



CLAIHR

Canadian Lawyers for International Human Rights
Juristes canadiens pour les droits internationaux de la personne

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CLAIHR Statement on Ontario Capital Markets Modernization Taskforce Final Report

The Ontario Capital Markets Modernization Taskforce (the “Taskforce”) was established in early 2020 to review and modernize Ontario’s capital markets regulatory framework. In discharging its task, the Taskforce held extensive public consultations throughout 2020. In the course of these consultations, CLAIHR submitted comments on matters of interest to CLAIHR. This is CLAIHR’s response to the Taskforce’s [Final Report](#) published in January 2021.

We are encouraged by the efforts to take a fulsome approach to reviewing Ontario’s capital market regulations. We thank the Taskforce for undertaking the much-needed and important task of reviewing and proposing updates to our capital markets and its related systems. The recommendations reflect real progress; however, substantial room for improvement remains in areas of interest to CLAIHR.

The primary focus of our [comments to the Taskforce’s consultation](#) was on environmental, social and governance (“ESG”) disclosures. The Taskforce, somewhat surprisingly, only provided mention of and recommendations requiring compliance with the Task Force on Climate-Related Disclosures (“TCFD”). While we also endorse the use of the TCFD, along with support by a number of respondents, it remains a climate-focused reporting framework, and a clear gap in the “social” component of ESG reporting information persists.

The recommendations fail to provide guidance on how businesses should disclose issues that implicate human rights. CLAIHR’s submission urged the Taskforce to expand the view of ESG issues beyond a narrow definition of financially material to dynamically keep pace with regulatory and standards developments in Europe, a market that is more mature when it comes to disclosure of ESG information. We are disappointed by limited recommendations in this regard. CLAIHR maintains that consideration of salient human rights and the UN Guiding Principles on Human Rights (UNGPs) should be integrated into corporate due diligence and disclosures.

We understand there are complexities in establishing clear guidance on how to identify and report human rights issues, yet this should not preclude a fulsome review and recommendation for effective implementation. CLAIHR is dedicated to working with members of the Taskforce, and members of the Ontario government who are grappling with how to move forward to incorporate a modern approach to human rights due diligence and corporate disclosures.

Separately, the report’s formal recognition of the abysmally slow progress in the area of diversity in corporate Canada is welcome. Comply or explain programs have been a useful tool for developing a rolling start to foster change, however, this report recognizes that target setting (an aggregated target of 50% for women and 30% for Black, Indigenous and people of colour, persons with disabilities and LGBTQ+ people) by corporate issuers is required for substantive and meaningful change. While CLAIHR did not take a position in our response to the Taskforce on this point, we find great utility in the diversity related recommendations and findings.

Meaningful changes to the composition of corporate boards and management teams through disclosure requirements are possible and we commend the Taskforce recommending a more directional stance.

CLAIHR will continue to articulate and promote the establishment and refinement of recommendations that help to embed the inclusion of social risks, namely human rights risks and impacts into the regulations that govern the Canadian capital markets.