



2023 ESG Disclosure Study

Benchmark survey of ESG-related
disclosure and practices by Canadian
public companies

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FASKEN



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Executive Summary

Environmental, Social and Governance (ESG) considerations are referenced everywhere in today's market and can be interpreted from various perspectives, including those of investors, companies, regulators and other stakeholders.

From a corporate perspective, ESG-related expectations from various stakeholders can seem overwhelming and companies are seeking more clarity on how to approach governance, management and disclosure of ESG issues. This study (the Study) aims to assist companies and their boards by reviewing the approaches taken by large Canadian companies on board oversight, management and disclosure of certain ESG-related matters of relevance in today's market.

At a high-level, our Study notes:

- Almost all large Canadian companies surveyed in our Study specifically reference an oversight function of ESG considerations by their board and/or a board committee. In a large number of companies, board committees appear to have the primary mandate regarding oversight of ESG matters. Most companies have directors that have ESG-related expertise and some companies specifically reference their directors' environmental ('E') and/or social ('S') expertise. When it comes to executive compensation, although companies are considering ESG matters in connection with compensation, only a few companies are tying compensation to specific 'E' or 'S' metrics. In addition, in a majority of instances where compensation is related to ESG metrics, it is tied to short-term compensation.
- Almost all companies have some form of sustainability report and most companies are referencing some combination of one or more frameworks for their ESG reporting. In addition, some companies are beginning to disclose some form of assurance with respect to certain aspects of their ESG reporting.
- When it comes to 'E' and 'S' targets, goals or objectives, many companies are disclosing a "net-zero by 2050" target consistent with the Paris-aligned climate goals, with some companies targeting an earlier date for achieving "net zero" (e.g., 2030). Other 'E' and 'S' objectives often mentioned by companies relate to waste management, community engagement and water consumption, while many also reference objectives relating to indigenous engagement and reconciliation.
- Certain stakeholders attempt to engage with companies on ESG matters through shareholder proposals. Such proposals may bring to light a particular issue or concern of importance to such stakeholders, even though few of these proposals receive majority shareholder approval.
- Many companies are broadening their consideration of 'S' matters, with community development and relations and issues with respect to employees being the most mentioned considerations, followed closely by consideration of indigenous engagement and reconciliation matters.

As we note below in our concluding thoughts, *Looking Ahead to 2023*, companies and their boards will need to continue to evaluate ESG considerations through the lens of what risks, regulatory obligations and opportunities are applicable to their company. As with all other decisions, boards will need to do this in a principled way by assessing and addressing a company's ESG-related risks and opportunities with a view to the best interests of the corporation and while balancing the demands of various stakeholders. Increasingly, companies and boards may be expected to articulate their view of this assessment clearly. In addition, boards will need to assess the materiality of the ESG considerations that come across the boardroom table.

About our Study

This Study provides insights into how companies may approach certain ESG matters by considering the public disclosure of the Canadian companies comprising the S&P TSX 60¹ (TSX60), a stock market index of the 60 largest companies listed on the Toronto Stock Exchange (TSX) and the public disclosure of the 40 companies that are the subject of the Climate Engagement Canada (CEC) Focus List (CEC40).

The CEC is a Canadian initiative developed by the Responsible Investment Association (RIA), Shareholder Association for Research and Education (SHARE) and Ceres², with support from the Principles for Responsible Investment (PRI). The CEC Focus List is similar to the global Climate Action 100+ initiative and aims to focus on engaging with 40 TSX-listed companies “for the alignment of expectations on climate risk governance, disclosure, and the transition to a low-carbon economy in Canada”. The CEC notes that the CEC Focus List companies “have been identified as the top reporting or estimated emitters on the [TSX] and/or with a significant opportunity to contribute to the transition to a low-carbon future and become a sectoral and corporate climate action leader in Canada”.³ Accordingly, because these 40 companies are likely already considering investor engagement as it relates to climate action, they have been included in this Study to provide additional references as to how they are approaching ESG considerations with respect to their disclosures.

With some overlap between the TSX60 companies and the CEC40 companies, this Study covers a total of 82 public companies listed on the TSX (the Surveyed Companies).



1. As maintained by the Canadian S&P Index Committee, a unit of Standard & Poor's and as comprised as of September 2, 2022.

2. Ceres is a not-for-profit organization which aims to work with capital market participants on sustainability matters.

3. Responsible Investing Association, *Financial Community to Engage 40 Canadian Corporate Issuers for Alignment on Net-Zero Transition*, (June 8, 2022), online: <https://www.riacanada.ca/news/financial-community-to-engage-40-canadian-corporate-issuers-for-net-zero>.

Figure 1A – Composition of the TSX60 companies by industry (based on the number of companies in each industry) according to the SEDAR industry classifications⁴:

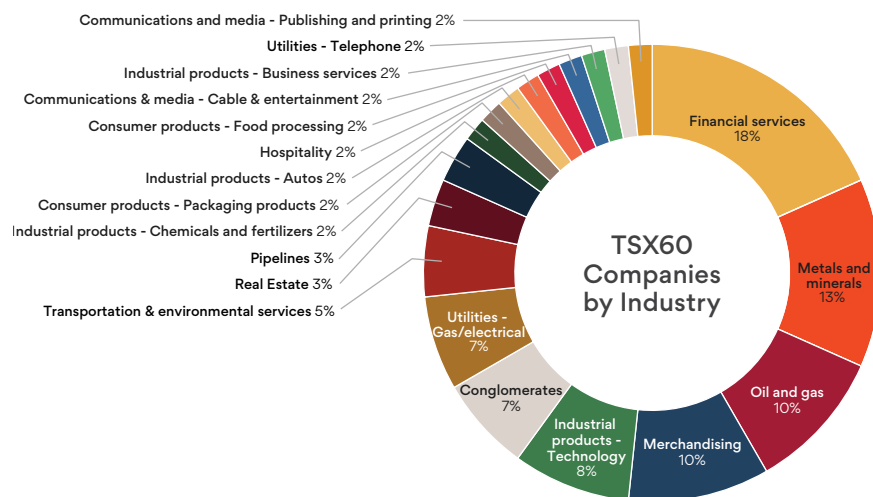
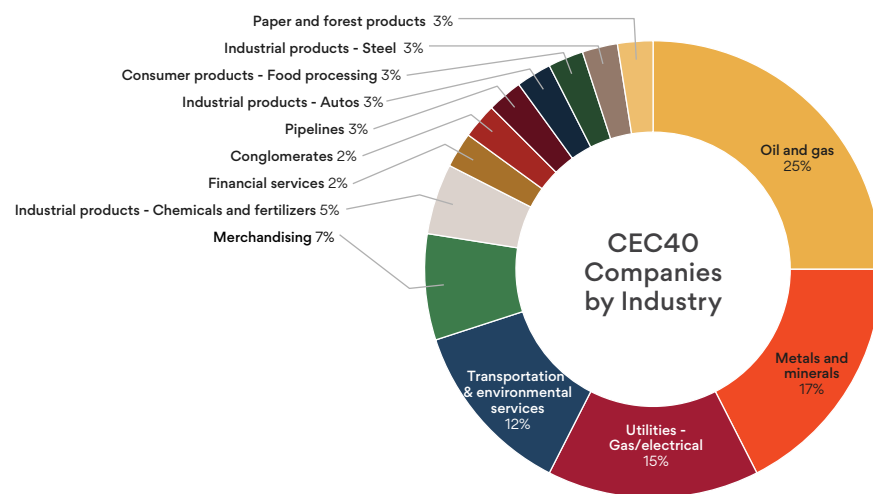


Figure 1B – Composition of the CEC40 companies by industry (based on the number of companies in the industry), according to the SEDAR industry classifications⁵:



For certain data points, an analysis has been done on an industry basis with respect to four specific industries (the Referenced Industries), which consist of the three industries with the largest number of companies within the Surveyed Companies that have historically been a significant part of Canadian capital markets (i.e., financial services, metals and minerals and oil and gas), supplemented by the technology industry because of its more recent growth in global capital markets. Our review of ESG-related disclosure published by the Surveyed Companies included examining:

- (i) their following continuous disclosure documents filed prior to August 2022 and in respect of the most recently completed financial year and interim period as required under applicable securities laws: Annual Information Forms (AIFs), Proxy Circulars (Circulars), and annual and interim Management Discussion & Analysis (MD&A) (which are collectively referred to as Continuous Disclosure Documents), and
- (ii) their stand-alone reports related to sustainability published prior to August 2022 (e.g., sustainability reports, ESG reports, and ESG data supplements, which are collectively referred to in this Study as Sustainability Reports).

Accordingly, this Study is based on the review of publicly available information which has not been verified by us. The results of our Study are limited by the extent to which information relevant to the analysis was publicly available on SEDAR or websites of the Surveyed Companies. Additionally, it is important to note that this Study does not consist of a census of the ESG-related public disclosure of all Canadian public companies as the Study is limited to the review of the Continuous Disclosure Documents and the Sustainability Reports of the Surveyed Companies, being the 82 public companies listed on the TSX.

The aim of this Study is to provide general information for clients and other readers. The results reflected in this Study, and our discussion and analysis of those results, should not be taken as advice or guidance, legal or otherwise.

We also welcome any feedback on the Study at: FaskenESGStudyFeedback@fasken.com

4. The SEDAR industry classifications were used in the first instance, as supplemented by Capital IQ to determine an appropriate category for such company. In addition, certain SEDAR industry classifications were consolidated to provide more meaningful analysis (e.g., metals and minerals was combined with gold and mining under the category of "Metals and Minerals").
 5. *Ibid.*

TOPICS ADDRESSED

The specific subject matters of this Study include:

Governance of ESG Issues	This Study considers the oversight of environmental and social issues, including an assessment of which board committees have oversight over environmental and social issues. It also explores whether directors have specific ESG-related expertise and whether ESG-based metrics are used in connection with executive compensation.
ESG Disclosure	This Study examines where issuers are disclosing ESG-related information and the reporting frameworks and standards referenced. It also tracks whether public issuers are obtaining assurance for ESG-related disclosure and the nature of the assurance being obtained.
‘E’ and ‘S’ Goals and Targets	This Study explores whether public companies in Canada are setting, and reporting on, environmental and social goals and targets, and provides an overview of the environmental and social matters that are the subject of such objectives, particularly noting goals and targets relating to reducing GHG emissions.
Shareholder Proposals	This Study considers the types of ESG-related shareholder proposals that were put forth, and the results of such proposals.
Social Issues	This Study explores what social matters public issuers are considering, other than EDI matters.
Forward-Looking Information	This Study provides an overview of the range of approaches taken by issuers with respect to disclosure around GHG emission targets, or targets to reduce GHG emissions by a certain date, in relation to forward-looking information disclosure.

A Note about Equity, Diversity and Inclusion Disclosure

Although Equity, Diversity and Inclusion (EDI) matters form an important part of the ‘S’ in ESG considerations, this Study does not review EDI disclosure by the Surveyed Companies. Disclosure around certain EDI matters has been required under applicable securities laws for many years and has more recently been required under the *Canada Business Corporations Act*.⁶ Public issuers have been reporting on EDI matters, both under specific requirements and on a voluntary basis, for some time and there are several reports that focus specifically on EDI matters, and related disclosure, in a comprehensive manner.⁷ Consequently, in this Study, when referring to ‘E’ and ‘S’ or ‘Environmental and Social’ disclosure or matters, we are not including EDI disclosure or matters.

6. See Corporations Canada, *Diversity disclosure guidelines*, online: <https://ised-isde.canada.ca/site/corporations-canada/en/diversity-disclosure-guidelines>.

7. See for example, Canadian Securities Administrators, CSA *Multilateral Staff Notice 58-314 Review of Disclosure Regarding Women on Boards and in Executive Officer Positions - Year 8 Report* (October 27, 2022), online: https://www.securities-administrators.ca/wp-content/uploads/2022/10/sn_20221027_58-314_women-on-boards.pdf; ISED, *Diversity of Boards of Directors and Senior Management of Federal Distributing Companies* (2021), online: <https://ised-isde.canada.ca/site/corporations-canada/en/data-services/diversity-boards-directors-and-senior-management-federal-distributing-corporations-2021-annual>.

A. Governance of ESG Issues

Board Oversight of Environmental and Social Issues

As part of their fiduciary duties, boards are responsible for overseeing the strategy and risks at their companies.

In recent years, there has been increased focus on managing ESG-specific strategies and risks, particularly since 2018 when the Canadian Coalition for Good Governance (CCGG) published *The Directors' E&S Guidebook* (the Guidebook) designed to assist boards in developing “a robust, principles-based approach to the governance and oversight of E&S factors”. Since then, there have been numerous calls for greater ESG oversight from various industry players. For example, in its updated 2023 policy guidelines for Canada, proxy advisory firm Glass Lewis indicates that, for shareholder meetings held starting in 2023, it “will generally recommend voting against the governance committee chair of any company in the S&P/TSX Composite that fails to provide explicit disclosure concerning the board’s role in overseeing these E&S issues”, because “insufficient oversight of material environmental and social issues can present direct legal, financial, regulatory and reputational risks that could serve to harm shareholder interests”.

As both CCGG and Glass Lewis noted, companies should have an appropriate oversight structure in place to both mitigate relevant ‘E’ and ‘S’ risks (such as climate change, human capital management, diversity, and

health & safety) and capitalize on relevant ‘E’ and ‘S’ opportunities in order to enhance their company’s value.

The entire board of directors is collectively responsible for ESG oversight. However, careful consideration should be given by companies in determining the best structure for such oversight. Certain ESG issues can be complex and require specialized knowledge (e.g., selecting appropriate sustainability standards, evaluating human rights practices, or determining executive compensation practices). Accordingly, in some instances, oversight of such issues are better dealt with by a specialized committee (e.g., an ESG committee), or by assigning such oversight role to an existing committee (e.g., risk management committee or corporate governance committee).

In certain instances, a board may determine that oversight should be addressed by the entire board (e.g., if it determines that ESG considerations are so fundamental to the corporation’s overall strategic objectives).

As CCGG stated in its Guidebook:

“There is no right or wrong board structure for supporting effective oversight of E&S opportunities and risk. Rather, boards need to carefully consider the nature of the E&S issues when determining the most appropriate committee to assign accountability”.

Overall, our Study found that for ‘E’ issues, there seems to be a more even breakdown among both the TSX60 and CEC40 companies of the allocation of responsibility of board oversight (between either a board committee or a board committee together with the entire board). However, for ‘S’ issues, the CEC40 companies have slightly more committee oversight in contrast to oversight by a committee together with the entire board.

On an industry basis, our Study found that there was some dependency based on industry as to the level of committee involvement. In particular, the financial services and metals and minerals industries tended more to delegating oversight to a committee only, compared to the oil and gas industry, which tended to have more oversight by the board together with a committee. By contrast, the technology industry seemed to have a broader range of oversight allocation as between the board and committees.

Generally, either a governance committee or another ESG specific committee (e.g., sustainability committee) tends to be tasked with ESG oversight. As noted further under *ESG Disclosure -Assurance*, ESG disclosures are not subject to certifications which are required for Continuous Disclosure Documents, including financial disclosures. If issuers move to establish internal controls over ESG reporting, it is possible that oversight over ESG matters could be delegated to an issuer’s audit committee since it already has familiarity with internal controls and in assessing risk.



Responsibility for 'E' Issues

Figure 2A - For the surveyed TSX60 and CEC40 companies, the charts below illustrate whether the entire board of directors as a whole has responsibility for 'E' issues, or whether the responsibility sits with a committee of the board.

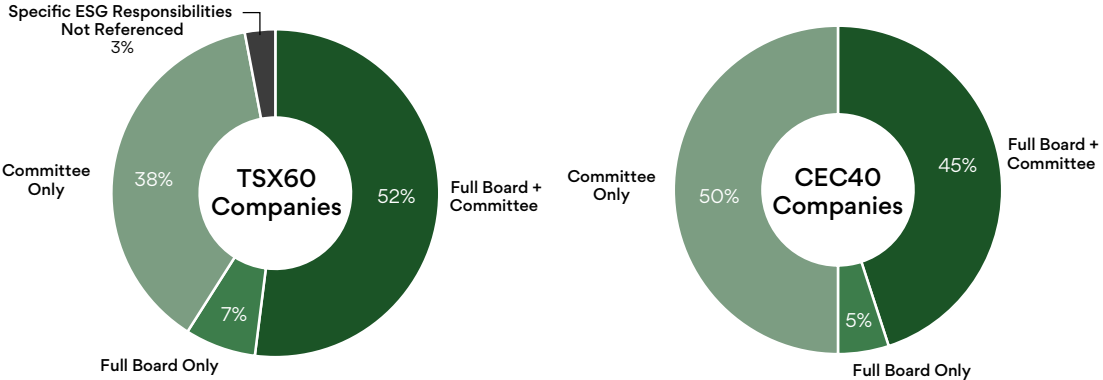
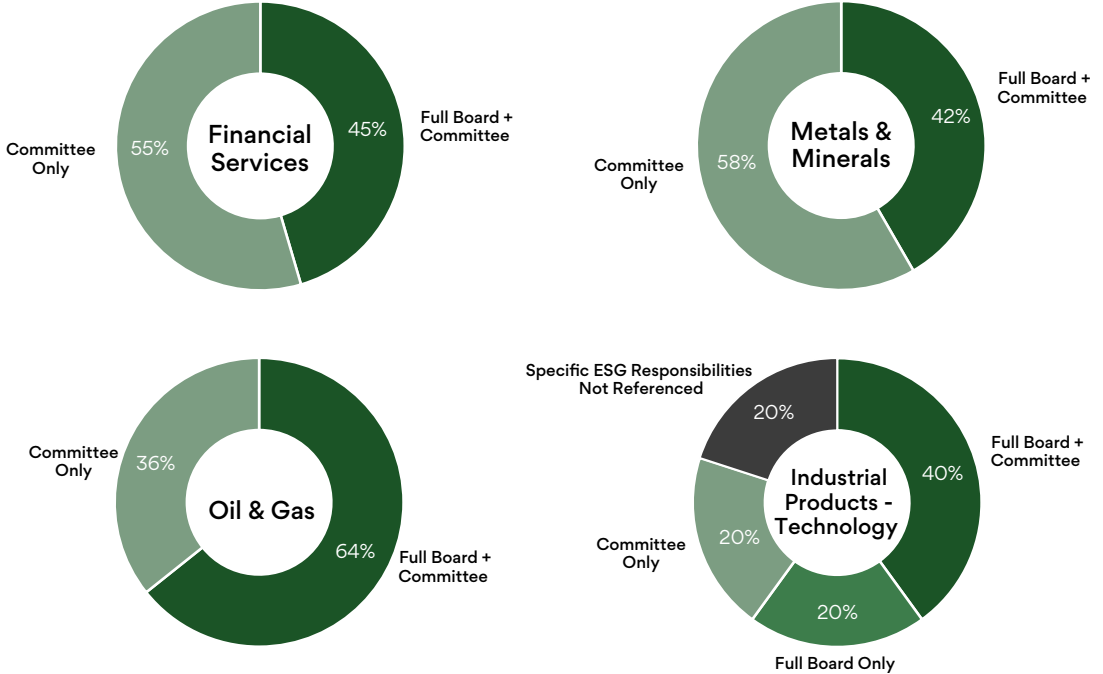
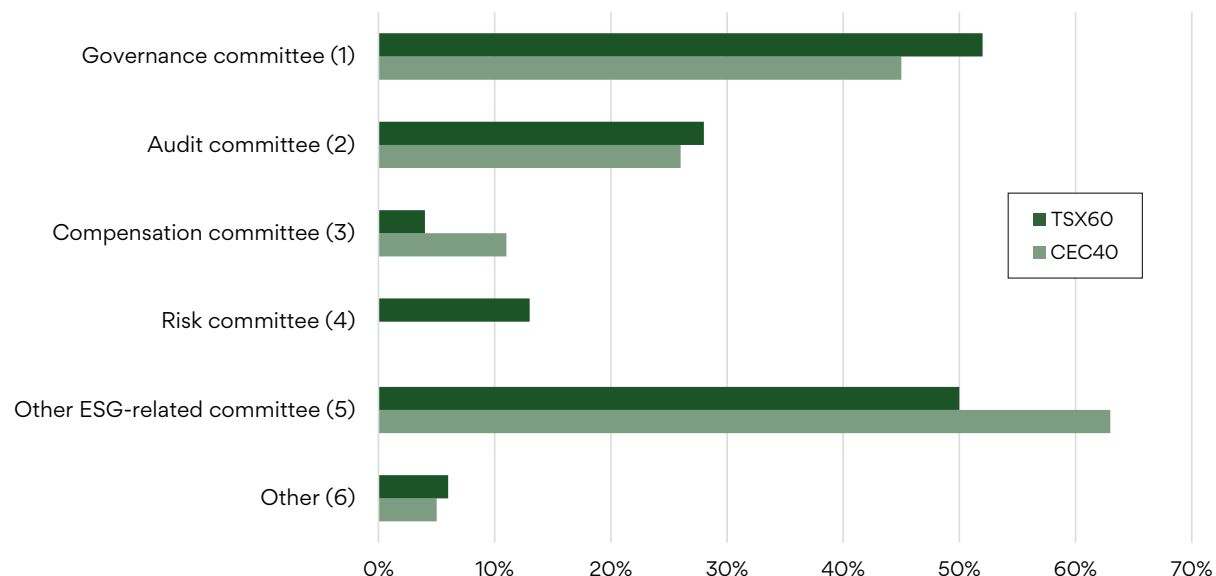


Figure 2B - For the Surveyed Companies, the charts below illustrate whether the entire board of directors as a whole has responsibility for 'E' issues, or whether the responsibility sits with a committee of the board for the four Referenced Industries.



Responsibility for 'E' Issues

Figure 2C – For the surveyed TSX60 and CEC40 companies, where one or more committees of the board of directors was identified as having responsibility over 'E' issues, the chart below identifies such committee(s). Note: Since more than one category may be applicable for any given company, the totals for the chart do not add to 100%.



Notes

- (1) Governance committee includes, corporate governance and/or nominating committees, or any combination thereof (including instances where such committees are combined with a human resources function not related to compensation).
- (2) Audit committee includes, audit, finance and risk committees (where such committee is combined with audit or finance functions), or any combination thereof.
- (3) Compensation committee includes, human resources (where such committee is not combined with a governance function), human capital and/or compensation committee, or any combination thereof.
- (4) Risk committee includes, risk management (where such committee is not combined with an audit or finance function) and/or compliance committees, or any combination thereof.
- (5) Other ESG-related committee, sustainability, sustainable development, health, safety, environment, diversity and inclusion committees, or any combination thereof.
- (6) Other includes, corporate responsibility and brand committees, or any combination thereof.

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Responsibility for 'S' Issues

Figure 2D – For the surveyed TSX60 and CEC40 companies, the chart below illustrates whether the entire board of directors as a whole has responsibility for 'S' issues, or whether the responsibility sits with a committee of the board.

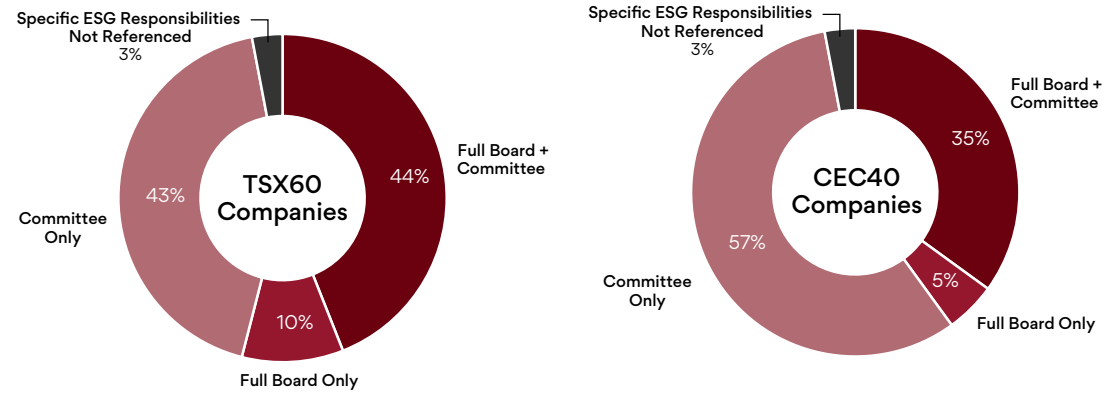
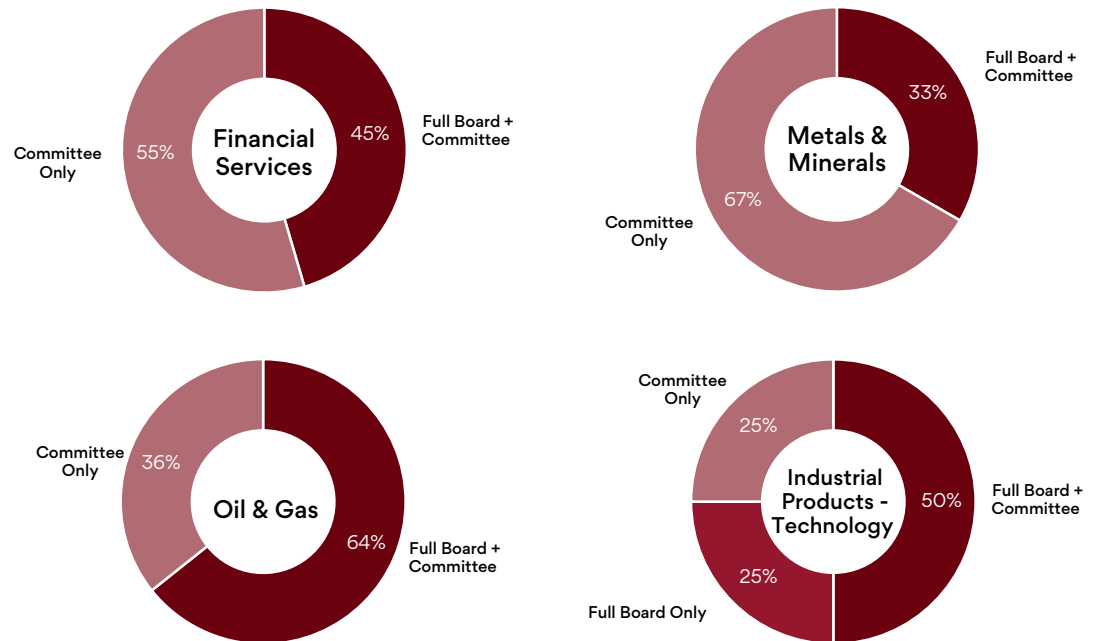


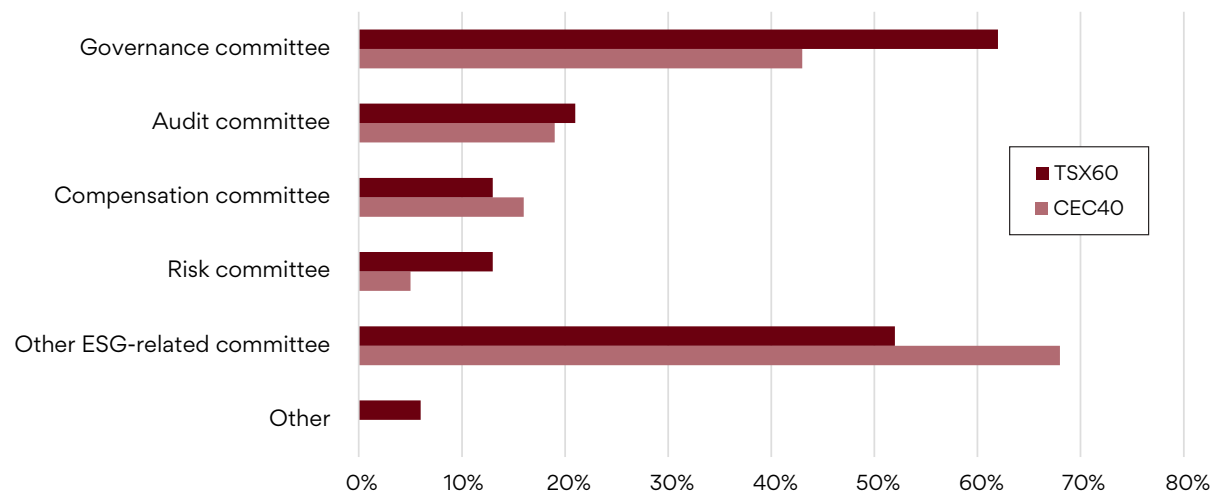
Figure 2E – For the Surveyed Companies, the charts below illustrate whether the entire board of directors as a whole has responsibility for 'S' issues, or whether the responsibility sits with a committee of the board for the four Referenced Industries.



STUDY FINDINGS

Responsibility for ‘S’ Issues

Figure 2F – For the surveyed TSX60 and CEC40 companies, where one or more committees of the board of directors was identified as having responsibility over ‘S’ issues, the chart below identifies such committee(s). Note: Since more than one category may be applicable for any given company, the totals for the chart below do not add to 100%.



Notes

- (1) Governance committee includes, corporate governance and/or nominating committees, or any combination thereof (including instances where such committees are combined with a human resources function not related to compensation).
- (2) Audit committee includes, audit, finance and risk committees (where such committee is combined with audit or finance functions), or any combination thereof.
- (3) Compensation committee includes, human resources (where such committee is not combined with a governance function), human capital and/or compensation committee, or any combination thereof.
- (4) Risk committee includes, risk management (where such committee is not combined with an audit or finance function) and/or compliance committees, or any combination thereof.
- (5) Other ESG-related committee, sustainability, sustainable development, health, safety, environment, diversity and inclusion committees, or any combination thereof.
- (6) Other includes, corporate responsibility and brand committees, or any combination thereof.

Board Expertise in ESG

The exercise of building an effective board often includes the use of a skills matrix to ensure that the board collectively possesses the necessary expertise and experience (e.g., legal/regulatory, accounting, strategy development) to effectively govern the company.

As part of this exercise, expertise in ESG-related matters is increasingly considered important to a board's overall skill set. Having the necessary training and experience to consider ESG issues relevant to a company helps ensure that a board is managing its oversight role with respect to ESG matters appropriately. Without such board expertise there is a risk that key ESG issues, which may not be readily apparent, are either not considered at all, or if considered, are not actioned in an appropriate manner.

The designation of directors with financial expertise usually arises from prescribed requirements under applicable securities laws. In contrast, identifying directors with ESG expertise is not yet a legal requirement, though it is important for good governance. In its *2022 Best Practices For Proxy Circular Disclosure* publication, CCGG makes the following comment about how a board's skills matrix should highlight 'E' and 'S' expertise:

“E&S-focused capabilities should be captured in the board skills matrix when such matters are material to the corporation's business and pertinent to the board's role in risk management and strategic planning oversight. Furthermore, issuers should clearly define the skills and experience that this type of expertise entails given the unique context and circumstances of their business to ensure that they are recruiting directors with the relevant knowledge to provide guidance in these areas.”

The type of ESG expertise that is material to a company will vary from company to company. As CCGG stated in its Guidebook: “If a factor on the E&S spectrum has emerged as highly important for company strategy, investors would expect the board to have the requisite skills or expertise to address it.”

As one can see in the following charts, our Study found that almost all companies (i.e., 83% of TSX60 companies, 95% of CEC40 companies) identified at least one director as having ESG expertise. Of those companies which disclose the ESG expertise of their directors, approximately three-quarters (i.e., 78% of TSX60 companies, 76% of CEC40 companies) describe such expertise as being general ESG, while the percentage of those companies which further identify some directors with E or S varies (i.e., 36% and 50%, respectively, for TSX60 companies; 66% and 61%, respectively, for CEC40 companies). Although for analysis purposes the Study examined companies' identification of director expertise and allocated such expertise into these three categories, most companies identified director expertise in more than one of these categories.

On an industry basis, companies in Oil and Gas and Metals and Minerals tended to identify directors specifically with 'E' or 'S' expertise.

Board ESG Expertise

Figure 3A – For the surveyed TSX60 and CEC40 companies, the chart below identifies whether specific directors on the board are identified as having some form of ESG expertise.

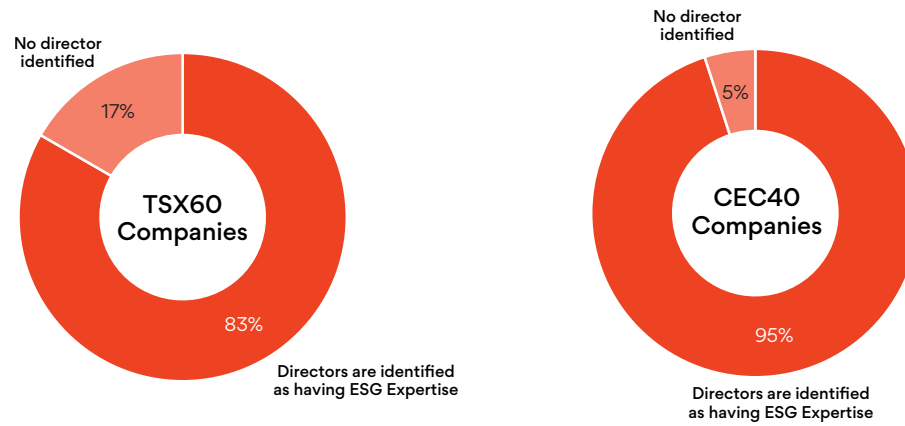
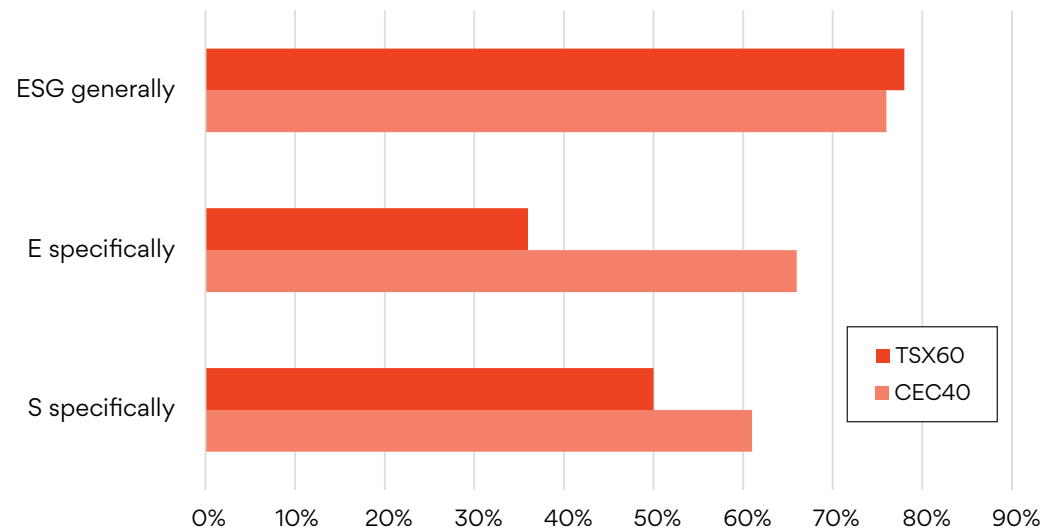


Figure 3B – For the surveyed TSX60 and CEC40 companies which disclose the ESG expertise of one or more board members, such identified expertise is presented. Note: Since more than one category may be applicable for any given company, the totals for the chart below do not add to 100%.



Executive Compensation Tied to ESG Metrics

To incentivize executives and align their interests with those of the company that they serve, executive-based compensation has been tied to certain metrics for some time.

Such compensation, for example, has included bonus payouts which are tied to the company's achievement of a specified share price or revenue or income targets. More recently however, we see that such metrics are being expanded to include certain ESG metrics. This can include, for example, pay tied to cybersecurity metrics (e.g., a financial institution completing the fiscal year without any cyber breaches or incidents) or safety metrics (e.g., a mining company achieving zero fatalities across their operations during the year). In this regard, CCGG stated the following in its Guidebook:

“The E&S priorities that are part of the strategic plan should be captured in performance evaluation and management compensation structures. The board should work with management to determine which behaviours and objectives to reinforce through metrics, including any existing behaviours that have unintentionally been reinforced and need redirection.”

How a company structures its compensation plans sheds light on the company's priorities. For example, adopting metrics tied to greenhouse gas reductions signals a company's focus on the environment. Metrics tied to customer satisfaction highlight the importance of customers as key stakeholders of the company, such as those in the retail sector. Executive compensation plans which do not include non-financial objectives based on social or environmental issues may start to receive more attention from investors, as certain investors are increasingly expecting such ESG based metrics.

If such metrics are being used by the company in its compensation plans, then certain disclosures may be required. Pursuant to Form 51-102F6 *Statement Of Executive Compensation*, a description of the significant elements of compensation awarded to certain individuals, including which elements were chosen and why, is required to be included in Circulars.

As illustrated in the following charts, our Study found that the majority of Surveyed Companies (i.e., 67% of TSX60 companies, 80% of CEC40 companies) disclose the use of one or more ESG metrics in compensation plans for CEOs or other named executive officers (NEOs). Of those companies which disclose some type of ESG metrics in executive compensation plans, most often (i.e., 50% for TSX60 companies, 55% for CEC40 companies) such ESG metrics were incorporated in with other types of metrics (e.g., such as customer experience) rather than being separate ESG metrics. Additionally, of those companies which disclose some type of ESG metrics in executive compensation plans, most often (i.e., 68% for TSX60 companies, 80% for CEC40 companies) the ESG metrics were tied to short-term incentive compensation (e.g., annual bonuses or other short-term incentives) rather than long-term incentives (e.g., stock options or other long-term incentives).

STUDY FINDINGS

Executive Compensation

Figure 4A – For the surveyed TSX60 and CEC40 companies, the chart below illustrates the percentage of companies which tie the compensation of CEOs and/or other NEOs with ESG-based metrics.

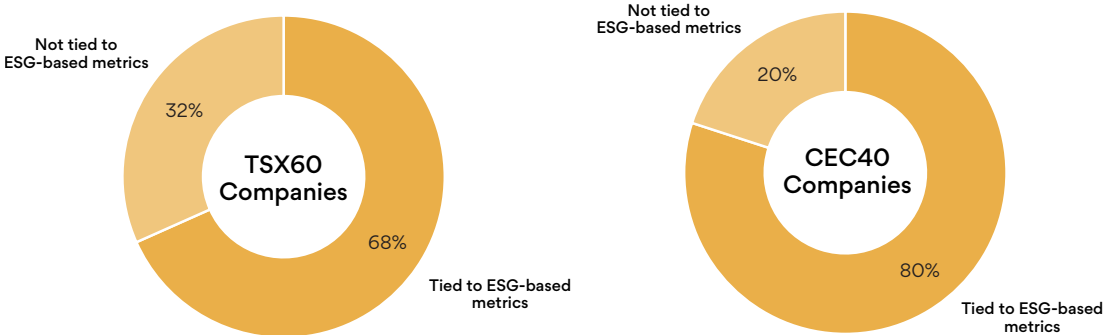
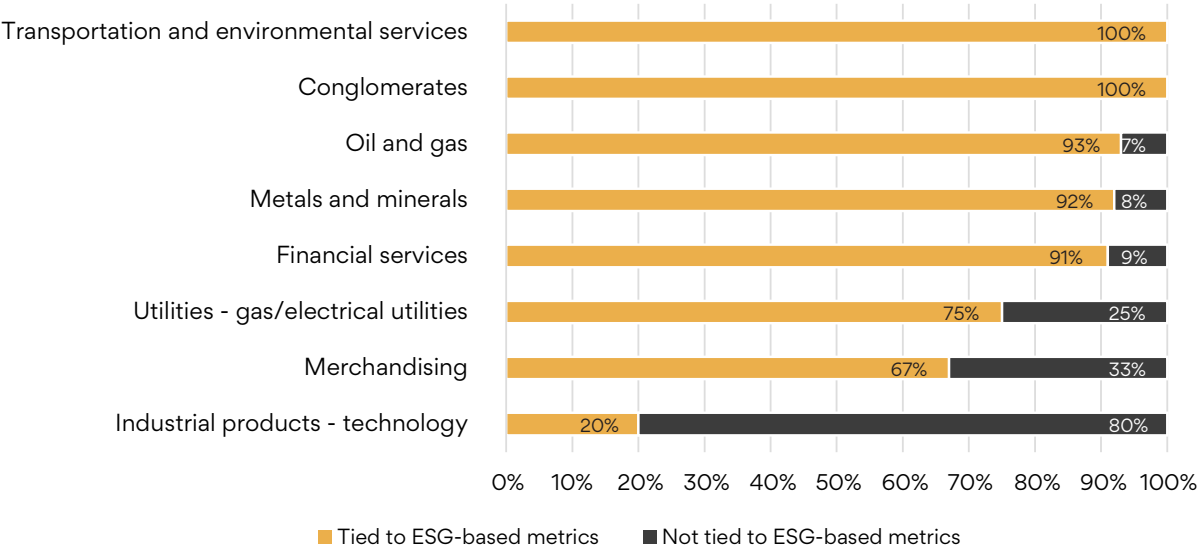


Figure 4B – For the surveyed TSX60 and CEC40 companies, the chart below illustrates the percentage of companies, on an industry basis, which tie the compensation of CEOs and/or other NEOs with ESG-based metrics.



STUDY FINDINGS

Executive Compensation

Figure 4C – For the surveyed TSX60 and CEC40 companies, of the companies which tie executive compensation to ESG metrics, the chart below identifies the percentage of such companies which separately consider ESG-related metrics (whether on a stand alone or bundled basis), ‘E’ specific and/or ‘S’ specific metrics in compensation plans. Note: Since more than one category may be applicable for any given company, the totals for the chart do not add to 100%.

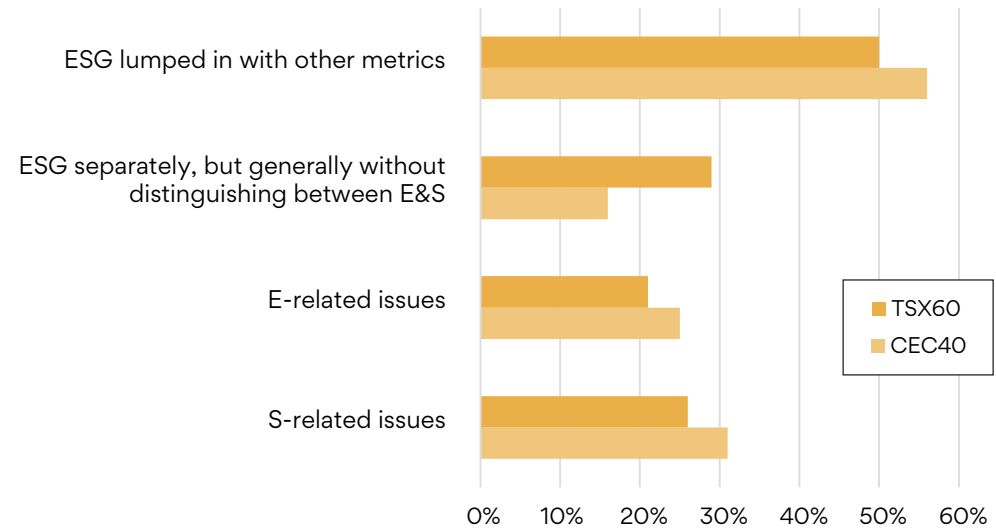
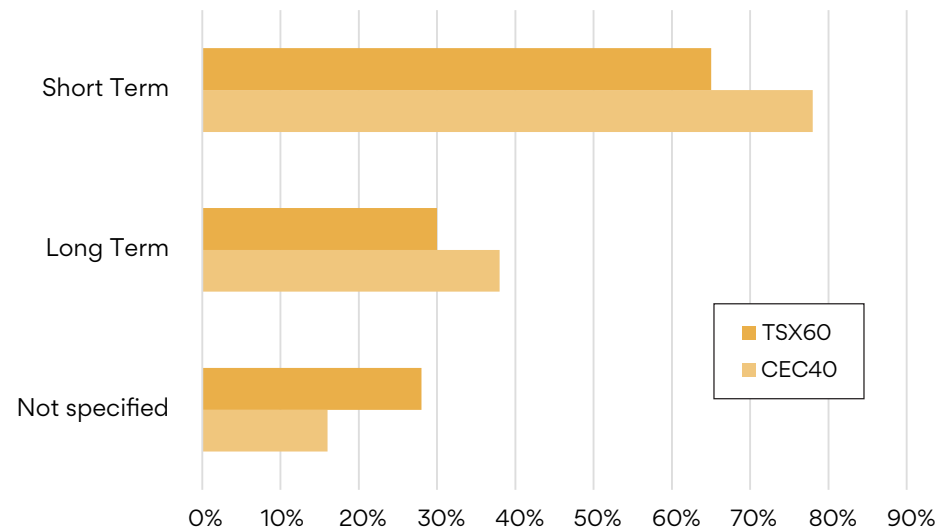


Figure 4D – For the surveyed TSX60 and CEC40 companies, of the companies which tie executive compensation to ESG metrics, the chart below identifies the percentage of such companies which tie compensation to short-term performance and/or long-term performance. Note: Since more than one category may be applicable for any given company, the totals for the chart below do not add to 100%.



B. ESG Disclosure

Location of Environmental and Social Disclosure

Today, most companies disclose some level of ‘E’ and ‘S’ information to their stakeholders. The location of such ‘E’ and ‘S’ disclosure often depends on the nature of the information, whether it is material from an investor’s perspective, and with whom it is being shared.

In Canada, ‘E’ and ‘S’ disclosure (other than that related to EDI) is not specifically mandated, however, under Canadian securities legislation, public companies must disclose in a meaningful way “material” information in their Continuous Disclosure Documents, which includes information that, if omitted or misstated, would likely influence a reasonable investor’s decision to buy, sell or hold a security. This requirement applies to ‘E’ and ‘S’ information as it would to any other information. Depending on the nature of the information, ‘E’ and ‘S’ disclosure may need to be disclosed in MD&A, if it consists of material information that may not be fully reflected in an issuer’s financial statements, or in an AIF, if it consists of a material risk factor to the business.

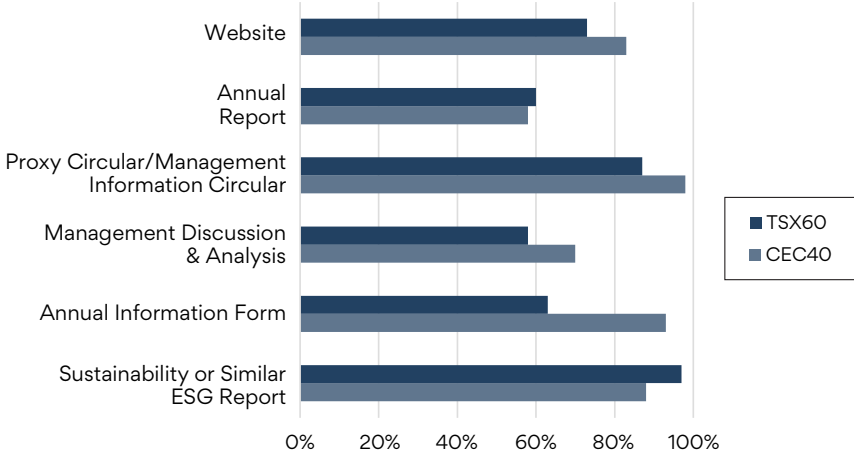
Public companies often choose to disclose a broad range of ‘E’ and ‘S’ information in different forms beyond what is required by securities laws, including in Sustainability Reports. Voluntary ESG disclosure can provide valuable information to a company’s stakeholders, including consumers, the communities in which they operate, and investors.



While not currently mandatory under Canadian securities laws, such information may be subject to applicable securities laws relating to misrepresentations (whether in relation to historical, current or forward-looking information) under the civil liability for secondary market disclosure regime, and potentially also subject to review and action by securities regulators.

Our Study results suggest that most companies disclose ‘E’ and ‘S’ information in their Continuous Disclosure Documents required by securities laws, and also publish a Sustainability Report, which contains more comprehensive disclosure on the company’s ‘E’ and ‘S’ risk and opportunity profile and ‘E’ and ‘S’ -related goals and targets. The information provided in Sustainability Reports generally goes beyond what is disclosed in Continuous Disclosure Documents, which is primarily focused on information that is mandated under applicable securities laws. In fact, over 90% of TSX 60 companies and over 80% of CEC 40 companies published a Sustainability Report. With respect to Continuous Disclosure Documents, a majority of all Surveyed Companies published some level of ‘E’ and ‘S’ information across all Continuous Disclosure Documents, but most (over 80% of TSX 60 companies and over 90% of CEC 40 companies) disclose ‘E’ and ‘S’ information in their Circulars.

Figure 5 – For the surveyed TSX60 and CEC40 companies, the chart below illustrates the location of any disclosure with respect to ESG-related matters. Note: Since more than one category may be applicable for any given company, the totals for the chart below do not add to 100%.



Reporting Frameworks and Standards for ESG Disclosure

In recent years, there has been significant momentum in developing globally applicable frameworks and standards to support ESG-related disclosure for public and private companies.

To date, the most often relied on ESG standards and frameworks by companies in Canada include the Sustainability Accounting Standards Board Standards (the SASB Standards), the Taskforce on Climate-related Financial Disclosure Recommendations (the TCFD Recommendations), and the Global Reporting Initiative Standards (the GRI Standards).

SASB Standards

This is an ESG guidance framework that sets standards for the disclosure of financially material ESG information by companies to their investors. The SASB Standards focus on sustainability information that is financially material across 77 industries, and are intended to result in disclosure that is decision-useful for investors and modeled after the processes used to develop financial accounting standards.⁸

TCFD Recommendations

This is a set of climate-related financial disclosure recommendations established by the Taskforce on Climate related Financial Disclosure in 2017. The TCFD recommendations are structured around four thematic areas and 11 recommended disclosures which assist companies in providing clear, comparable and consistent information about climate-related risks and opportunities affecting the company.⁹

GRI Standards

This is a set of interconnected standards that provide a framework and structure for companies when publicly reporting on the impacts of their activities and include both requirements (a set of disclosures that must be made to be compliant with the GRI Standards) and recommendations (disclosure that is encouraged but not mandatory). The GRI Standards are made up of three separate standards, including the GRI Universal Standards, which apply to all companies, the GRI Sector Standards, which have been developed for 40 separate sectors, and the GRI Topic Standards, which cover various material topics for disclosure ranging from waste to occupational health and safety.¹⁰

While the SASB Standards, TCFD Recommendations and GRI Standards are those most referenced by companies, some companies rely on other ESG standards and frameworks, including the Sustainable Development Goals reporting guidance (SDGs), the UN Global Compact (UNGC), The Climate Registry (TCR), the Carbon Disclosure Project (CDP), and the GRESB Standards (GRESB), as illustrated in Figure 6A.

8. SASB, *About Us*, online: <<https://www.sasb.org/about/>>.

9. TCFD, *About*, online: <<https://www.fsb-tcfid.org/about/>>.

10. GRI, *A Short Introduction to the GRI Standards*, online: <<https://www.globalreporting.org/media/wtaf14tw/a-short-introduction-to-the-gri-standards.pdf>>.

At COP 26 in 2021, the IFRS Foundation Trustees announced the establishment of the International Sustainability Standards Board (ISSB) to consolidate content from the various reporting standards and frameworks and to develop a “comprehensive global baseline of sustainability disclosures”. During 2022, the Value Reporting Foundation (which developed the SASB Standards) and the Climate Disclosure Standards Board, consolidated under the IFRS Foundation.

As a step towards the development of the IFRS Sustainability Disclosure Standards, the ISSB has to date released two proposed standards for consultation, the first with respect to general sustainability-related disclosure requirements and the other with respect to climate-related disclosure requirements¹¹:

- Exposure Draft Proposed IFRS S1 General Requirements for Disclosure of Sustainability-related Financial Information (Exposure Draft S1); and
- Exposure Draft Proposed IFRS S2 Climate-related Disclosures (Exposure Draft S2).

Exposure Draft 1 incorporates the industry-based disclosure requirements found in the SASB Standards and Exposure Draft 2 builds on the TCFD Recommendations. For this reason, companies reporting under the SASB Standards and TCFD Recommendations are encouraged by ISSB to continue to do so as this will ease their transition to the IFRS Sustainability Disclosure Standards.

In July of 2020, the Taskforce on Nature-related Financial Disclosures (TNFD) was formed and is working with market participants and other stakeholders to develop a risk management and disclosure framework relating to evolving nature-related risks. The TNFD aims to publish its final recommendations in September of 2023 and is expected to be added to the growing scope of a company’s ESG disclosures.

In the meantime, companies continue to rely on a variety of standards and frameworks to guide their ESG disclosure.



11. <https://www.ifrs.org/news-and-events/news/2022/03/issb-delivers-proposals-that-create-comprehensive-global-baseline-of-sustainability-disclosures>

Figure 6A – For the Surveyed Companies, the chart below illustrates the reporting frameworks and standards most referenced by public issuers (with many issuers referencing more than one framework or standard) for reporting on ESG-related matters.

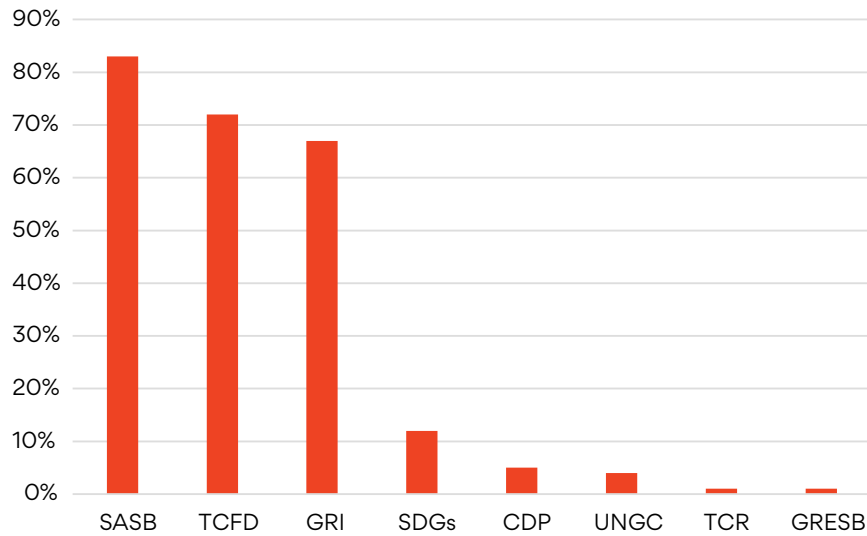


Figure 6B – For the Surveyed Companies, since most companies reference more than one framework or standard in their ESG disclosure, the chart below illustrates the combinations of the three most prominent reporting frameworks and standards with other prominent and non-prominent frameworks and standards referenced by the companies.

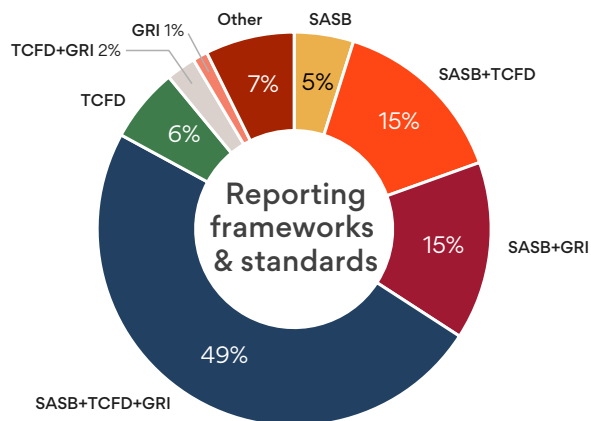
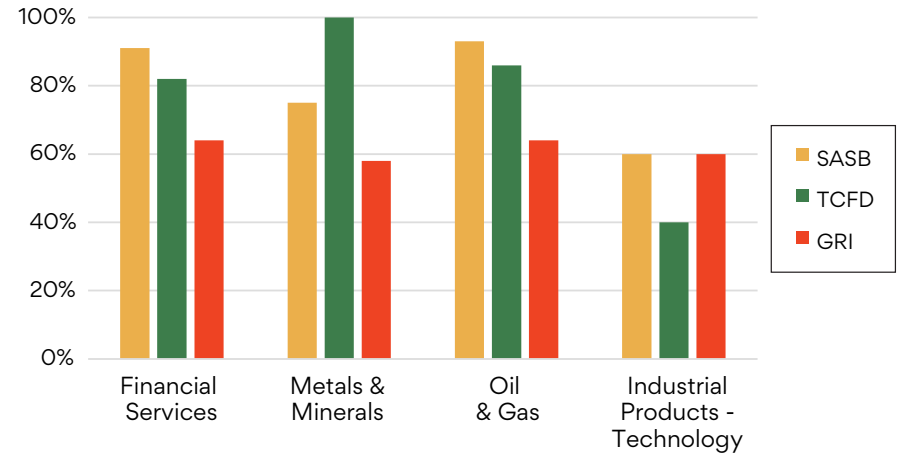


Figure 6C – For the Surveyed Companies, the percentage of companies in the Referenced Industries which identified the use of a prominent ESG standard or framework are presented below.



Assurance

Investors continue to request ESG information that is not only consistent and comparable, but also reliable.

One way that companies can respond to investors' desire for reliability in ESG disclosures is by companies obtaining appropriate assurance on ESG information that they intend to publicly disclose and then including an assurance report with their ESG disclosures. Assurance might also provide a level of defence for companies and their boards against civil or regulatory proceedings alleging that disclosed ESG information is misleading or constitutes a misrepresentation.

Unlike financial statements which are subject to certification of internal controls over financial reporting, together with an audit report from a company's auditor, and other disclosures mandated under applicable securities laws which are subject to certifications of disclosure controls, ESG-related disclosures are not yet subject to any such mandated controls over reporting or audits or verifications.

In the future, however, ESG-related assurance might become a legal requirement, at least for certain types of ESG disclosures. For example, in the Canadian Securities Administrators' (CSA) proposed National Instrument 51-107 *Disclosure of Climate-related Matters in Canada* published in October 2021 (Proposed NI 51-107), the CSA specifically asked for comments on whether some form of assurance should be required for GHG emissions reporting. In November 2022, the European Parliament announced the adoption of the Corporate Sustainability Reporting Directive, which subjects companies to independent auditing and certification

requirements for their sustainability reporting, similar to financial reporting. The new rules are intended to address shortcomings in existing legislation on the disclosure of non-financial information perceived as "largely insufficient and unreliable", and to provide investors with "comparable and reliable data".

Some of the key questions for companies to consider when obtaining ESG-related assurance are:

- whether the assurance will be provided internally (e.g., by internal auditors or other internal management) or externally by third parties;
- if assurance is provided externally by a third party, will the assurance be provided by an independent auditor or by an engineering or consulting firm;
- against what standards will assurance be given and what level of assurance will be provided against those standards; and
- what ESG information will be the subject of assurance.

The charts in Figure 7A illustrate that more than a majority of the Surveyed Companies (58% of the TSX60 companies and 62% of the CEC40 companies) disclose some type of ESG-related assurance. Of those companies that provide some type of ESG-related assurance, over 75% of the Surveyed Companies disclose some assurance related to GHG emissions, while assurance on other E and S performance metrics runs from 20% to 40%.

It is not surprising that GHG emissions is the most common ESG metric which is subject to assurance given that:

- companies face ongoing scrutiny regarding their GHG emissions and studies have shown that companies may not always be measuring their GHG emissions accurately; and
- some jurisdictions are in the process of considering or implementing legislation that would require some form of assurance for disclosure of GHG emissions data.

Figure 7A – For the Surveyed Companies, the charts below illustrates whether or not the companies disclose ESG-related assurance.

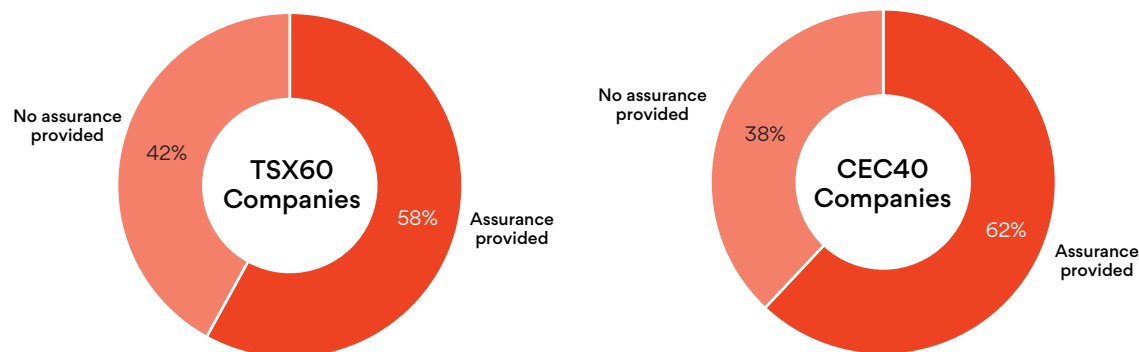


Figure 7B – For the surveyed TSX60 and CEC40 companies, the percentage of companies in the Referenced Industries that have received assurance on ESG-related matters are shown below.

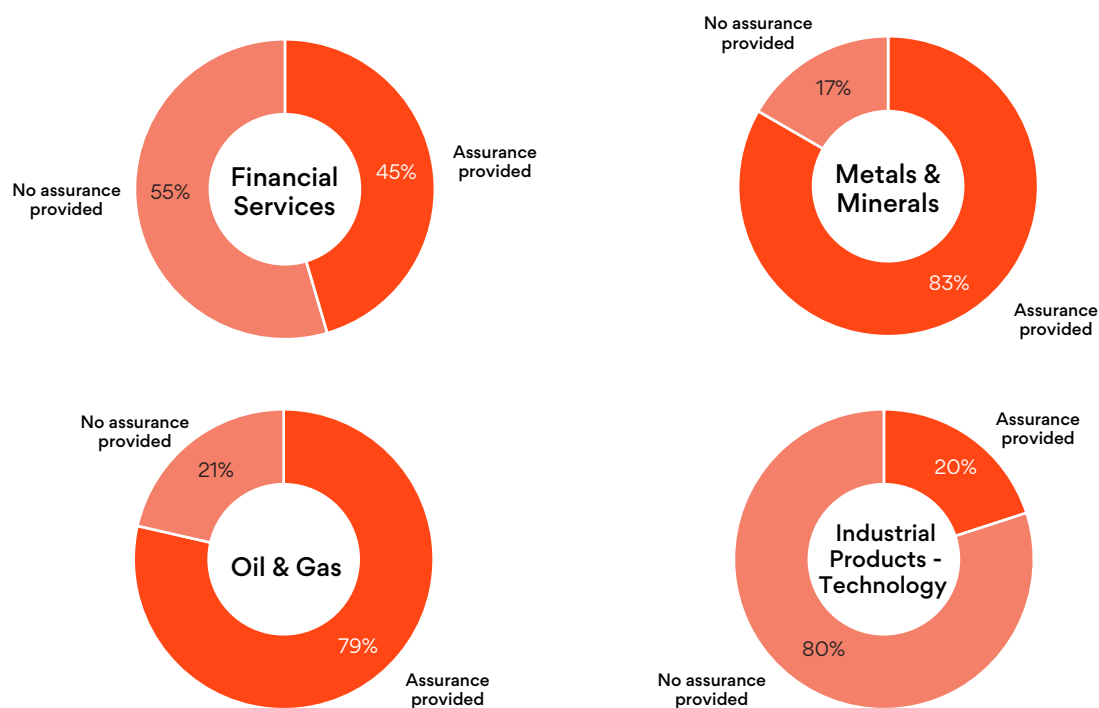
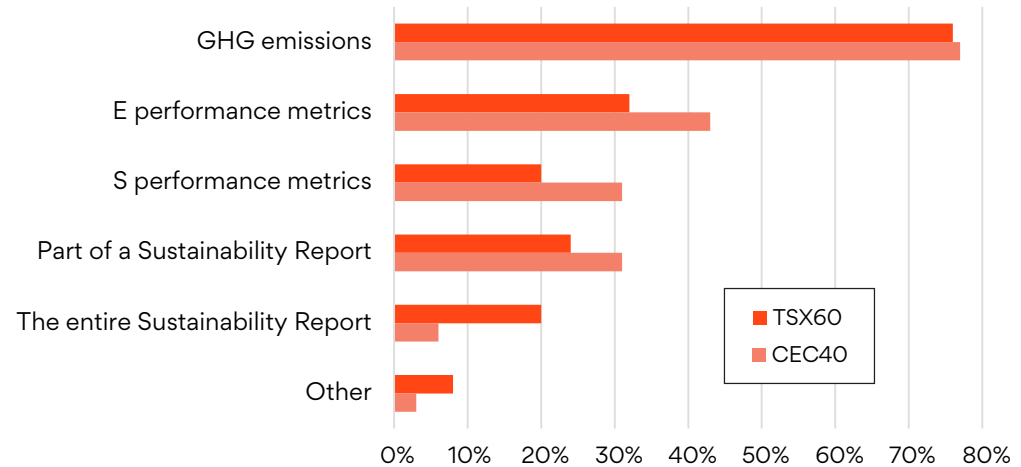


Figure 7C – For the surveyed TSX60 and CEC40 companies, with respect to all companies receiving some form of ESG-related assurance, the percentage of such companies that disclose assurance with respect to specific types of ESG-related subjects is shown below. Note: Since more than one category may be applicable for any given company, the totals for the chart below do not add to 100%.

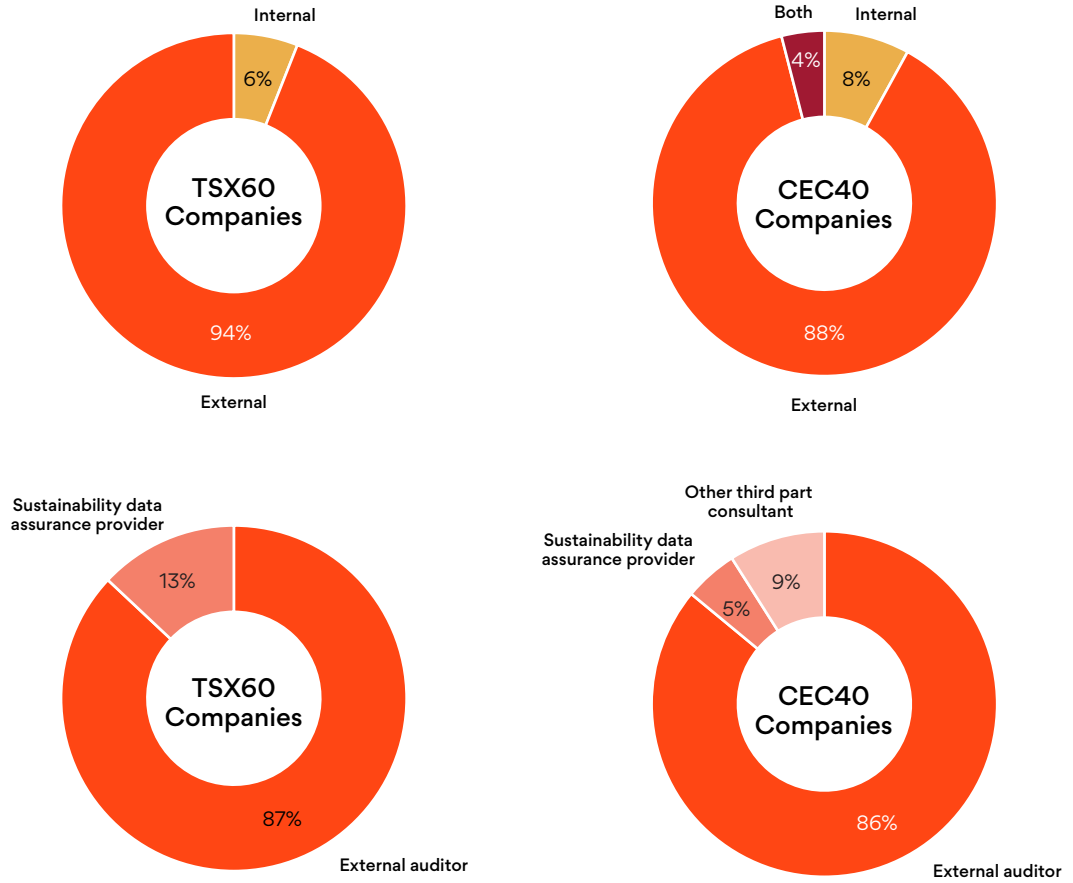


Of the companies that provide some type of ESG-related assurance, 14% of the assurance disclosed by TSX60 companies and 24% of the assurance disclosed by CEC40 companies is “reasonable” assurance on some types of ESG metrics, while 80% and 68%, respectively, is “limited” assurance on some types of ESG metrics. A number of companies indicated that they relied on a mix of reasonable and limited assurance, depending on the nature of the ESG information.¹²

The charts in Figure 7D illustrate that of the companies that provide some type of ESG-related assurance, 94% of the assurance disclosed by TSX60 companies is external assurance and an external auditor provides that assurance in 87% of the cases, while 92% of the assurance disclosed by CEC40 companies is external assurance and an external auditor provides that assurance in 95% of the cases.

¹² Reasonable assurance is a high level of assurance, but it is not absolute. The provider of this level of assurance usually provides a positive statement that the information is prepared, in all material respects, in accordance with certain criteria. Limited assurance is a lower level of assurance than reasonable assurance. The provider of this level of assurance typically includes a negative form of assurance, stating for example that no matters have come to the provider’s attention that cause the provider to believe that the information is not prepared, in all material respects, in accordance with certain criteria.

Figure 7D – For the surveyed TSX60 and CEC40 companies surveyed, the charts below illustrate whether assurance is provided internally or externally and if the assurance is provided externally, the party responsible for the assurance.



C. ‘E’ and ‘S’ Goals and Targets

Environmental and Social Goals and Targets

When boards and senior management of a corporation set strategic priorities, setting measurable and meaningful goals and targets allows them to track progress towards such priorities. Such goals and targets also provide for the ability to link compensation to the achievement or progress towards such strategic priorities.

As companies move from considering ESG priorities as directional (e.g., “we want to do better”) or aspirational (e.g., “we believe in a net-zero world”), to becoming more strategic (e.g., “we expect that in the future the reputational, regulatory and monetary cost of carbon emissions will be prohibitively high, and consequently we must reduce our carbon emissions”), companies are increasingly setting specific ESG-related goals and targets. Many ESG-related goals (such as GHG emissions reduction goals) are long-term in nature and current boards and management teams may not be around to see the achievement of such goals. So not only must the oversight of progress towards such goals become more institutionalized, but it may also make sense to set interim targets towards such goals.

For many investors, the setting of goals and targets and reporting against the achievement of goals and targets will allow them to make efficient capital allocation decisions in line with their investment mandates.

In order to understand where Canadian companies are at with their views on ESG priorities, we reviewed whether companies were setting ESG goals and targets and, if so, what types of goals and targets they were setting.



Goals and Targets to Reduce GHG Emissions

The Study shows that of all ‘E’ and ‘S’ related matters surveyed, GHG emissions were the most often considered topic by the Surveyed Companies when setting goals and targets. Most of the Surveyed Companies disclose some level of GHG emissions data and one or more voluntary targets to reduce GHG emissions from their operations.

Companies that disclose GHG emissions reduction targets have taken different approaches to setting and defining such targets. The most often cited GHG emissions reduction targets include (with many companies referencing more than one target):

- net-zero targets¹³ (referenced by 52% of Surveyed Companies);
- a reduction in absolute GHG emissions¹⁴ (referenced by 46% of Surveyed Companies);
- carbon intensity improvement targets¹⁵ (referenced by 42% of Surveyed Companies); and
- carbon neutral targets¹⁶ (referenced by 24% of Surveyed Companies).

Historically, companies have focused on whether or not they could set targets to reduce absolute GHG emissions or improve carbon intensity measures, as compared to historical performance in a specified base year. In the lead up to COP26 in 2021, companies increasingly considered net-zero targets. The Study found that 50% of the TSX60 companies and 38% of the CEC40 companies have referenced a net-zero target. Almost all companies setting such targets have selected 2050 as the deadline to achieve such target, which is consistent with the Paris-aligned climate goals.

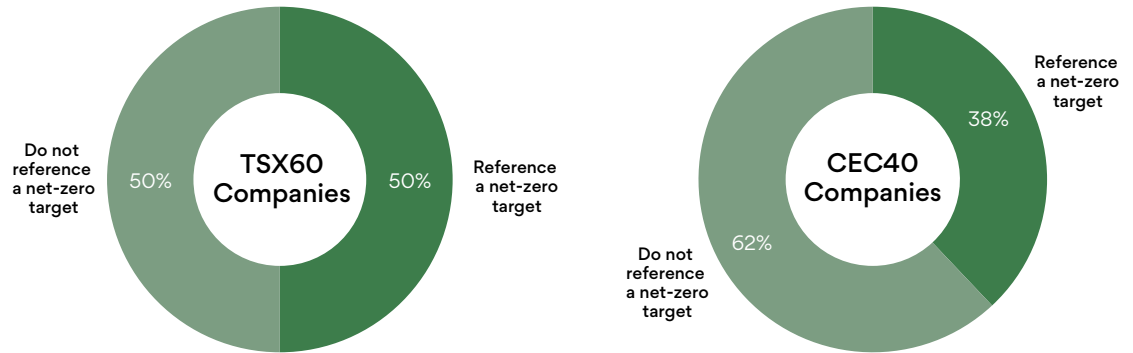
13. Usually expressed as a plan to reduce operational emissions as much as feasible and then use carbon offsets to net residual emissions to zero by a fixed date, usually 2050.

14. Usually expressed as a reduction in metric tonnes of CO₂ equivalent (tCO₂e) GHG emissions as compared to a base year.

15. Usually expressed as a reduction in metric tonnes of CO₂ equivalent (tCO₂e) GHG emissions / revenue or volume of product as compared to a base year.

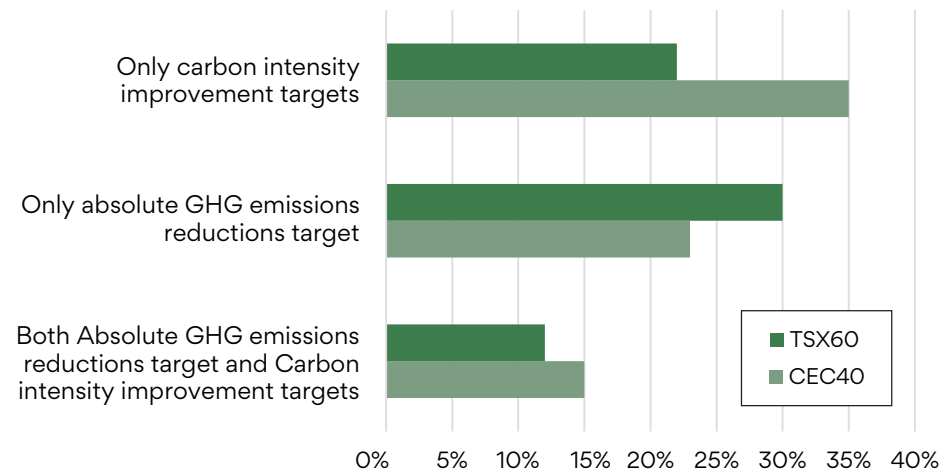
16. Usually expressed as the use of carbon offsets to net current period GHG emissions to zero and may be limited to carbon dioxide.

Figure 8 – As shown in the charts below, half of the TSX60 companies and many of the CEC40 companies reference a net-zero target.



As between the traditional types of targets (a carbon intensity improvement target or an absolute GHG emissions reductions target) a larger portion of the CEC40 companies have referenced carbon intensity improvement targets and a larger portion of the TSX60 companies have referenced absolute GHG emissions reduction targets. Only a small portion of these companies appear to be managing their GHG emissions against both types of targets.

Figure 9 – For the surveyed TSX60 and CEC40 companies, the chart below shows the percentage of such companies that reference a carbon intensity improvement target or an absolute GHG emissions reductions target or both types of targets.



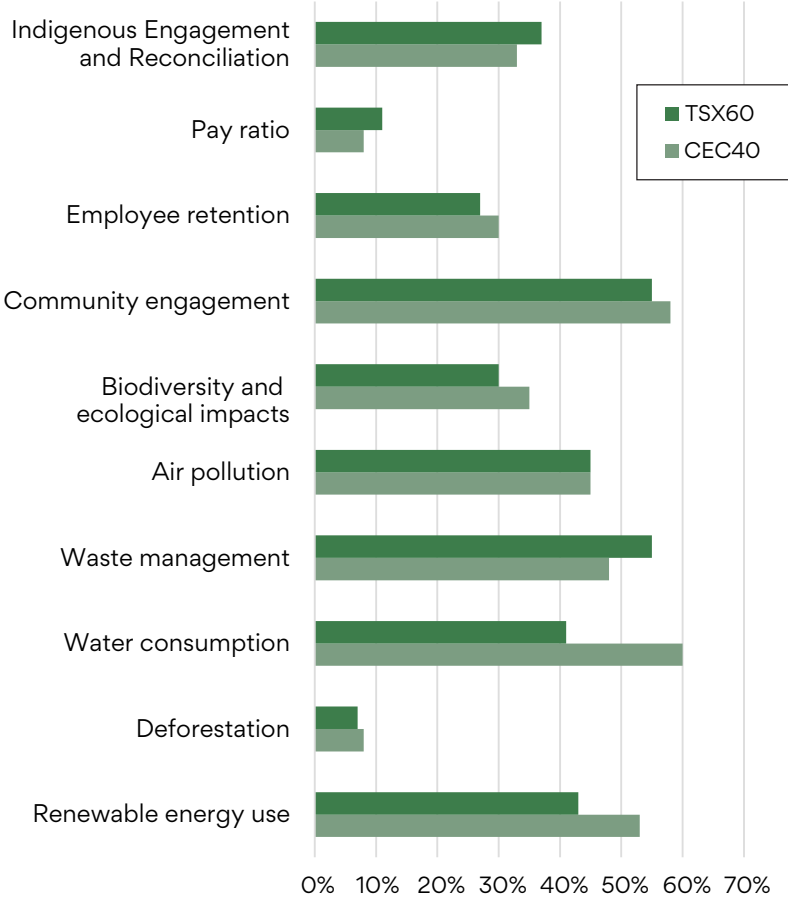
Disclosure of GHG Emissions

Companies face challenges in collecting coherent emissions data and a consistent level of disclosure across companies has not yet emerged. Among the Surveyed Companies there is a large variation in their approach to their disclosure of scope 1, 2, and 3 emissions¹⁷. Many companies attempt to disclose scope 1 and 2 emissions data and at least some scope 3 emissions data. However, the disclosure of scope 3 emissions can range from a detailed attempt to disclose several elements of upstream and downstream GHG emissions relating to such things as, for example, goods and services, capital goods, business travel, and employee commuting, to disclosure with respect to very specific and limited types of scope 3 emissions.

Other ‘E’ and ‘S’ Goals and Targets

Apart from targets related to GHG emissions, many companies refer to their intentions with respect to other ‘E’ or ‘S’ goals and targets in their Continuous Disclosure Documents. Figure 10 demonstrates the range of the subject matter of such objectives disclosed by the Surveyed Companies.

Figure 10 – For the surveyed TSX60 and CEC40 companies, of the companies disclosing an ‘E’ or ‘S’ objective, other than targets related to GHG emissions, the percentage of companies disclosing specific ‘E’ or ‘S’ objectives are shown below.



¹⁷ In general terms, Scope 1 emissions refer to direct emissions by a company in its operations; Scope 2 emissions refer to indirect emissions related to a company’s purchase of energy (e.g., electricity) used in its operations; and Scope 3 emissions refer to all indirect emissions upstream and downstream in a company’s value chain.

D. Shareholder Proposals

Shareholder activism can take various forms, one of which is through shareholders putting forth their own proposals for consideration at the company's annual meetings.

Canadian corporate statutes allow shareholders to submit proposals (subject to meeting certain conditions) to be voted on at annual meetings of shareholders. Often these proposals are “advisory” in nature because the subject matter of the proposal is not something that shareholders have the authority, under corporate law, to require a corporation to undertake. Under corporate law, the authority to manage the business and affairs of a corporation (which is a broad power) rests with the board of directors.

Accordingly, although shareholders cannot direct a corporation to take specific action, an advisory proposal is still a powerful mechanism that shareholders can use to bring to the forefront issues which are important to shareholders as well as signal to the corporation's board the shareholders' sentiments towards such issues. For example, shareholders may put forth a say-on-pay proposal which asks shareholders to, on an advisory basis, vote on the compensation practices of the company's top executives. Such a proposal allows shareholders to have a directional say on the compensation practices of a corporation.

In recent years, we have seen a rise in the use of ESG-related shareholder proposals, including “say-on-climate” proposals. Such proposals ask a corporation to adopt a policy on holding an annual advisory vote with respect to the corporation's climate action plan. In certain instances, management of a corporation will voluntarily hold an advisory “say-on-climate” vote.

From our Study, we found that approximately one in five of the Surveyed Companies were subject to an ESG-related shareholder proposal that was not withdrawn.

Of such companies, approximately 56%, 75% and 31% received shareholder proposals relating to the environmental, social and governance categories, respectively. Note that since a company may receive more than one shareholder proposal, the percentages do not add to 100%.

The various environmental-related proposals put forth at the companies we surveyed included requests to cease any new fossil fuel financing, establish advisory vote policies regarding environmental and climate change targets and action plans, and a request to commit to emission reduction targets (often in line with Paris-aligned climate goals). These proposals generally received support ranging from 4% to 30%, with the highest support seen being 37% in one instance.

As to social-related proposals, several were put forth requesting that the company become a “benefit” company¹⁸, as well as proposals to increase employee representation and/or employee participation in company decision-making. As to results, however, most of the social-related proposals generally received low support (less than 10%), with a handful of proposals receiving support between 10% to 35%. Only in one instance did a racial equity proposal receive majority support. This proposal requested the company to prepare a report on its plans to address racial disparities within its workforce.

For governance, some proposals included a request to establish an environment-related board committee, a request to publish reports (often on an annual basis) disclosing the representation of women in management, or a request to disclose the pay ratios of the compensation of the CEO to the compensation of a general employee or “median worker”. These governance-related proposals received shareholder support ranging between 9% to 24%.

Figure 11 – For the Surveyed Companies, the chart below illustrates whether, and what proportion of, companies received one or more ESG-related shareholder proposals that were not withdrawn.

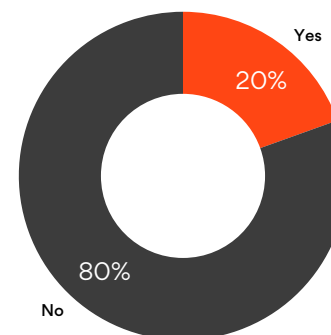
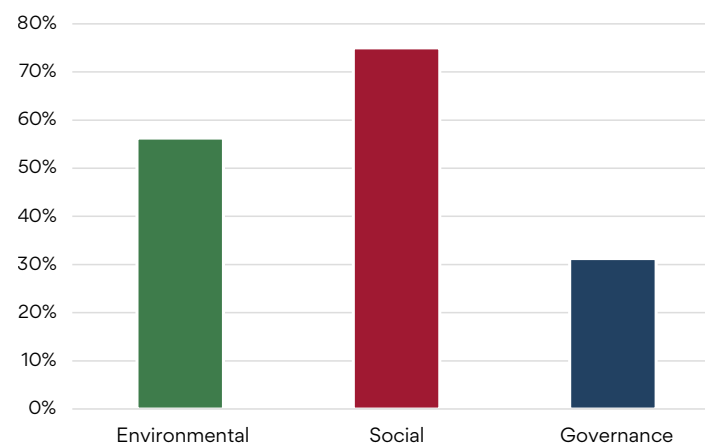


Figure 12 – For the Surveyed Companies which received one or more ESG-related shareholder proposals that were not withdrawn, the chart below illustrates the category of such proposal(s) (i.e., whether it was an environmental, social or governance related proposal). Note: Since more than one category may be applicable for any given company, the totals for the chart do not add to 100%.



¹⁸ According to the British Columbia Registry Services, a “benefit” company “is a for-profit company that commits to conducting its business in a responsible and sustainable way. It must also promote one or more public benefits.” Source: https://www2.gov.bc.ca/assets/gov/employment-business-and-economic-development/business-management/permits-licences-and-registration/registries-packages/information_package_for_benefit_company.pdf

E. Social Issues

The ‘S’ category within ESG has proceeded down a number of paths at different speeds and is arguably the least developed of the three ESG factors.

Equity, diversity and inclusion (EDI) has received a considerable amount of attention over the past number of years. For this reason and as discussed above in *About our Study - A Note about Equity, Diversity and Inclusion Disclosure*, EDI has been purposely excluded from this Study.

The ‘S’ category within ESG relates to a company’s social and human capital and the way in which it interacts with its stakeholders, including a company’s treatment of its employees with respect to health and safety and labour practices, supply chain management and human rights policies, privacy and data security practices, product quality and safety, and impacts on and relations with the communities located where it carries on operations or business activities, including engagement with Indigenous peoples.

In our Study, we found that all Surveyed Companies highlight social issues beyond EDI in their public disclosure documents and as illustrated in Figure 13A, over 80% of the Surveyed Companies disclose Social-related information with respect to their employees and community development and relations (including human rights), and over 75% of companies disclose information relating to Indigenous engagement and/or their company’s Indigenous reconciliation plan. We also note that over 60% of companies disclose their philanthropic efforts, which is an avenue through which to support causes and organizations of importance to the company, its communities and stakeholders.

Figure 13A – For the surveyed TSX60 and CEC40 companies, the charts below illustrate whether the companies have highlighted social issues other than EDI initiatives.

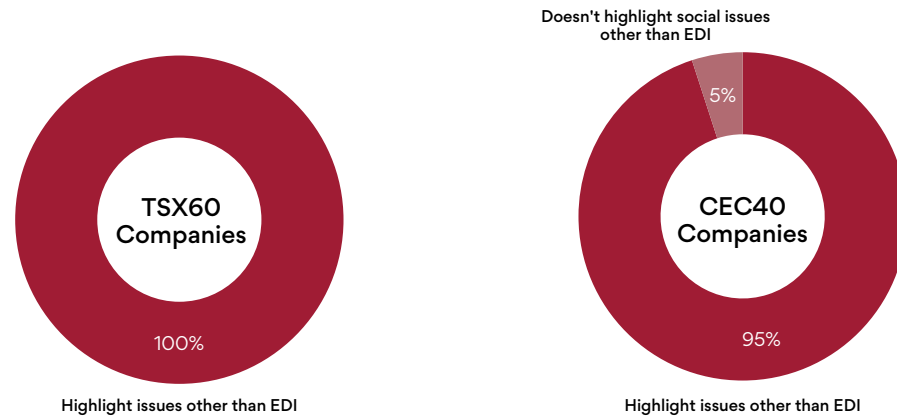
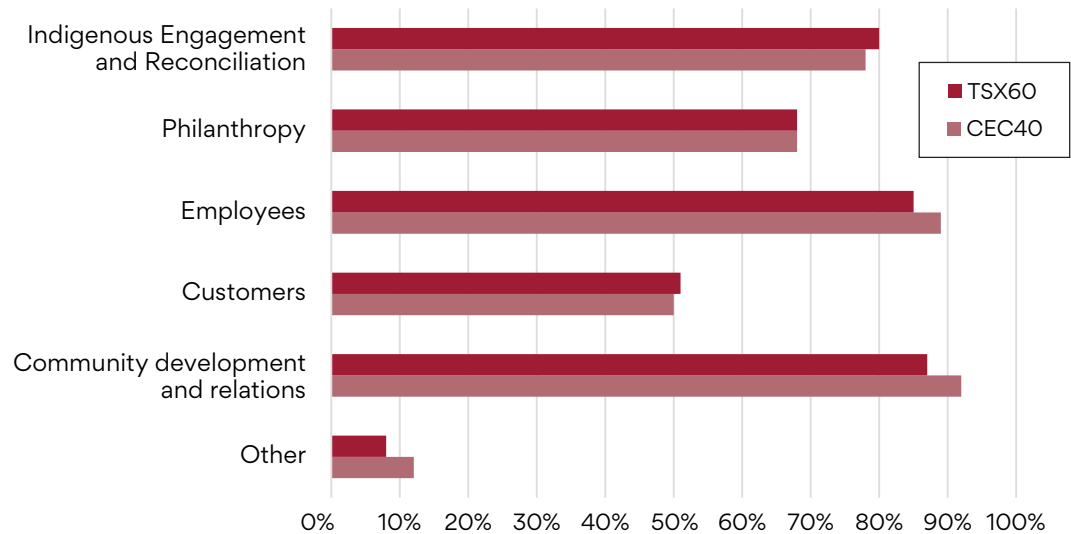


Figure 13B – For the surveyed TSX60 and CEC40 companies, of those identifying ‘S’ initiatives, other than EDI, the chart below illustrates the percentage of such companies identifying certain specific ‘S’ stakeholders or initiatives. Note: Since more than one category may be applicable for any given company, the totals for the chart do not add to 100%.



In light of recent regulatory developments in Canada and globally, we expect an increased focus on human rights due diligence in company supply chains in 2023 and beyond.

For example, Bill S-211, *An Act to enact Fighting Against Forced Labour and Child Labour in Supply Chains Act and to Amend the Tariff Act* (Modern Slavery Act) may come into force in early 2023. If and when it comes into force, the Modern Slavery Act will require that companies file an annual report identifying, among other things, areas of risk for forced labour or child labour in its supply chains, measures taken to remediate such risks and training provided to employees regarding forced labour and child labour.

The European Commission has gone beyond reporting requirements and on February 23, 2022, adopted the proposal for a Directive on Corporate Sustainability Due Diligence (CSDDD) which is working its way through the EU legislative process. The CSDDD would introduce and mandate a corporate due diligence duty to identify, prevent, mitigate and account for adverse impacts of company operations with respect to human rights and environmental impacts in their supply chains globally. Directors would be expected to integrate such due diligence processes in their oversight roles. The CSDDD is an extension of the EU's 'European Green Deal' which aims to incorporate sustainability into corporate governance. While some EU countries already mandate corporate human rights due diligence, the CSDDD would level the playing field for EU members states and provide a harmonized legal framework. If and when approved, each EU member state would have two years to transpose the CSDDD into national law.



F. Forward-Looking Information

Under Canadian securities laws, forward-looking information (FLI) encompasses disclosure regarding “possible events, conditions or financial performance that is based on assumptions about future economic conditions and courses of action”.

FLI, as with other public disclosure, that contains a misrepresentation could result in potential liability under the civil liability for secondary market disclosure regime of applicable securities laws. This regime also provides a safe harbour for issuers with respect to FLI if, in general terms, an issuer had a reasonable basis for making the statement contained in the FLI, and the document that contains the FLI (i) contains reasonable cautionary language identifying the FLI and identifying the material factors that could cause actual results to differ materially from the statement in the FLI; and (ii) provides a statement of material factors or assumptions that were applied in making the applicable statement set out in the FLI.

The Study considered whether companies that set some form of GHG emission targets, or targets to reduce GHG emissions by a certain date, consider such targets (GHG targets) as FLI and, if so, the extent of FLI disclosure provided.

The CSA has provided only limited guidance with respect to this issue to date:

- under CSA Staff Notice 51-364, Continuous Disclosure Review Program Activities for the fiscal years ended March 31, 2022 and March 31, 2021, the CSA notes that disclosure provided by an issuer that stated “The Company plans to be carbon neutral by 2023”, would “typically” constitute FLI; and
- under the proposed companion policy to Proposed NI 51-107, the CSA simply notes that disclosure provided pursuant to the proposed rule “may” constitute FLI.

In reviewing the disclosure provided by the Surveyed Companies, the Study did not find a universal approach adopted by issuers in this area. The range of approaches taken by issuers can be summarized as follows:

Identification of GHG targets as FLI

While several issuers specifically identified their GHG targets as FLI, a number of companies did not. Some of the issuers that did not identify GHG targets as FLI may be envisioning such a target as something that is “aspirational”, encompassed within a statement of “vision” or a “commitment” rather than a specific target. Other issuers that did not identify targets as FLI appear to be relying on the more general language contained in FLI disclosure that states that FLI includes information that can be identified through the use of words such as “target”, “goal”, etc.

With respect to companies that did identify GHG targets as FLI, examples of how specific they were in identifying such statements are as follows:

- “In particular, forward-looking information in this document includes, but is not limited to: references to ... goals and targets, including targeted net zero emissions by *[date]*; the [...] targets outlined on pages ...”.
- “These forward-looking statements include, but are not limited to, statements with respect to ... net zero financed emissions targets, reducing operational GHG emissions ...”.
- “Examples of forward-looking information in this *[document]* include: ... our planned measures to address climate change impacts in our operations; our expectations respecting the impact of new technology to enable us to achieve our ESG goals ...”.
- “Forward-looking information in this *[document]* ... includes *[the company’s]* ... commitments, targets and further ambitions, including ... reducing absolute net equity-based scope 1 and 2 GHG emissions by *[specified percentage]* by *[date]* from 2019 levels and long-term ambition to achieve net zero GHG emissions from operations by *[date]*; our estimate of scope 3 emissions...”.
- “This forward-looking information ... includes statements about ... the Corporation’s long-term target of achieving net zero GHG (scope 1 and scope 2) by *[date]*...”.

Statement of material factors and assumptions

Only a few companies identified specific factors, assumptions and risks related to the FLI in connection with GHG targets or ESG disclosures generally. Many issuers appear to be relying on general statements of factors, assumptions and risks relating to all FLI such as climate change generally or government regulation. Examples of specific factors, assumptions or risks mentioned by a few issuers related to GHG targets, or ESG disclosure generally, are as follows:

- “... the development and performance of technology and technological innovations and the ability to otherwise access and implement all technology necessary to achieve GHG and other ESG targets...”.
- “...changing views of governments regarding the pursuit of carbon reduction strategies ...”.
- “...strategies to mitigate and adapt to climate-related risks and opportunities will not be achieved ...”.
- “... new technology or lack of appropriate technologies needed to advance our goals ...”.

As regulators move towards adopting rules regarding emissions disclosure, it is expected that public issuers may focus more attention on determining whether any such disclosure provided could constitute FLI, regardless of whether such disclosure is contained in documents filed under applicable securities laws or furnished in stand alone Sustainability Reports.

Looking Ahead to 2023

We expect to see a continued focus on ESG, whether through calls for consideration of further ESG matters, or through pushback on ESG from certain stakeholders.

In light of these competing dynamics, it will be important for boards to take a principled approach to ESG that aligns with their fiduciary obligations and duty to act in the best interests of the corporation. Boards and companies will be expected to continue to consider an evolving breadth of ESG matters and assess the materiality of such matters for their companies. Increasingly boards may be expected to articulate to their stakeholders the ESG matters of relevance and importance to the company with a view to the best interests of the corporation.

One particular stakeholder we expect to take a more prominent role in the ESG discourse are regulators and standard setters. We already see that ESG-related regulations are being promulgated worldwide, including for example Proposed NI 51-107, and expect this trend to continue. Similarly, standard setters have been working on developing disclosure guidelines to allow for uniformity and comparability between companies' ESG-related disclosures. In particular, the ISSB's Exposure Draft S1 and Exposure Draft S2, which build upon the SASB Standards and TCFD Recommendations already referenced by many companies, will be important to watch.

As to shareholder engagement, we may see increased activity in this space. This might be achieved by way of an increase in the frequency of ESG-related shareholder proposals being put forth, or a higher level of shareholder support for such proposals. The latter may arise because of the recent trend we are seeing whereby some large asset managers are now allowing certain clients (typically of a notable size such as pension funds) to decide how their shares are voted, thereby increasing shareholder democracy. Engagement in the form of dialogue exchanges between companies and their shareholders on ESG-related issues is also likely to continue, potentially with a greater number of structured dialogues along the lines of the CEC initiative.

As ESG reporting continues to increase and more ESG data is generated, expectations for demonstrating the credibility of such data are expected to heighten. This may lead to an increased desire, and requirements for, third party assurance with respect to key elements of ESG data. Concurrently, we expect that companies will increasingly consider how to establish and develop internal controls with respect to such data. Which function within an organization is responsible for such controls (e.g., the finance function which has familiarity with controls but may not have familiarity over the technical data being reported, or other functions such as internal environmental/sustainability experts or the legal function), remains to be seen.

Also in relation to ESG data, we expect more calls for increased transparency around the methodologies used by ESG ratings providers and how they assess ESG data.

Other ESG-related topics may emerge or receive heightened focus in 2023. For example, we anticipate increasing scrutiny of cybersecurity practices. In March 2022, the US Securities and Exchange Commission proposed new cybersecurity disclosure requirements for public companies requiring, among other things, enhanced disclosure regarding a board's oversight of cyber risk as well as directors with cybersecurity expertise.

Furthermore, a company's consideration of relevant social issues will likely continue to evolve and mature given that the relationships between organizations and their stakeholders is currently in a state of recalibration globally. This expectation is based on recent developments related to regulatory reforms being considered both domestically and internationally aimed at mandating human rights due diligence and new modern slavery legislation, such as Canada's proposed *Modern Slavery Act* and the European Commission's CSDDD.

Discussion with respect to biodiversity is also expected to rise following the adoption in December 2022 of the Kunming-Montreal Global Diversity Framework (GDF) at the UN Biodiversity Conference (COP 15) hosted in Montreal.

The GDF encompasses four goals and 23 targets to be achieved by 2030, including:

- (i) a commitment to effective conservation and management of 30% of Earth's lands, oceans, coastal areas, and inland waters,
- (ii) cutting global food waste in half and significantly reducing over consumption and waste generation, and
- (iii) progressively phasing out subsidies that harm biodiversity by at least \$500 billion annually. Adoption of the GDF has been termed the "Paris moment" for nature and biodiversity. Relatedly, the TNFD is expected to publish its final recommendations in September of 2023 concerning nature related financial disclosures.

We also anticipate an increased focus on, and development of, Indigenous reconciliation plans by companies across various industries, but in particular industries that necessarily engage with Indigenous communities in light of the location of their operations and/or their impacts on Indigenous peoples in Canada.

Given the current state of affairs, there will be no shortage of developments in the coming year.



Our ESG Practice

At its heart, environmental, social and governance (ESG) considerations are driving organizations to focus on complex factors in order to navigate an increasingly changing world. Integrating these factors into an organization's fabric is becoming critical to chart the organization's long term path and guide the impact on its stakeholders. As clients evaluate these factors and navigate this path, Fasken ensures they succeed.

In helping clients develop their path, our interdisciplinary teams help evaluate emerging legal and regulatory ESG risks, capitalize on emerging opportunities, create oversight structures for such risks and opportunities and identify and engage with relevant stakeholders and their key interests. We partner with clients to design their path forward in a changing world.

Our [webpage](#) also provides more information about our ESG & Sustainability practice.

For members of our Firm practicing in the ESG area, please see the Authors and Additional Key Contacts noted below as well as others found on our ESG & Sustainability webpage.

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About the Firm

We are an innovative and forward-thinking business and litigation law firm, founded in Canada in 1863. Our team of over 800 lawyers provides expertise in every sector, including complex and high-profile matters across more than 130 practices and industry specialties. With regional representation in 10 offices in Canada, the United Kingdom, South Africa and China, we provide a global reach across four continents.

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