

Changes In The Law To Encourage Diversity In The Workplace

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Recent and Proposed Changes

Ontario and Federal

- **Ontario - 2016:**
 - Bill 132 - Sexual Violence and Harassment Action Plan Act
 - Ontario Human Rights Code
- **Canada - 2018:**
 - Bill C-25 – Disclose Diversity amongst Directors and Senior Management of Public Companies
 - Employment Equity Act (Federal)
 - Bill C-65 – Anti-Harassment
- **TSX – Proposed:**
 - Board of Directors Diversity
- #Me too Movement – *In progress!*



Bill 132- Sexual Violence and Harassment Action Plan Act

Ontario, 2016

- Bill 132 in force in 2016 amended the Occupational Health and Safety Act and imposes positive duties on employers to foster harassment-free workplaces.
- Employers required to investigate complaints of workplace harassment, failing which the Ministry of Labour may order an external investigation at the cost of the employer.
- Employers are required to establish written workplace and harassment policies.

Ontario Human Rights Code

- Avenue available for complaint.



Bill C-25

Awaiting Royal Assent as of April 19, 2018

- The amendments in Bill C-25 and draft regulations dealing with diversity would require publicly traded corporations to disclose information on the diversity amongst their directors and in senior management.
- The measures mirror those already required by all provincial and territorial regulators except in British Columbia and Prince Edward Island.

Employment Equity Act

Amended in the Miscellaneous Statute Law Amendment Act, 2017

- **Purpose of Act – Section 2**

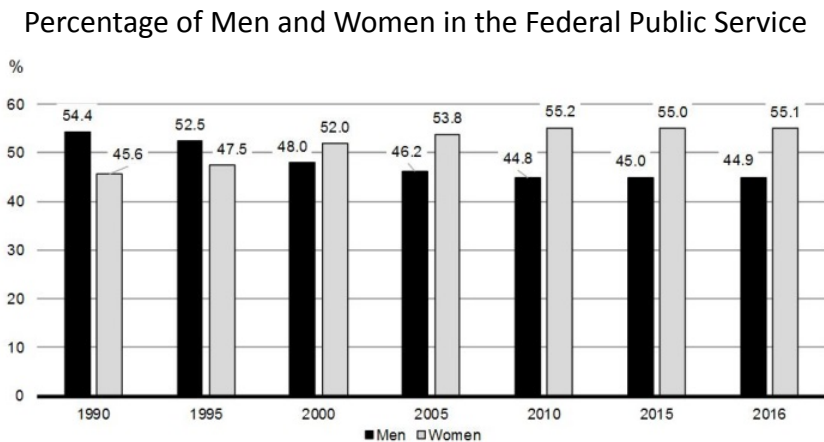
- The purpose of this Act is to achieve equality in the workplace so that no person shall be denied employment opportunities or benefits for:

- reasons unrelated to ability and,
- to correct the conditions of disadvantage in employment experienced by:

women, Aboriginal peoples, persons with disabilities and members of visible minorities by giving effect to the principle that employment equity means more than treating persons in the same way but also requires special measures and the accommodation of differences.

Bill C-65 - Anti-Harassment Rules

- In November 2017, the Government introduced Bill C-65 to create a single, integrated framework that will protect federally regulated employees from harassment and violence in the workplace.



Bill C-65

- Amends the Canada Labour Code (harassment and violence). The Parliamentary Employment and Staff Relations Act and the Budget Implementation Act, 2017.
- The major issues with the bill is it does not necessarily help those working in the private sector.

Bill C-65

Notable Amendments²

cont'd...

- **Prescribed Measures Against Violence and Harassment:**
Although Ontario employers are already required to maintain workplace and harassment policies, federally regulated employers would now be required to take prescribed measures to prevent and protect against harassment and violence in the workplace, respond to occurrences of harassment and violence in the workplace and offer support to employees affected and violence in the workplace.

Bill C-65

Notable Amendments²

cont'd...

- **Repeal of Exemption:** The existing law allows federally regulated employers to request an exemption from establishing a workplace health and safety committee where the work is relatively free from risks to health and safety. This exemption would be repealed.

Bill C-65

Notable Amendments²

cont'd...

- **Protection of Privacy:** The privacy of complainants of workplace harassment or violence would be protected. Workplace committees, policy committees and health and safety representatives would not be permitted to participate in investigations into workplace harassment or violence, and would not be provided with any information that is likely to reveal the identity of a person involved in an investigation, unless an employee provides his/her consent.

² <http://www.macleodlawfirm.ca/employers/2017/11/bill-c-65-federal-governments-crackdown-workplace-harassment-violence/>

TSX Board of Directors Diversity

2017 Diversity Disclosure Practices: As of July 31, 2017¹

- The percentage of companies without any women on the board fell to 37% in 2017
- The average number of women directors per company is 1.13 (vs. 0.96 in 2016)
- 47% of S&P/TSX 60 companies have now adopted a target for the representation of women on the board (up from 39% in 2016)



TSX Board of Directors Diversity

2017 Diversity Disclosure Practices: As of July 31, 2017¹ cont'd...

- Women now hold 14.5% of all board seats among all companies disclosing the number of women directors on their boards and 26% of the board seats for S&P/TSX 60 companies
- 47% of companies disclosing indicate that they have a written board diversity policy
- At 15%, the average percentage of executive officers who are women was unchanged in 2017



CSA Multilateral Staff Notice 58-308

Compliance with NI 58-101 Disclosure of Corporate Governance Practices¹

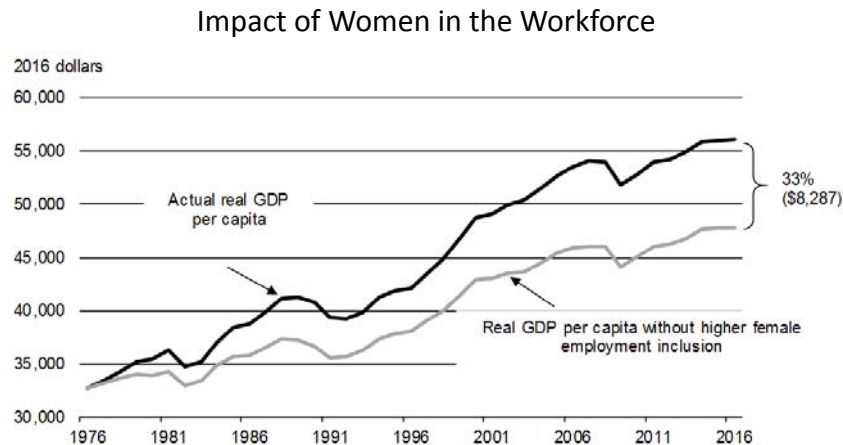
- National Instrument 58-101 Disclosure of Corporate Governance Practices (NI 58-101) requires non-venture issuers in Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Ontario, Québec, Saskatchewan and Yukon to disclose certain information regarding women on boards and in executive positions.

¹ https://www.osc.gov.on.ca/documents/en/Securities-Category5/sn_20160928_58-308_staff-review-women-on-boards.pdf

2018 Federal Budget

Budget 2018

- Canada sets a new standard of gender budgeting as a core pillar of budget-making—legislating higher standards and making meaningful investments toward greater gender equality underpinned by clear objectives and strong evidence.



“Me Too” Movement

- Bill C-65 was one of the measures implemented by the Canadian Parliament in response to the #MeToo movement.³
- To analyze the case law, it does not seem enough time has elapsed to understand the full effect of the movement and its impact on the Canadian Common Law. Bill C-65 appears to be the only federal action in direct response to the movement.

³ <http://www.cbc.ca/news/politics/billc65-stories-sexual-harassment-1.4515281>

Me too” Movement Status?

A WORK IN PROGRESS



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