

Client Advisory

Developments in executive compensation and governance, workforce rewards and pay equity, and inclusion and diversity – Spring 2023

June 12, 2023

Summary

Various workforce rewards and executive compensation developments have occurred since the publication of our November 14, 2022 Client Advisory. Key items of interest include:

Executive compensation and governance:

- OSFI compensation guidance
- Virtual corporate processes
- Beneficial ownership disclosures
- Federal proxy developments
- Securities regulator and accounting developments
- CCGG initiatives
- US SEC developments

Workforce rewards and pay equity:

- Pay transparency legislation in British Columbia
- Proposed Ontario gig worker protections
- Minimum wage and statutory holiday developments
- Canada Labour Code developments
- Federal tax credit for clean technologies
- Competition Act amendments
- Manitoba payroll tax changes
- Income support changes

- QPP reform
- Employee ownership trusts

Case law:

- Factors affecting reasonable notice
- Components of wrongful dismissal damages: Bonus and other entitlements
- Duty to mitigate
- Employment class actions certified
- Aggravated and punitive damages
- Investigating allegations of gender-based discrimination
- Taxable employment benefits in Québec

Inclusion and diversity:

- Women and racialized groups on boards and in executive officer positions
- Recent employment trends
- Federal and provincial diversity initiatives

Executive compensation and governance

OSFI compensation guidance

The Office of the Superintendent of Financial Institutions (OSFI) has released [Guideline B-15](#) on Climate Risk Management. By fiscal year-end 2025, all federally regulated financial institutions (FRFIs) must, among other new requirements, “consider whether and how Senior Management compensation policies and related practices should incorporate climate-related risk considerations.”

OSFI’s draft [Culture and Behaviour Risk Guideline](#) sets out principles-based expectations for FRFIs to oversee their culture and assess the impact of behavioural patterns to effectively manage the associated risks. As OSFI notes, culture can influence sound decision-making, prudent risk-taking and effective risk management, which can materially support or weaken the resilience of FRFIs. OSFI expects FRFIs to define the desired culture needed to achieve their strategy and to manage risks effectively. FRFIs should develop and implement a plan to embed the desired culture across the institution. Many factors shape culture and behaviour, but at a minimum OSFI expects FRFIs to use leadership, talent and performance management practices, and compensation and incentive plans to promote and/or reinforce their desired culture and expected behaviours.

Virtual corporate processes

[Federal Budget 2023](#) announced pending amendments to the *Bank Act*, *Insurance Companies Act*, and *Trust and Loan Companies Act* to permit virtual-only corporate meetings.

Effective March 1, 2023, British Columbia's *Business Corporations Regulation* was [amended](#) to require advance notice of any meeting of shareholders to elect directors on a website that is accessible to all shareholders and is not social media. New notice requirements are also set out for holding hybrid meetings. For details of earlier changes to notice requirements for certain in-person or fully electronic meetings, see our [Client Advisory](#) dated November 14, 2022.

[Amendments](#) to the Alberta *Business Corporations Act* will, once proclaimed into force, allow delivery of a corporation's financial statements by electronic means (i.e., in accordance with the *Securities Act*, which permits sending any document by electronic means).

Ontario has introduced [amendments](#) to its *Business Corporations Act* to permit certain corporations to hold virtual or hybrid meetings and elections, and facilitate sending notices or other documents by electronic means. In addition, the [Ontario Securities Commission](#) can now authorize or require any document to be delivered or distributed in alternative formats. This could, for example, permit issuers to post documents such as the MD&A on their publicly accessible websites.

[Amendments](#) to the New Brunswick *Business Corporations Act* have been introduced to allow a meeting of shareholders to be held entirely electronically. Notices respecting shareholders meetings and related documents could also be provided by posting on a website. Financial statements, resolutions, proxies, notices and records could be signed, filed or inspected electronically. For details of these and other amendments, see the New Brunswick Financial and Consumer Services Commission's [Proposal to Modernize the Business Corporations Act](#).

Beneficial ownership disclosures

The federal government is accelerating by two years (or the end of 2023) implementation of a publicly searchable [beneficial ownership](#) registry under the *Canada Business Corporations Act* (CBCA). [Final regulations](#) were subsequently released providing additional guidance on how to create and maintain such a register. Exemptions are provided for subsidiaries of, or corporations wholly-owned by the federal Crown, and a process setting out what a corporation must do if it cannot identify an individual with significant control. Additional CBCA [amendments](#) have also been [introduced](#) to require the federal regulator to make publicly available certain information on individuals with significant control over a corporation. Whistleblowers would be protected, and broader enforcement and compliance powers would be introduced.

British Columbia has [passed](#) amendments (see [Bill 20](#)) under the *Business Corporations Act* that will expand, by 2025, the existing requirement for private (non-offering) companies to identify their beneficial owners (i.e., an entity that holds, directly or indirectly, 25% or more of the shares of a corporation) and maintain a list of all beneficial owners in their corporate records.

[Amendments](#) under Ontario's *Business Corporations Act* effective January 1, 2023 require private corporations to maintain a register of individuals with significant control. Personal information must be removed from the register within seven years after an individual ceases to exercise such control.

Registrants under Québec's *Act respecting the legal publicity of enterprises* must, effective [March 31, 2023](#), declare [additional information](#) relating to persons who are their "ultimate beneficiaries"

based on unit ownership, voting rights or the exercise of effective control. Registrants must identify and locate all of the ultimate beneficiaries and provide certain information to the government. Exceptions apply for certain registrants including financial institutions, trust companies and banks.

Amendments to the Nova Scotia *Companies Act* requiring companies to create and maintain a register of individuals with significant control over the company (i.e., any number of shares that carries 25% or more of the voting rights attached to all of the company's outstanding voting shares, or that equals 25% or more of all of the company's outstanding shares as measured by fair market value) have been proclaimed into force, effective **April 1, 2023**.

Federal proxy developments

The federal government has released a **proposal** to update the *Form of Proxy (Banks and Bank Holding Companies) Regulations* under the *Bank Act* to better align with the *Canada Business Corporations Regulations, 2001* (CBCR) which now incorporate by reference National Instrument 51-102-Continuous Disclosure Obligations (NI 51-102) (see our **Client Advisory** dated November 10, 2021). This will avoid conflicting requirements under the Regulations and applicable provincial securities legislation, and improve transparency. The changes relate to executive compensation disclosure, and indebtedness of directors and executive officers. Exemptions would apply to certain non-distributing banks and bank holding companies, while requirements for a dissident's proxy circular will be removed. Various circumstances are set out in which announcements and communications would not be considered a solicitation. The following requirements will also be retained in the Regulations, despite no equivalents in the revised CBCR or NI 51-102:

- Disclosure of information related to indemnities and liability insurance
- Percentage of votes required to approve any matter at a meeting
- Signed statement by management that the contents and transmission of the circular have been approved by the directors
- Signed statement by a dissident that they approve the dissident proxy circular

Securities regulator and accounting developments

The Canadian Securities Administrators (CSA) have published an **exemption** for *Canada Business Corporations Act* reporting issuers from the director election form of proxy requirement in subsection 9.4(6) of National Instrument 51-102 - Continuous Disclosure Obligations, in respect of uncontested director elections (see our **Client Advisory** dated May 16, 2022). The CSA have also **proposed** enhanced diversity disclosures (in addition to gender) so that shareholders can better understand how diversity ties into an issuer's strategic decisions. Issuers would also be provided guidance on corporate governance practices related to board nominations, board renewal and diversity.

The Ontario Securities Commission (OSC) has released its **Corporate Finance Branch 2022 Annual Report**, which notes that cross-ownership of financial interests could give rise, in the context of M&A transactions, to conflicts of interest, are material information for investors, and should be disclosed in detail. Issuers should also consider potential conflicts of interest when identifying board members as

being independent, and adopt standards for ethical decision making and compliance. Problems are also noted with reporting the type of ownership in insider reports, including failures by insiders to report their holdings and share transactions, and by beneficial securities holders to report the holdings and share transactions undertaken on their behalf by an issuer, an affiliated issuer, a family trust, a third person, or other legal entity.

The Toronto Stock Exchange (TSX) has provided [guidance on Voting Agreements](#) in relation to certain management proposals. It will generally consider Voting Agreements to have a material effect on issuer control, and require disinterested security holder approval based on a consideration of various factors (such as the context of and proposed term of the Voting Agreement, whether it results in a block sufficient to influence the outcome of a vote, and any consequences of breaching the agreement). The TSX may also consider security holdings by a combination of entities acting together to materially affect control. The TSX is also proposing [amendments](#) to the prospectus offering rules in the Toronto Stock Exchange Company Manual that would set clear standards for what constitutes a bona fide public offering, based on whether the offering has been broadly marketed, how the offering price is determined (including discounts) and participation by insiders.

The federal government and eight participating jurisdictions have [dissolved](#) the Canadian Securities Regulation Regime Transition Office. However, the former remains committed to working with provinces and territories to implement a cooperative securities regulation system. For details of the federal government's efforts to implement securities legislation and establish a national securities regulator, see our [Client Advisory](#) dated March 7, 2019.

The Canadian Securities Administrators have released their latest [biennial report on the continuous disclosure \(CD\) review program](#) (for fiscal years ended March 31, 2022 and March 31, 2021). "Overly promotional disclosure" pertaining to environmental, social and governance (ESG) matters is identified as a common deficiency in CD and other documents. All public disclosures, whether voluntary or required, must be "factual and balanced".

The Ontario Securities Commission has released its [Statement of Priorities for Financial Year 2023-2024](#), which notes that issuers should provide clarity on their ESG disclosure requirements, and that investors should have access to ESG information needed to inform their investment and voting decisions.

The [Accounting Standards Board](#) has released its December 5, 2022 IFRS Discussion Group Meeting Report which notes that an entity may modify existing compensation arrangements to include climate-related vesting conditions, and should consider specific guidance on the accounting for contract modification in various IFRS Accounting Standards. Entities may also need to disclose information so that financial statement users understand the effect of these modifications.

CCGG initiatives

The Canadian Coalition for Good Governance (CCGG) has released a new Report on [Management-Shareholder Alignment](#), which summarizes findings from its review of 237 TSX proxy circular disclosures, with a focus on the extent to which CEOs rely on unvested compensation awards to meet share ownership requirements. The Report notes that many CEOs do not meet such

requirements through common shares or vested full-value awards such as deferred stock units (DSUs) alone when credit is given for unvested compensation awards such as restricted stock units (RSUs) or performance stock units (PSUs), especially if they are settled in cash. Named executive officers other than the CEO are less likely to meet this optimal benchmark. Methods by which the boards of directors can address this situation are also set out.

CCGG has also released its [2022 Best Practices for Proxy Circular Disclosure](#), which presents examples of high-quality public disclosure of important corporate governance policies and executive compensation practices. However, issuers could enhance their circular disclosures with respect to:

- Board oversight of non-GAAP performance measures used in executive compensation
- Performance measures and targets used to determine compensation outcomes
- Executive succession planning, diversity and talent management
- Director skills and experiences

US SEC developments

The US Securities and Exchange Commission (SEC) has finalized [amendments to Rule 10b5-1 – Insider Trading Plans and Related Disclosures](#). Elements include:

- Cooling-off periods for directors, officers and other persons before trading can commence under a (modified) trading arrangement
- Director and officer certifications when a plan is adopted or modified
- Limitations on the use of plans, or on the affirmative defense for a single-trade plan
- New quarterly and annual disclosure requirements, including presentation requirements

The amendments are generally effective, for beneficial ownership reports filed on or after April 1, 2023, and for other reports and statements in the filing that covers the first full fiscal period beginning on or after April 1, 2023. Compliance is deferred by six months for smaller reporting companies. For details of the amendments as originally proposed, see our [Client Advisory](#) dated May 16, 2022.

The SEC will also [update disclosure frameworks](#) to reflect investor demand for information related to an issuer's climate risks, and has outlined various ESG-related [enforcement actions](#) including charges for materially misleading ESG statements, omissions and marketing claims.

The US Federal Trade Commission is proposing a [ban on noncompete provisions](#) in employment contracts, which could increase wages by US\$300 billion per year and expand career opportunities for 30 million US workers. In 2021, Ontario banned most noncompete provisions, with an exception for executive level employees (see our [Client Advisory](#) dated May 16, 2022).

Workforce rewards and pay transparency / equity

Pay transparency legislation in British Columbia

British Columbia has passed the [Pay Transparency Act](#) (not yet in force) to support identification and elimination of pay differences among worker groups and help [close the gender pay gap](#), which stood at 17% in 2022 (with larger gaps for racialized women). It will apply to all employers operating in British Columbia, not just those headquartered there or subject to provincial employment standards legislation. In addition to salary, wages or commissions pay under the Act includes various incentives and other payments that are unrelated to hours of work, production or efficiency.

Employers must, as of November 4, 2023, include information about the expected salary, wage or wage range in advertised postings, and can neither seek pay history information from applicants (unless publicly accessible) nor initiate or threaten reprisals (against employees who discuss their current compensation with others). Employers must make reasonable efforts to collect information from consenting employees, and (for those with at least 50 employees) publish annual pay transparency reports, first due between 2024 and 2026 depending on the nature and size of the employer.

For details of pay transparency legislation federally and in Newfoundland and Labrador, see our [Client Advisory](#) dated November 14, 2022. For similar legislation in Ontario (not yet enacted) and Nova Scotia, see our Client Advisories dated [March 7, 2019](#) and [April 6, 2020](#) respectively. For details of their implications, see our [Client Advisory](#) dated April 20, 2023.

Proposed Ontario gig worker protections

Ontario has [proposed](#) a regulatory framework under the *Digital Platform Workers' Rights Act, 2022* (see our [Client Advisory](#) dated May 16, 2022) which will establish certain worker rights and protections for digital platform workers, regardless of employment status. Issues to be determined include the legislation's effective date, and a definition for "work assignment". Operators would also have to provide a breakdown of amounts paid to workers, including compensation for distance travelled. A relaxation of notice requirements for removal from a platform are also being considered.

Minimum wage and statutory holiday developments

Recent minimum wage developments are as follows:

- [Federal](#): \$1.10 increase to \$16.65 effective April 1, 2023 (employers must apply a higher provincial or territorial minimum wage, where applicable)
- [British Columbia](#): \$1.10 increase to \$16.75 effective June 1, 2023
- [Ontario](#): \$1.05 increase to \$16.55 effective October 1, 2023
- [Québec](#): \$1.00 increase to \$15.25 effective May 1, 2023
- [Nova Scotia](#): \$0.90 increase to \$14.50 effective April 1, 2023, followed by a further increase to \$15.00 on October 1, 2023 (and possible [acceleration of scheduled increases](#) into 2024)

- **New Brunswick:** \$1.00 increase to \$14.75 effective April 1, 2023
- **Prince Edward Island:** \$0.50 increase to \$15.00 effective October 1, 2023
- **Newfoundland and Labrador:** \$0.80 increase to \$14.50 effective April 1, 2023, followed by a further increase to \$15.00 on October 1, 2023

Some provinces are providing temporary support to offset the impact of recent minimum wage increases on small businesses. In **Manitoba**, support is now available as one-time funding (\$520 per eligible employee to a maximum of \$10,400). Seasonal businesses are also now eligible. Employers in **Newfoundland and Labrador** with 100 employees or fewer can receive up to \$1,040 in support per minimum wage earner between October 1, 2022 and September 30, 2023.

Yukon and **British Columbia** have amended their employment standards legislation to introduce National Day for Truth and Reconciliation (September 30th) as a paid statutory (general) holiday. Subsequent British Columbia **amendments** will require unionized employers to provide statutory holiday pay on this day, even if their collective agreement entitlements “meet or exceed” the legislated requirements.

Canada Labour Code developments

Effective December 31, 2022, federally regulated workers received three days of **paid sick leave**. On February 1, 2023 a fourth day was acquired, and employees will accumulate one additional day per month, up to a maximum of 10 days per year once fully implemented.

Separate **amendments** to the *Canada Labour Code* (Code) and its *Regulations* increasing the minimum age of employment, and the age under which certain employment conditions apply, from 17 to 18, take effect on June 12, 2023 (see our **Client Advisory** dated November 14, 2022).

Code **amendments** requiring employers to reimburse reasonable work-related expenses, and provide a written employment statement as well as information respecting the employers’ and employees’ rights and obligations under Part III (hours, wages, vacations and holidays) take effect on June 20, 2023. Supporting **regulations** setting out the time limit for reimbursement in cases where there is no agreement between the parties, factors determining whether an expense is work-related or reasonable, and contents of the employment statement take effect on the same date.

Federal Budget 2023 announced Code amendments to strengthen prohibitions against employee misclassification, to ensure all federally regulated workers are protected and receive required employer contributions (EI and CPP). Further amendments and unspecified non-legislative initiatives will be considered to assist gig workers.

Federal tax credits for clean technologies

Following **consultations**, **Federal Budget 2023** announced various labour requirements for the Clean Technology and Clean Hydrogen Investment Tax Credit, effective with respect to labour performed on or after October 1, 2023. To receive the maximum tax credit, businesses must provide total compensation equal to the prevailing wage, based on union compensation including benefits and pension contributions from the most recent widely applicable multi-employer collective bargaining

agreement or corresponding project labour agreement, in the jurisdiction where relevant labour is employed. At least 10% of tradesperson hours worked must be performed by registered apprentices.

Competition Act amendments

The federal Competition Bureau has released draft [Enforcement guidance on wage-fixing and no-poaching agreements](#) (i.e., “labour coordination”). It sets out the Bureau’s approach to applying new section 45(1.1) of the *Competition Act*, applicable to all businesses operating in Canada, which will criminalize labour coordination, effective June 23, 2023 (see our [Client Advisory](#) dated November 14, 2022). As a result, it will be an offence for unaffiliated employers to agree to fix, maintain, decrease or control wages or other terms of employment, or to not solicit or hire each other’s employees. Prohibited agreements on “terms and conditions” of employment include agreements on job-descriptions, allowances, non-monetary compensation, hours, and non-compete clauses. Various defences and limitations on the Bureau’s enforcement activities are set out. Parties implicated in unlawful conduct could cooperate with the Bureau in exchange for [immunity from prosecution or lenient treatment in sentencing](#).

The government is also considering whether to de-criminalize labour coordination and re-instate the previous [civil standard](#) (i.e., prohibition of buy-side collusion). If so, employers could be subject to new monetary penalties or private enforcement before the Competition Tribunal or the courts.

Manitoba payroll tax changes

Effective January 1, 2024, a monthly 4.13% [Health and Post-Secondary Education Tax Levy](#) will apply on payroll amounts between \$2.25 million (up from \$2 million) and \$4.5 million (up from \$4 million). A monthly 2.15% levy will apply on total payroll that exceeds \$4.5 million, while employers with total monthly payroll at or below \$2.25 million will be exempt.

Income support changes

Ontario is considering increasing the monthly earnings exemption under the [Ontario Disability Support Program](#) (ODSP) from \$200 to \$1,000. This will benefit 25,000 workers and could encourage another 25,000 to join the workforce. Core ODSP allowances would also be adjusted to inflation annually, beginning this year.

Newfoundland and Labrador has launched an [Employment Support Stability Pilot Project](#) for Income Support participants who begin a new job and/or maintain or increase their hours of work. A new earnings exemption formula will also apply.

QPP reform

Due to demographic pressures, Québec expects the size of its labour force to decrease until 2030 and then advance more slowly than in the rest of Canada or the US. Consultations have therefore been launched on various [reforms](#) to the Québec Pension Plan designed to encourage experienced workers to remain employed, including raising the minimum and maximum ages of eligibility for a retirement pension, allowing beneficiaries who work after age 65 to stop contributing, and decreasing the retirement benefit for new beneficiaries who draw a pension before age 65.

Employee ownership trusts

[Federal Budget 2023](#) announced that the *Income Tax Act* would be amended to facilitate the creation of employee ownership trusts, effective for the 2024 taxation year, to encourage and facilitate the transition of privately owned businesses to employees.

Case law

Factors affecting 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 wrongful dismissal damages. The mere fact that the plaintiff was “a long-term valued management-level employee does not constitute an exceptional circumstance that would lead to an increase in the upper limit of 24 months”.

In [Chin v. Beauty Express Canada Inc.](#) the Ontario Superior Court of Justice awarded a 69-year old employee with six years of service, 10 months reasonable notice on termination without cause. Although an additional 15 years of service with a predecessor employer were not counted toward her entitlement at common law, because bankruptcy constitutes constructive dismissal, her experience in that previous role benefited the employer, thus increasing her reasonable notice period by five months. Though not cited, this result follows the Ontario Court of Appeal decision in [Antichipalovskaia v. Guestlogix Inc.](#) (see our [Client Advisory](#) dated November 14, 2022).

In [Celestini v. Shoplogix Inc.](#), the Ontario Court of Appeal confirmed a lower court decision awarding a 50-year old Chief Technology Officer 18 months reasonable notice, even though he was entitled to a maximum of 12 months under the parties’ employment contract. Because the CTO had subsequently assumed significant additional responsibilities under an Incentive Compensation Agreement, together with enhanced compensation, the termination provisions of his original employment contract were unenforceable pursuant to the “changed substratum doctrine”.

Components of wrongful dismissal damages: Bonus and other entitlements

In [Nader v. University Health Network](#) the Ontario Court of Appeal confirmed that a terminated executive was entitled to 12 months’ severance. This included a bonus component because such payments in the 25% of salary range during the previous three years represented “a substantial and integral part of his overall compensation”. Although the 12-month notice period did not extend over an entire calendar year, as required for payment of performance-based bonuses, the employer had previously pro-rated such payments.

In [Milwid v. IBM Canada Ltd.](#), a 62-year old program director with 38 years of service, was awarded 26 months damages for wrongful dismissal – two months above the common law upper limit barring exceptional circumstances – plus an additional month for his reduced job prospects during the COVID-19 pandemic (for a total of 27 months). An amount representing 444 Restricted Share Unites (RSUs) was included in his damages. Although bound by the termination provision in IBM’s applicable corporate documents, which Milwid acknowledged having read and accepted by clicking on a link, those documents did not unequivocally revoke his right to RSUs that vested during the

reasonable notice period. The fact that one document was from a separate company (IBM instead of IBM Canada) was not relevant.

In *Williams v. Air Canada*, the Ontario Superior Court of Justice awarded a 52-year old manager with 23.5 years of service, 24 months reasonable notice on termination without cause, including incentive and profit sharing plan payments for fiscal 2021 – but not for fiscal 2022 because the latter would be payable only in March 2023, after the end of the 24-month reasonable notice period. Both plans were clear that any unpaid entitlements as at the date of termination “shall be cancelled”. No damages were awarded for flight privileges and anniversary service awards payable during the reasonable notice period, because neither was a “contractual entitlement”.

In *Boyer v. Callidus Capital Corporation*, the Ontario Court of Appeal set aside a lower court decision preventing a former employee from amending his pleadings to include a claim for deferred bonuses because the motion for leave to amend was brought more than two years after the date of its discovery and was therefore statute barred. According to the Court of Appeal, a claim for deferred bonus payments “falls squarely within the four corners of the claim” and is not a separate cause of action. Neither would the employer have suffered prejudice by allowing this new head of damages.

Duty to mitigate

In *Lake v. La Presse*, the Ontario Court of Appeal confirmed a lower court award of eight months reasonable notice for termination without cause in favour of a 52-year old General Sales Manager with 5.5 years of service, including a bonus component averaged over the past three years. However, the trial judge’s reduction of damages by two months for failure to mitigate (by making reasonable efforts to find a new position during the reasonable notice period) was set aside. The employee had applied for 20 positions requiring comparable skills, but the trial judge placed undue emphasis on the titles attached to those positions.

Employment class actions certified

In *Flesch v. Apache Corporation*, the Alberta Court of Appeal confirmed certification of a class action by 347 former employees of Apache Canada, who became employees of Paramount Resources after its sale by Apache Corporation, for cancellation of awards under Apache’s Omnibus Compensation Plan (including one or more of restricted stock units, stock options and performance awards). Although eligible to participate in Paramount’s share options, these awards were significantly less remunerative than Apache’s. Individual issues involving the calculation of damages or contractual releases could be addressed following resolution of the common issues, or by the appointment of an independent adjudicator.

In *Singh v. RBC Insurance Agency Ltd.*, the Ontario Superior Court of Justice certified a class action against RBC Insurance Agency Ltd. and Aviva General Insurance Company, alleging failure to pay vacation and public holiday pay to 458 current and former property and casualty advisors on their variable (performance-based) compensation (representing approximately 20% of the average advisor’s total compensation) contrary to the employment standards legislation of Ontario and six other provinces. Other advisors could also participate, with respect to claims as far back as November 1, 2012, if able to demonstrate delayed discoverability due to reliance on employer

representations (implied or in various policies) that all compensation had been properly calculated and paid. Aggregate damages could be determined without the need for individual assessments.

Aggravated and punitive damages

In *Pohl v. Hudson's Bay Company*, the Ontario Superior Court of Justice awarded a 55-year old Sales Manager with 28 years of service, wrongful dismissal damages equivalent to 24 months reasonable notice. This included \$55,000 in aggravated and punitive damages for HBC's "untruthful, misleading, and unduly insensitive" manner of termination.

Investigating allegations of gender-based discrimination

In *Kastner v. Health Professional Appeal and Review Board*, the Ontario Divisional Court ordered the Board to conduct a fresh investigation concerning allegations of gender-based discrimination against the former Emergency Department Chief at two Toronto area hospitals, dating back to 2002, for blocking the hiring of women doctors and encouraging a workplace openly hostile to women. The Board was directed to contact witnesses with direct knowledge of issues raised in the complaint.

Taxable employment benefits in Québec

In *Agence du revenu du Québec c. Des Groseilliers*, the Québec Court of Appeal reversed a lower court decision (confirmed by the Supreme Court of Canada) and held that a charitable donation of stock options gave rise to a taxable employment benefit under the *Taxation Act* equal to the fair market value of the options at the time of the gift. Despite receiving no actual consideration, the employee's taxable income had been correctly increased to reflect the total value of the donated options for which tax credits were claimed. These amounts were also correctly added to the employer's payroll.

Inclusion and diversity

Women and racialized individuals on boards and in executive officer positions

The federal government has released *Diversity of Boards of Directors and Senior Management of Federal Distributing Corporations – 2022 annual report*, detailing information for 2021 from 498 proxy circulars. The percentages of:

- Boards with at least one woman, Indigenous person or person with disabilities increased to 55%, 3% and 3% respectively, whereas those with at least one visible minority member were unchanged at 23%
- Board seats held by women and members of visible minorities decreased to 19% and 6% respectively, whereas those held by Indigenous persons increased to 0.6%, and those held by persons with disabilities were unchanged at 9.4%
- Distributing corporations with formal targets for representation of equity seeking groups on Boards increased, whereas those with written policies to identify and nominate members of equity seeking groups decreased

- Senior management positions held by women, members of visible minorities and persons with disabilities increased to 27%, 12% and 1.2% respectively, while those held by Indigenous persons were unchanged at 0.4%

Federal Budget 2023 announced that recent *Canada Business Corporations Act* diversity disclosure requirements for directors and senior managers (see our [Client Advisory](#) dated October 15, 2019) will be applied to their counterparts at federally regulated financial institutions (banks, insurance companies, and trust and loan companies).

The Canadian Securities Administrators have [published](#) the [underlying data](#) for the eighth annual review of [women on boards and in executive officer positions](#) (see our [Client Advisory](#) dated November 14, 2022). Data for non-venture issuers are also now available.

According to [Statistics Canada](#), in 2018 immigrant women were less likely to sit on a board or as corporate officers than Canadian-born women. Immigrant women executives were also more likely to serve in lower-level roles and experience a larger gender pay gap than Canadian-born women executives (29% or \$97,200 versus 25% or \$87,400).

Recent employment trends

According to Statistics Canada, the [income gap narrowed](#) during the fourth quarter of 2022, due to strong employment gains for lower income earners, while the overall wealth gap widened. The [human capital gender gap](#) (i.e., human capital of women relative to that of men) also narrowed, to 35% between 1970 and 2020, but it was larger for immigrant women compared with Canadian-born women. Meanwhile, [employment of core-aged women](#) remained near a record high in March of 2023, at 62.4%, while the [gender wage gap](#) also narrowed, to 26.0% in 2021 from 27.3% in 2020. Between 2008 and 2018, the [gap between women's and men's contributions to GDP](#) narrowed by 2.7%, especially within public sector industries such health, education and public administration.

In 2020-2021, 31.5% of women aged 25 to 64 with a postsecondary credential in computer and information sciences worked in [STEM occupations](#) in mathematics, or computer and information sciences – compared with 50.1% of men. As a result of this under-representation, plus a high rate of job mismatch, women were under-represented in related occupations, comprising only 21.3% of private sector information and communication technology specialists.

In 2022, 52% of women provided [paid or unpaid care](#). They were also significantly more likely to report negative impacts as a result, such as adjusting their work schedules, being more flexible with caregiving responsibilities, reducing their regular work hours, or leaving paid employment.

In March 2023 [racialized groups](#) comprised 28.6% of Canada's employed population. However, despite possessing higher levels of education, [racialized Canadians](#) are less likely to find "good jobs" early in their careers (i.e., offering higher pay, union membership and/or pension coverage) compared with non-racialized or non-Indigenous Canadians.

Federal and provincial diversity initiatives

The federal government has established a [Disability Inclusion Business Council](#) to recommend how businesses can improve workplace inclusivity. A pan-Canadian independent disability business network will also be established later in 2023.

The federal government has announced increased support, until 2025, under the [Racialized Newcomer Women Pilot Program](#) which funds work placements, mentorships, job counselling and programs to address barriers faced by racialized newcomer women such as gender- and race-based discrimination, unstable employment, and lack of affordable childcare.

Saskatchewan has passed employment standards [amendments](#) (see Bill 91) to require all workplaces to develop and implement a written policy and prevention plan on violence by May 17, 2024 (currently, only prescribed workplaces must have a plan) and to develop a written harassment prevention policy. Employers must now also ensure all incidents of violence or harassment are investigated.

The New Brunswick Human Rights Commission has issued [Guidance on Age Discrimination](#). Examples of age discrimination in employment are provided, and various best practices for employers are highlighted in areas such as recruitment, performance appraisal and policy development. Employers are also encouraged to ensure older workers can retrain, transition to part-time work, pursue flexible or phased retirement options, and receive pre-retirement counseling.

New Brunswick has introduced [amendments](#) to the *Employment Standards Act* to prohibit sub-minimum wage stipends for persons with a disability. According to the [Interim Report of the Select Committee on Accessibility in New Brunswick](#), disabled individuals with proper accommodations could fill many of the 120,000 forecasted job openings through 2027. The government should therefore release draft accessibility legislation.

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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About WTW

At WTW (NASDAQ: WTW), we provide data-driven, insight-led solutions in the areas of people, risk and capital. Leveraging the global view and local expertise of our colleagues serving 140 countries and markets, we help you sharpen your strategy, enhance organizational resilience, motivate your workforce and maximize performance.

Working shoulder to shoulder with you, we uncover opportunities for sustainable success—and provide perspective that moves you. Learn more at [wtwco.com](https://www.wtwco.com).