. It has also launched a [Policy on Social Procurement](#) with enhanced services to help underrepresented groups successfully participate in federal procurement, including a new coaching service for underrepresented and previously unsuccessful bidders.

The Canadian Securities Administrators have released their [2022-2025 Business Plan](#). Current areas of focus include improving diversity on corporate boards and in executive officer positions, fostering Indigenous reconciliation, and possibly requiring broader corporate diversity disclosures.

By July 31, 2023, Nova Scotia will create a strategy to address [seven forms of discrimination and racism](#) under the *Dismantling Racism and Hate Act*, followed by public sector bodies.

British Columbia has established an [Anti-Racism Data Committee](#) under the *Anti-Racism Data Act* to address barriers in government programs and services for racialized groups. It will collect intersectional demographic data on ethnic origin, ancestry, faith, ability and gender identity, and publish annual statistics with safeguards to prevent data misuse, beginning next year.

International developments

[Effective January 1, 2023](#), California’s new [pay transparency rules](#) will require all employers in the state to disclose the hourly rate of pay, or a salary range, in all job postings (the current law, passed in 2018, only requires disclosure if requested by an applicant). Although similar requirements already exist elsewhere, California’s new rules could prompt similar disclosure requirements across the US. Employers with at least 100 employees in the state must also report their median racial and gender pay gaps (a US first).

The US Securities and Exchange Commission’s [2020 Diversity Assessment Report](#) analyzes the voluntary diversity self-assessments of regulated entities (however, a majority of entities did not submit an assessment):

- 87% entities have a diversity and inclusion policy
- 70% promote diverse candidates for their board of directors (or other governing body)

- 62% publish their progress in achieving workforce diversity and inclusion
- 55% maintain a list of qualified minority- and women-owned firms for procurement purposes

The UK government will [not require mandatory ethnicity pay gap reporting](#), but will publish guidance to help employers collect data and voluntarily report pay gaps, with a focus on less ethnically diverse regions. It will also encourage employers to use specific ethnic groups (which can face different obstacles) when calculating pay gaps, rather than broader categories (such as “white vs non-white”). For details of the original UK proposals, see our [Client Advisory](#) dated March 7, 2019.

New research

The World Economic Forum, with the assistance of collaborators including WTW, has released the [2022 Global Gender Gap Report – Insight Report](#). In 2022, gender parity in the labour force is 62.9% (the lowest level since 2006). North America closed 76.9% of its gender gap, with slight improvement in the US, and none in Canada. The share of women corporate leaders increased to 36.9%, with better progress in industries where they were already highly represented. However, few industries had levels near gender parity. According to an analysis of 39 countries by WTW, women were disadvantaged regarding wealth accumulation over the span of their working life, due to gender gaps in pay and financial literacy, unequal career progressions, and life events. The overall gender wealth gap ranged from 11% for frontline operational roles to 38% for senior expert and leadership roles.

According to the [Canadian Centre for Policy Alternatives](#), by the end of 2021 total employment in vulnerable sectors was 11% below pre-pandemic levels, with women accounting for 60% of all job losses. Pre-existing disparities were also compounded by inflation, with real wages declining in key female-majority occupations such as nursing, child care, social work and community services.

According to [2021 Census data](#), the Canada Emergency Wage Subsidy, Canada Recovery Hiring Program and related pandemic supports (see our [Client Advisory](#) dated November 10, 2021) helped reduce the low income rate (i.e., below 50% of median household income) and income inequality in 2020, in all provinces and territories. Although the Canada Revenue Agency can now accept late applications for these programs, income inequality was already increasing in the [first quarter of 2022](#).

Statistics Canada has released a detailed [Overview of the Non-Profit Sector in Canada, 2010 to 2020](#). Women’s annual average wages and salaries increased faster than those for men. However, men still earned more on average, and the wage gap narrowed only slightly. By 2020, 22.7% of employees in the non-profit sector were over age 55, while those aged 65 or over increased by 80.2% since 2010. Older workers also had higher average wages and salaries. Visible minority employees increased from 22.5% to 28.6%, and their salaries were slightly higher than the national average for minority workers. However, in 2019 nearly half of all non-profit jobs were held by immigrants who, on average, earned less than immigrant workers in the wider economy.

Statistics Canada has released a [Study](#) on differences in full-time employment among diverse groups of women. Last year, 68% of all women aged 20 to 54 worked full time (up from 55% in 1997). Indigenous women had the highest rate of full-time employment (70%), while immigrant women arriving more than 10 years ago had the lowest rate (65%). Full-time employment increased

with age among Indigenous women, while immigrant women who had a spouse or were educated outside Canada had lower rates of full-time work.

Also according to Statistics Canada, by 2015 [universal low-cost childcare](#) had increased the employment rate of women with children in Québec by an additional 7% compared with working mothers in other provinces, which also represents a 9% increase in hours worked.

For more information

This Advisory is not intended to constitute or serve as a substitute for legal, accounting, actuarial or other professional advice. For information on how this issue may affect your organization, please contact your WTW consultant, or:

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