2024 ESG Disclosure Study

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

JANUARY 2024

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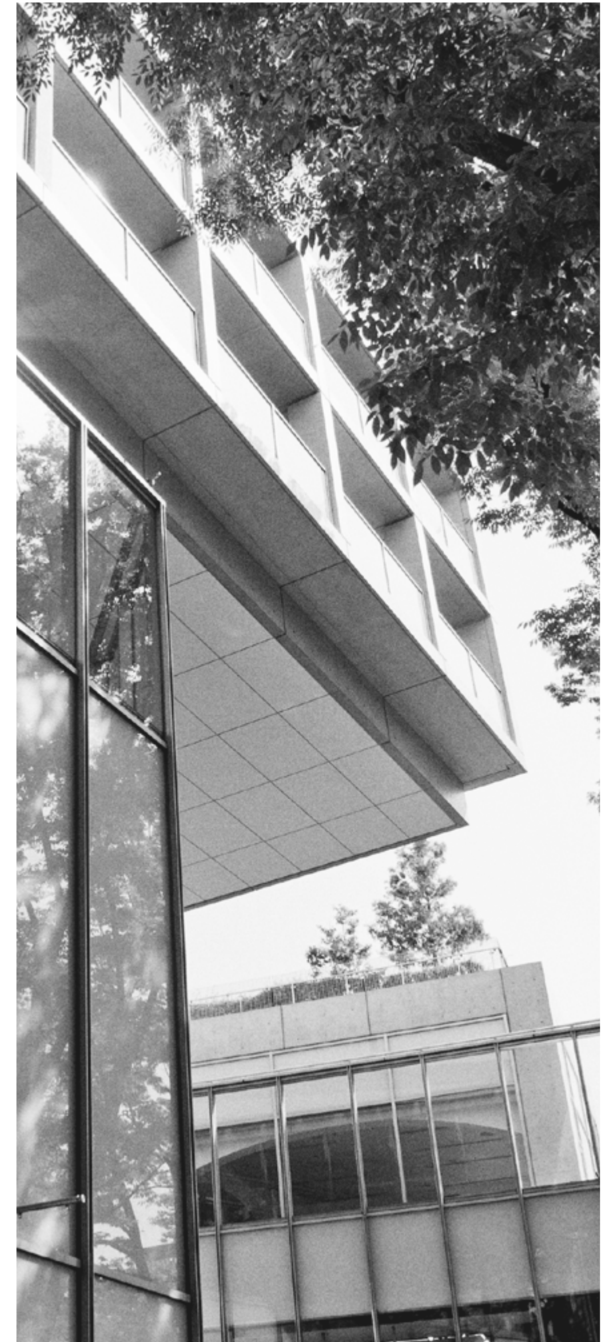
Executive Summary

Throughout 2023, Environmental, Social and Governance (ESG) considerations remained central to decision making by investors, companies, regulators and other stakeholders. From the perspective of corporate decision makers, where ESG is seen as a framework for assessing and managing material risks and opportunities in the categories of "environmental" and "social" matters and the "governance" structures to oversee such assessment and management, ESG topics are increasingly impossible to avoid. Whether it may be the operational impacts of extreme climate and weather events (such as the wildfires that burned across North America in summer 2023), the longer-term risks that are re-shaping markets (such as changes in insurance coverage related to climate risks), or the increasing risks in supply chains (such as greater exposures to human rights violations), ESG considerations continue to weigh heavily on the minds of corporate decision makers.

This does not mean that there has been no pushback from certain stakeholders; in fact, in some jurisdictions, this pushback has intensified. In limited instances we have observed a shift from the use of "ESG" terminology to the use of broader sustainability-related terminology. Regardless of terminology, the underlying consideration of whether a business enterprise can sustain itself and be successful in the long-term is still fundamental.

From a corporate disclosure perspective, ESG-related expectations from various stakeholders can seem overwhelming. Market demands have already nearly normalized disclosure of certain information related to ESG topics that goes beyond current legal requirements. However, governments have signaled that new regulations may be on the verge of catching-up and surpassing what is common at present. Companies continue to seek more clarity on how to approach governance, management and disclosure of ESG issues and how to build reliable internal reporting processes and mechanisms to address evolving stakeholders' demands.

This study (this 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.



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At a high-level, this Study notes:

Board Oversight

Almost all large Canadian companies surveyed in this Study specifically reference an oversight function of ESG considerations by their board and/or a board committee. We have noted a shift towards more boards taking the oversight role with respect to ESG matters (as opposed to overall ESG oversight being delegated to one or more committees). Many companies continue to give committees some role regarding ESG considerations although the level of "committee only" oversight has declined. The one committee that has seen an increase in its involvement, as predicted in **our 2023 study** (the Prior Study), is the audit committee. The number of companies that have identified directors with ESG-related expertise has also increased.

Executive and Employee Compensation

ESG continues to be relevant for short-term compensation decisions. More companies are noting specific ESG metrics that are applicable to these decisions, as opposed to lumping ESG topics with other considerations relevant to compensation. We also observed that, although not a majority, a considerable number of companies are reporting on their "wage gap" ratio (i.e., the ratio of compensation or elements of compensation earned by a given equity seeking group as compared to the broader workforce).

Reporting Frameworks

Almost all companies have some form of sustainability report and companies are increasingly moving their ESG disclosure to their Sustainability Reports, rather than including such disclosures in their Continuous Disclosure Documents. Most companies continue to reference one or more frameworks for their ESG reporting.

Assurance

Compared to our Prior Study, more companies are obtaining some form of assurance (typically limited assurance) with respect to certain aspects of their ESG disclosures.

Forced and/or Child Labour

While most of the companies are reporting on the policies or processes they have in relation to forced and/or child labour, generally stating zero tolerance in their supply chains, most are not yet providing the level of disclosure that is now mandatory under the FCLA in 2024 for entities that must report under the FCLA.

Targets

When it comes to 'E' and 'S' targets, goals or objectives, a significant proportion of companies are disclosing a GHG emissions reduction target with many companies committing to a reduction in absolute GHG emissions or to a net-zero target. Other 'E' and 'S' objectives often mentioned by companies relate to renewable energy use, waste management, community engagement, water consumption, and biodiversity.

Shareholder Proposals

Certain stakeholders attempt to engage with companies on ESG matters through shareholder proposals that may bring to light a particular issue or concern of importance to such stakeholders. The Financial Services industry continues to be the industry that receives the most shareholder proposals. Although many proposals are put to a shareholder vote, and few receive majority approval, proposals with respect to governance matters have a greater likelihood of being settled prior to a shareholder meeting. In addition, there have been more proposals that may be characterized as "anti-ESG" proposals.

Indigenous Engagement

This Study considered the disclosure of plans or policies focused on advancing Indigenous reconciliation and found that many companies are disclosing this type of policy or plan. At this time, companies in natural resource sectors or Financial Services are most likely to disclose a formal policy or plan focused on Indigenous reconciliation and engagement.

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About this Study

As was the case with the Prior Study, the intent of this Study is to provide insights into how companies may approach certain ESG matters by considering the public disclosure of the Canadian companies comprising the S&P TSX60[1] (TSX60), a stock market index of the 60 largest companies listed on the Toronto Stock Exchange (TSX) and the public disclosure of the 41 companies that are the subject of the Climate Engagement Canada (CEC) Focus List for 2023 (CEC41) as reviewed on May 24, 2023. With some overlap between the TSX60 companies and the CEC41 companies, this Study covers a total of 81 public companies listed on the TSX (the Surveyed Companies).

The CEC is a Canadian initiative developed by the Responsible Investment Association (RIA), Shareholder Association for Research and Education (SHARE) and Ceres[2], with support from the United Nations' 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 41 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 41 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.

Despite the attention, however, the CEC has noted in the *Globe and Mail*[4] that many of its Focus List companies have not announced the kind of target setting that they consider necessary. For instance, they found that most companies have not announced net-zero targets nor have they taken sufficient steps to align their short-term emissions targets with a path to limiting temperature increase to 1.5°C.

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1. As maintained by the Canadian S&P Index Committee, a unit of Standard & Poor's and as comprised as of September 1, 2023.
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**
4. Jeff Jones. Globe and Mail: "Canada's largest emitters commit to better disclosure, but none has backed up targets with spending". (December 12, 2023). Online: **https://www.theglobeandmail.com/business/article-canadaslargest-emitters-commit-to-better-disclosure-but-none-has**

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Figure 1A – Composition of the TSX60 companies by industry (based on the number of companies in each industry) according to the SEDAR industry classifications[5].

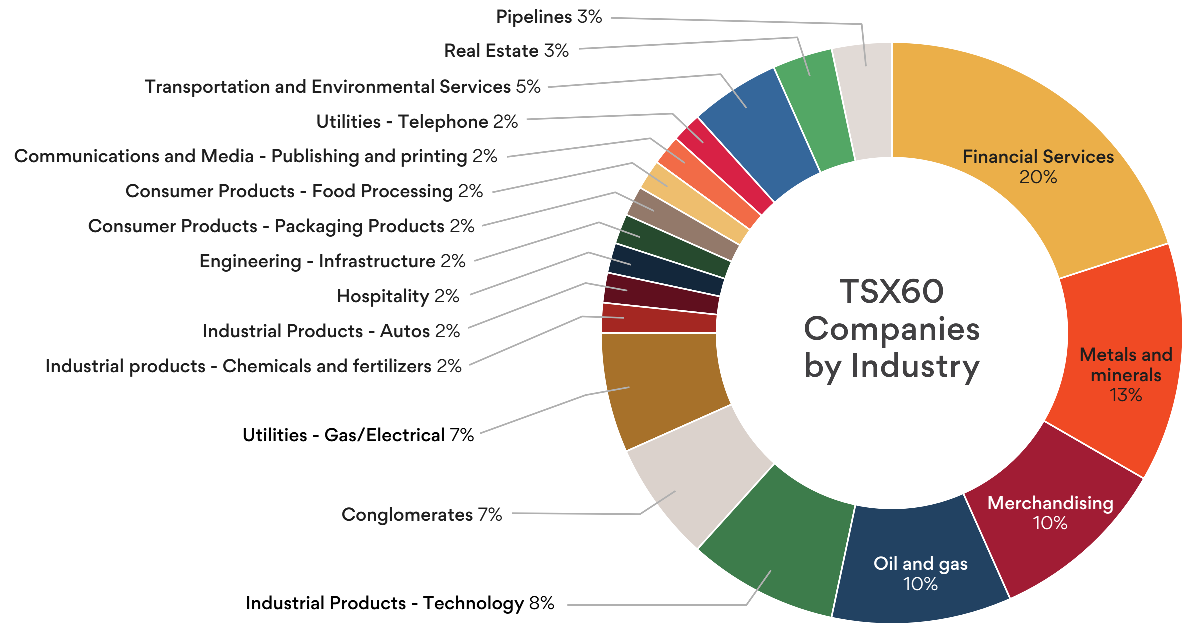
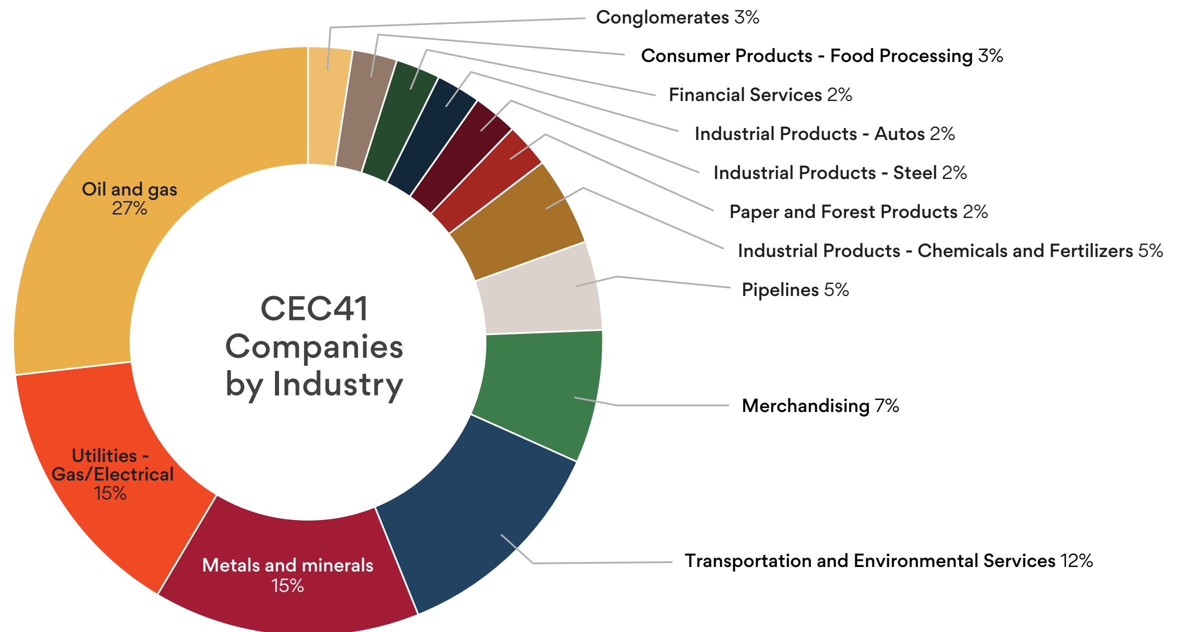


Figure 1B – Composition of the CEC41 companies by industry (based on the number of companies in the industry), according to the SEDAR+ industry classifications[6].



5. SEDAR+ has not yet been fully updated to reflect NAICS codes, so we have used the former SEDAR industry classifications. The former 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").
6. *Ibid.*

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For certain data points, an analysis has been done on an industry basis. Generally, an analysis has been done on the three specific industries (Financial Services, Metals and Minerals, and Oil and Gas) with the largest number of companies within the Surveyed Companies that have historically been a significant part of Canadian capital markets. In addition, where other industries provided useful insight, such industries were also included.

Our review of ESG-related disclosure published by the Surveyed Companies included examining:

i. The following Continuous Disclosure Documents filed by the Surveyed Companies prior to August 2023 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 Financial Statements and related Management Discussion & Analysis (MD&A) (which are collectively referred to as Continuous Disclosure Documents), and

ii. Stand-alone reports related to sustainability published by the Surveyed Companies prior to August 2023 (e.g., Sustainability Reports, Climate 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 this Study are limited by the extent to which information relevant to the analysis was publicly available on SEDAR+ or on the 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 this Study is limited to the review of the Continuous Disclosure Documents and the Sustainability Reports of the Surveyed Companies, being 81 public companies listed on the TSX.

This Study aims to provide general information for clients and other readers. The results reflected herein, 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 this Study at
FaskenESGStudyFeedback@fasken.com.

A Note about Equity, Diversity and Inclusion Disclosure

Equity, Diversity and Inclusion (EDI) matters continue to form an important part of the 'S' in ESG considerations and have remained an area of focus among institutional shareholders. Institutional Shareholder Services (ISS) under its voting guidelines requires S&P/TSX Composite Index companies to have at least one racially or ethnically diverse member director.

In addition, the Canadian Securities Administrators (CSA) published for comment a proposed rule that would require enhanced disclosure from non-venture issuers about how companies identify and evaluate new candidates for nomination to a company's board and how diversity is incorporated into those considerations. In particular the CSA sought input on whether the enhanced regime should require specific disclosure with respect to Indigenous peoples, LGBTQ2SI+ persons, racialized persons, persons with disabilities or women, or whether the specific disclosure should be limited to women on a company's board and allow for voluntary disclosure with respect to other under-represented groups. The comment period for the proposed rule ended on September 29, 2023. The CSA has not yet published any follow up guidance.

Although EDI continues to be an important consideration as part of the 'S' or 'Social' factors, similar to the Prior Study, EDI disclosure has not been reviewed in this Study. Since public issuers have been reporting on EDI matters, both under specific requirements[7] and on a voluntary basis, for some time, there are several reports that focus specifically on EDI matters, and related disclosure, in a comprehensive manner. EDI related matters did touch on certain topics that we considered in this Study (such as shareholder proposals related to racial equity audits), and therefore are mentioned in certain specific sections.

7. Disclosure required under National Instrument 58-101 and National Instrument 58-201 and under the Canada Business Corporations Act.

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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 relied on. 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 disclose that they are considering, other than EDI matters.
- Forced and Child Labour: In anticipation of the new required disclosure in Canada under the FCLA, this Study explores the current state of voluntary disclosure on the topics that will soon be required.
- Indigenous Engagement: This Study examines whether companies are disclosing plans or policies advancing Indigenous reconciliation or engagement.
- 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.

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A. Governance of ESG Issues

Board Oversight of Environmental and Social Issues

As part of their fiduciary duties, boards are responsible for overseeing strategy (including risks and opportunities) at their companies.

In recent years, there has been increased focus on boards managing ESG-specific strategies, as evidenced by guidance published by various organizations. For example:

- Canadian Coalition for Good Governance (CCGG) published *The Directors' E&S Guidebook* (the Guidebook) in 2018 designed to assist boards in developing "a robust, principles-based approach to the governance and oversight of E&S factors".
- Proxy advisory firm Glass Lewis, in its updated 2024 policy guidelines for Canada, states 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 index 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".
- Institutional Shareholder Services, in its 2024 voting guideline, recommends withholding votes for directors, committees, or entire boards under "extraordinary circumstances", due to material failures of risk oversight, including "demonstrably poor risk oversight of environmental and social issues".
- In the Globe and Mail's "Board Games" series for ranking of corporate goverance practices, one of the criteria is whether the company has "[identified] a board committee or committees responsible for climate policy and/or [described] how and how often other board committees consider specific climate-related issues, including as they review strategy, risk management and operating performance".

As is generally the case with the management of the risks and opportunities facing a company, the entire board of directors is ultimately collectively responsible for ESG oversight. However, careful consideration should be given to determine the best structure for such oversight. Certain ESG issues can be complex and require specialized knowledge (e.g., selecting appropriate sustainability standards, understanding cybersecurity risks and mitigating measures, evaluating human rights practices, or determining executive compensation practices).

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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 states 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". Similarly, Glass Lewis states that "[w]hile [they] believe that it is important that these issues are overseen at the board level [...], [they] believe that companies should determine the best structure for this oversight [... and that] this oversight can be effectively conducted by specific directors, the entire board, a separate committee, or combined with the responsibilities of a key committee."

As compared to the Prior Study, this Study found increased reliance among the Surveyed Companies on full board oversight in ESG matters and an increased involvement of audit committees.

Although the level of committee involvement in the oversight of 'E' and 'S' issues among the TSX60 and CEC41 companies remains high, in many instances there has been a shift to having the full board involved in such issues alongside such committee involvement (*Figure 2A* and *Figure 2B*).

The move to more board oversight for 'E' and 'S' issues is shown in two ways. First, with respect to CEC41 companies, this Study shows that the level of "full board only" oversight has increased for 'E' issues and 'S' issues. Secondly, for both TSX60 and CEC41 companies, the number of companies with "committee only" oversight has decreased for both 'E' and 'S' issues.

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Board Oversight of Environmental and Social Issues

Figure 2A – For the surveyed and CEC41 companies, in respect of oversight of 'E' issues, the charts below illustrate whether the board of directors as a whole, a committee of the board alone, or the full board and a committee of the board together, have responsibility for such issues.

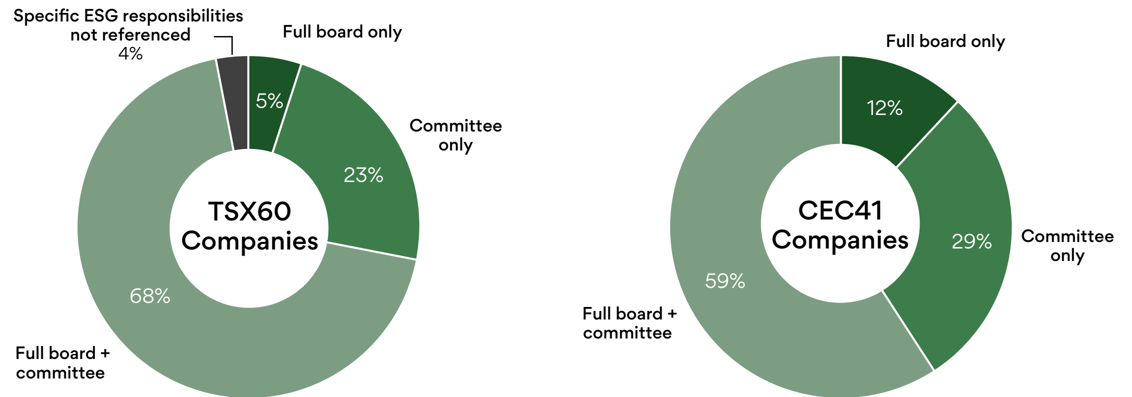
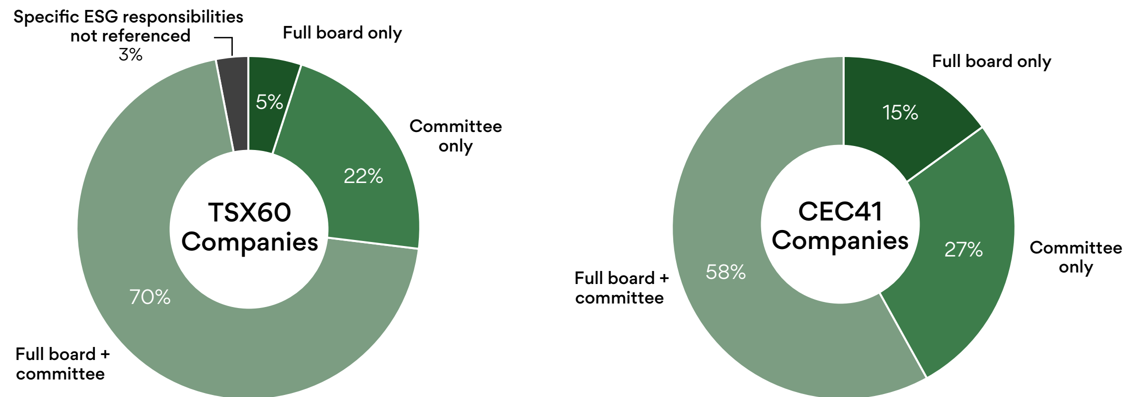


Figure 2B - For the surveyed TSX60 and CEC41 companies, in respect of oversight of 'S' issues, the charts below illustrate whether the board of directors as a whole, a committee of the board alone, or the full board and a committee of the board together, have responsibility for such issues.



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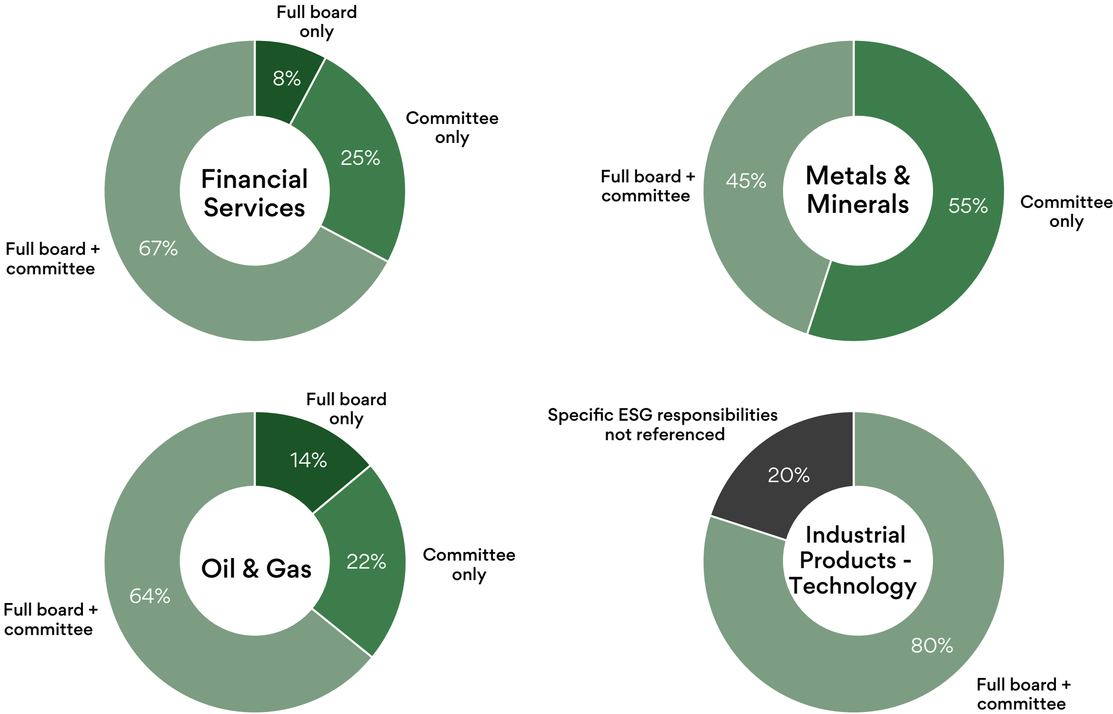
STUDY FINDINGS

Board Oversight of Environmental and Social Issues

This Study also found that committee involvement differs across industries. The Metals and Minerals Industry and Technology Industry tend to have committees involved in ESG oversight in all cases where board oversight of ESG issues is referenced, and there are no cases in which only the full board has oversight (*Figure 2C* and *Figure 2D*). In Oil and Gas and Financial Services industries, however, there is a decrease in the percentage of companies with committee involvement, either alone or in conjunction with the full board.

A notable difference from the Prior Study is that the level of ESG oversight allocated solely to board committees has decreased in all instances. This trend is most significant in the Financial Services industry.

Figure 2C – For the surveyed TSX60 and CEC41 companies, in respect of oversight of 'E' issues, the charts below illustrate whether the board of directors as a whole, a committee of the board alone, or the full board and a committee of the board together, have responsibility for such issues in four selected industries.



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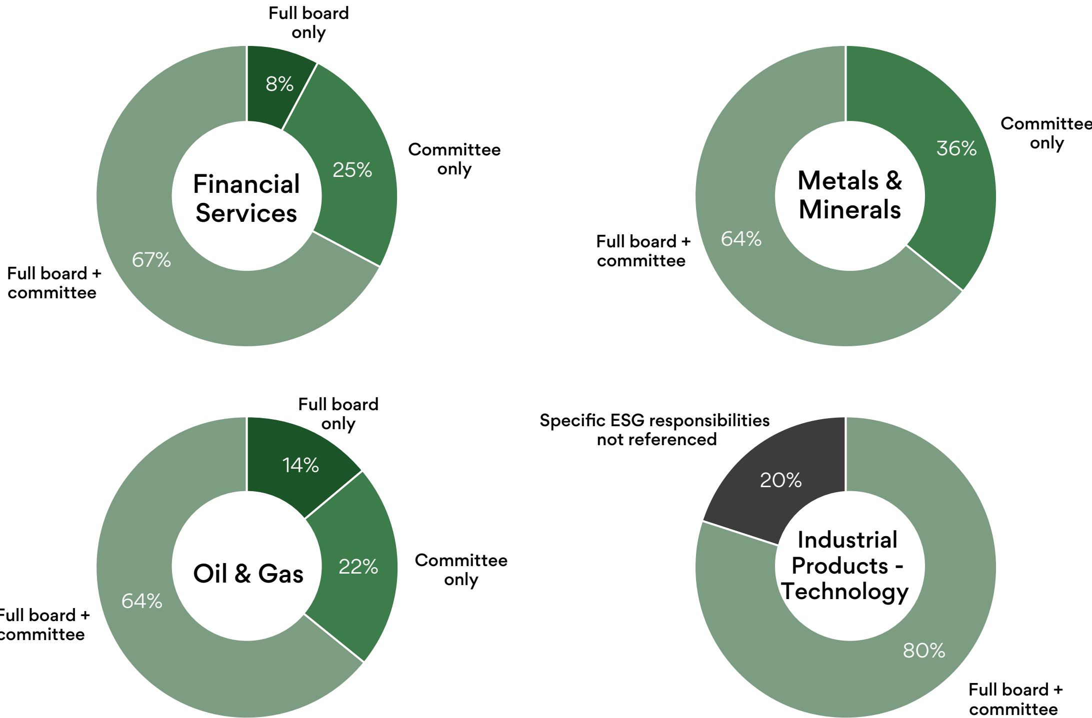
STUDY FINDINGS

Board Oversight of Environmental and Social Issues

Figure 2D – For the surveyed TSX60 and CEC41 companies, in respect of oversight of 'S' issues, the charts below illustrate whether the board of directors as a whole, a committee of the board alone, or the full board and a committee of the board together, have responsibility for such issues in four selected industries.



Generally, when a board committee is tasked with ESG oversight it is either a governance committee or another specific committee (e.g., sustainability committee) that is tasked with such oversight.

This Study also found that the level of audit committee involvement has increased from the Prior Study. In the Prior Study, we noted that this change might happen based on issuers relying on audit committees' existing familiarity with internal controls and in assessing risk as they work to establish internal controls over ESG reporting. Our analysis shows that this trend has started. In this Study, we found that an audit committee was involved in 'E' oversight by 45% of TSX60 companies and 36% of CEC41 companies (*Figure 2E*). For 'S' issues, we found that an audit committee was involved in oversight by 44% of TSX60 companies and 34% of CEC41 companies (*Figure 2F*).

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STUDY FINDINGS

Board Oversight of Environmental and Social Issues

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 (where such committee is combined with audit or finance functions) committees, 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 includes sustainability, sustainable development, health, safety, environment, diversity and inclusion committees, or any combination thereof.

(6) Other committees includes, corporate responsibility and brand committees, or any combination thereof.

Figure 2E – For the surveyed TSX60 and CEC41 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%.

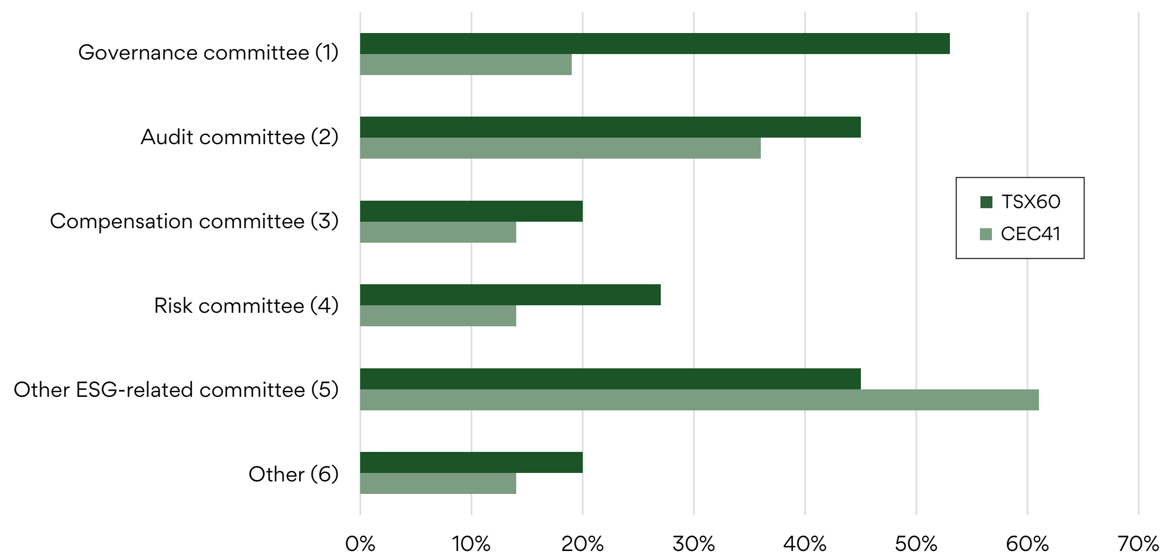
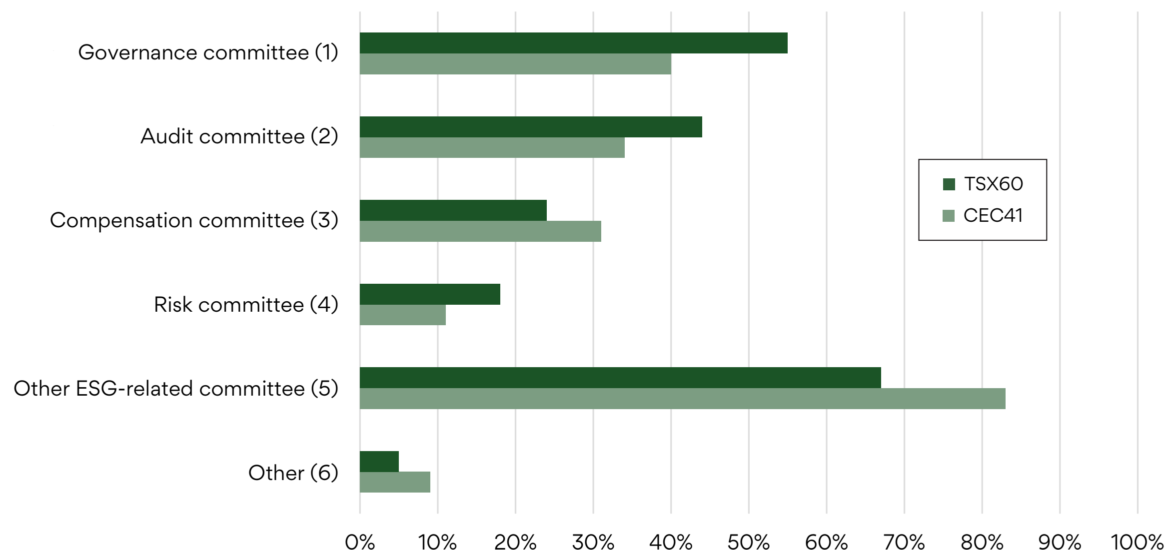


Figure 2F - For the surveyed TSX60 and CEC41 companies, where one or more committees of the board of directors was identified as having responsibility over 'S' issues, the chart below identifies such committee(s). Note: Since more than one category may be applicable for any given company, the totals for the chart below do not add to 100%.



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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 CCGG explains, "skills matrices [...] reveal any existing or potential gaps in the collective skillset of directors [... and] issuers may choose to identify only a director's top 3-5 skills and competencies in the matrices [...], or differentiate between directors who are experts versus those with general experience in a given area."

As part of the exercise of building out a well rounded board, expertise among directors in ESG-related matters is increasingly considered important. Having the necessary expertise 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 addition, stakeholders and investors are increasingly looking to directors to obtain relevant expertise. For example, The Globe and Mail's Board Games methodology for 2023 considers whether a company "includes climate expertise as a 'required skill' in the board skills matrix and [if] at least one director is attributed with climate expertise."

Similarly, in its 2023 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."

As evidenced in the following charts, this Study found that nearly all Surveyed Companies (i.e., 92% of TSX60 companies, 98% of CEC41 companies) identified at least one director as having ESG expertise (Figure 3A). Compared to our Prior Study, these figures have increased, particularly with respect to TSX60 companies.

Of those companies which disclose the ESG expertise of their directors, approximately three-quarters (i.e., 72% of TSX60 companies, 83% of CEC41 companies; Figure 3B) describe such expertise as being general ESG, while the percentage of those companies which further identify some directors with 'E' or 'S' expertise varies (i.e., 32% and 48%, respectively, for TSX60 companies; 54% and 59%, respectively, for CEC41 companies; Figure 3B).

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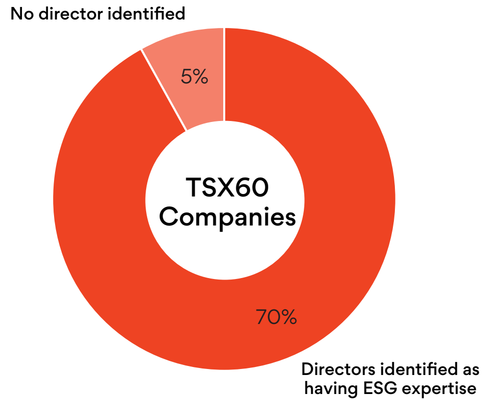
Figure 3A - For the surveyed TSX60 and CEC41 companies, the charts below identify whether specific directors on the board are identified as having some form of ESG expertise.



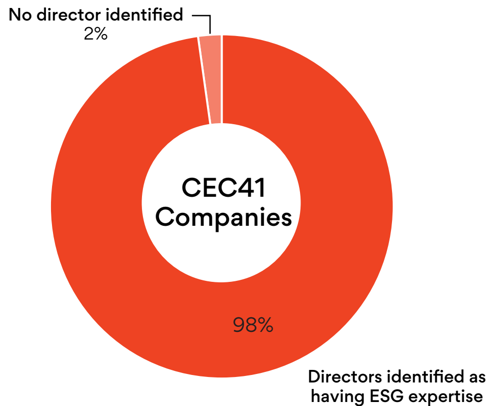


Figure 3B - For the surveyed TSX60 and CEC41 companies which disclose ESG expertise of one or more board members, such identified expertise is presented. Note: Since more than one category may be applicable for any given company, the totals for the chart below do not add to 100%.

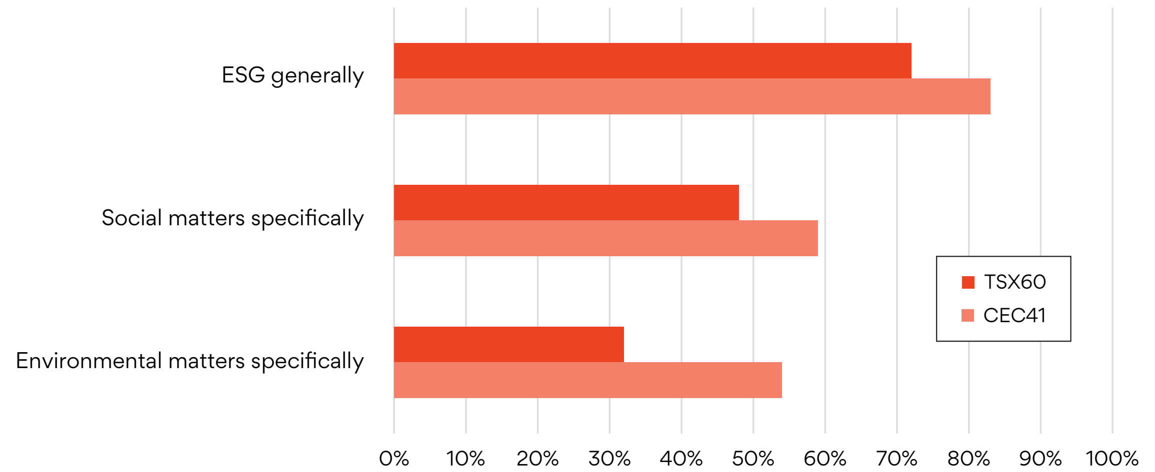
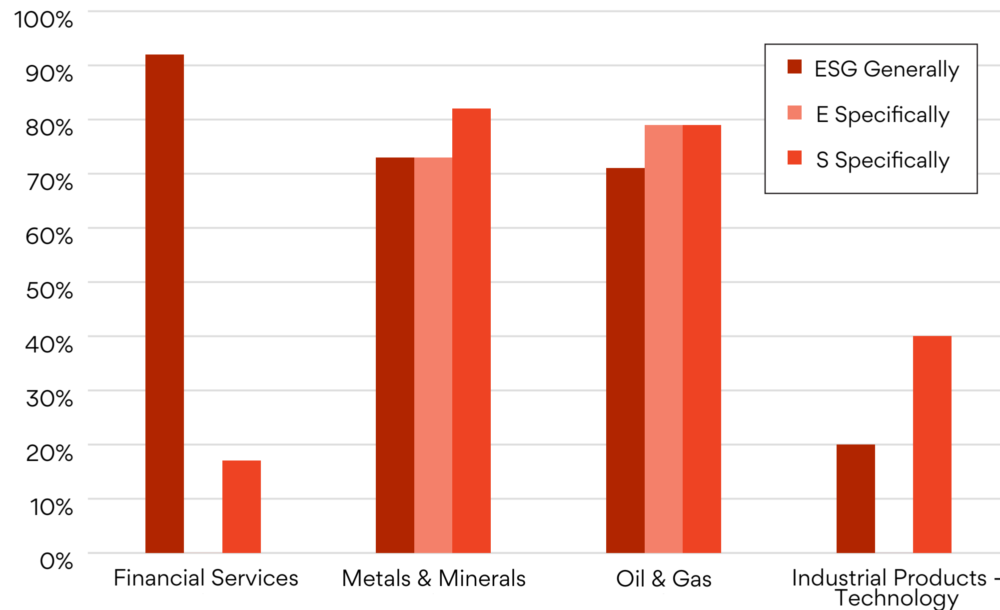


Figure 3C - For the Surveyed Companies which disclose ESG expertise of one or more board members, such identified expertise is presented below on an industry basis. Note: Since more than one category may be applicable for any given company, the totals for the chart below do not add to 100%.



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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 long been tied to certain metrics, with varying allocations between base salary, short term variable compensation, and long term variable compensation.

For example, annual bonus payouts are commonly tied to a company's achievement of a specified share price or revenue and income targets. As ESG metrics become more central to companies' corporate strategies, we are seeing a similar increase in the use of ESG metrics to drive executive compensation. For example, we observed that many companies among the Surveyed Companies quantitatively tie elements of short-term executive bonuses to ESG-related metrics, such as the management of cybersecurity risks, reductions in emissions, and achievement on health and safety targets. Broader or longer term goals are also quantitatively factored into short-term compensation, such as the trend we observed of boards factoring interim evaluations of progress towards emissions targets into an "ESG multiplier" input when computing executive compensation.

In this regard, CCGG states the following in its *Directors' E&S 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."

The Glass Lewis *ESG Initiatives Voting Guidelines* similarly uses the following methodology for evaluating companies' linking of ESG metrics executive compensation: "In most markets, should a company not provide any environmental or social considerations in its remuneration scheme, the ESG Policy will vote against the proposed [compensation] plan. For companies with a greater degree of exposure to environmental and climate-related issues (i.e., Climate Action 100+ focus list companies and those where SASB has deemed GHG emissions to be financially material), the ESG Policy will vote against compensation proposals if the company has not adequately incentivized executives to act in ways that mitigate a company's climate impact."

How a company structures its compensation plans sheds light on its priorities. For example, adopting metrics tied to greenhouse gas reductions signals a 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. Certain topics lend themselves broadly across companies and industries (such as emissions and energy transition goals), whereas others may have specific applicability to particular companies based on the nature of their operations (such as a mining company that may have specific goals regarding engagement with the Indigenous peoples on whose land they operate). 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.

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STUDY FINDINGS

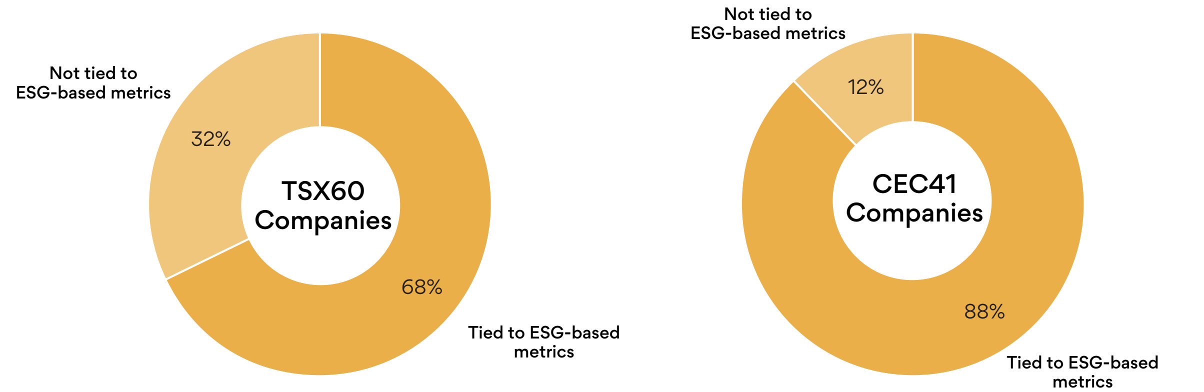
Executive Compensation Tied to ESG Metrics

Our Prior Study's review of executive compensation found that the majority of TSX60 and CEC41 companies, across a range of industries, tied at least some portion of executive compensation to an ESG metric of some form. However, we found that about half of the Surveyed Companies lumped ESG metrics with other metrics, which created some lack of clarity as to how precisely the achievement of ESG metrics drives pay.

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, this Study found again that the majority of Surveyed Companies (i.e., 67% of TSX60 companies, 85% of CEC41 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., 73%% for TSX60 companies, 74% for CEC41 companies) such ESG metrics were incorporated as either distinct E and/or S targets, or as a standalone ESG metric. This can be distinguished from the Prior Study, where the majority of Surveyed Companies disclosing ESG metrics (i.e, 50% for TSX60 Companies, 55% for CEC41 companies), lumped such metrics in with other types of metrics (e.g., such as customer experience), leaving more room for ESG considerations to be swamped by other priorities.

Figure 4A – For the surveyed TSX60 and CEC41 companies, the charts below illustrate the percentage of companies which tie the compensation of CEOs and/or other NEOs to ESG-based metrics.



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Executive Compensation Tied to ESG Metrics

Figure 4B – For the Surveyed Companies, the charts below illustrate the percentage of companies, on an industry basis, which tie the compensation of CEOs and/or other NEOs to ESG-based metrics.

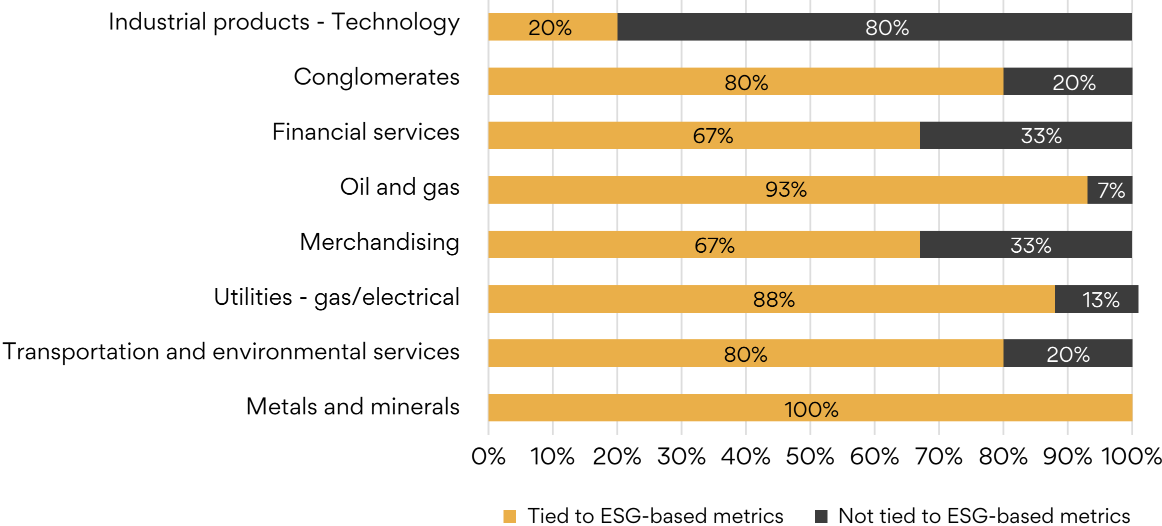
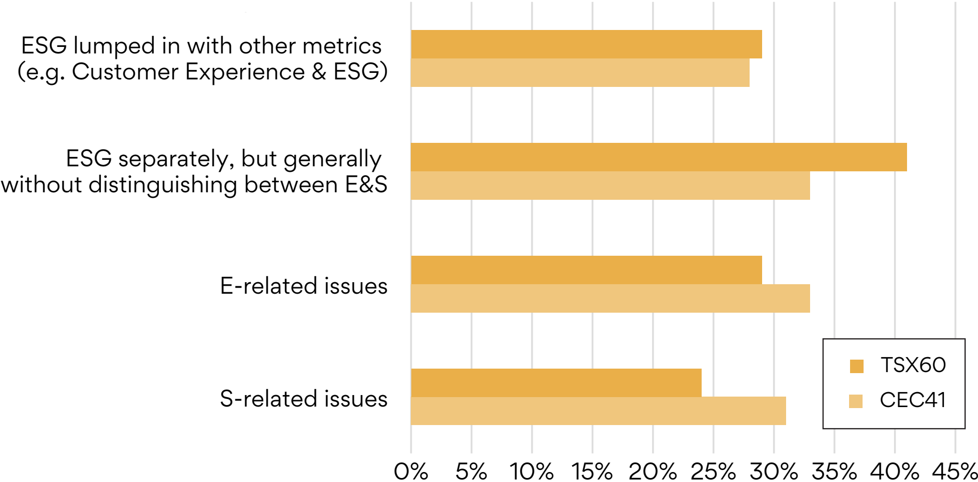


Figure 4C – For the Surveyed Companies, of the companies which tie executive compensation to ESG metrics, the chart below identifies the percentage of such companies which separately consider ESG-related metrics (whether on a stand alone or bundled basis), 'E' specific and/or 'S' specific metrics in 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%.



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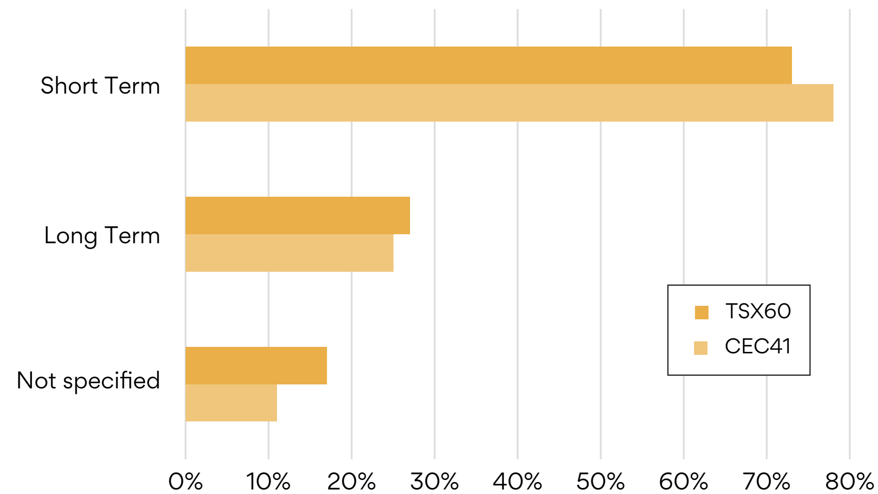
This Study shows a similar number of Surveyed Companies that disclose that ESG metrics are tied to executive compensation compared to the Prior Study, but the quality of disclosure has evolved year over year, with more specific disclosure of how ESG metrics are factored into compensation decisions (e.g. more instances in which the 'E' or the 'S' are specifically identified).

Figure 4D – For the surveyed 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.



Of the Surveyed Companies that disclose the use of ESG metrics in short-term incentive plans, most provide some level of quantitative detail on what percentage of such compensation is explicitly tied to ESG metrics, rather than other factors (i.e., 66% for TSX60 companies, 78% for CEC41 companies). Data on how the Surveyed Companies use ESG metrics in long-term incentive plans was more sparse, as fewer companies appear to tie ESG metrics to long-term incentive plans, and, even when they do, disclosure regarding the methodology applied is typically less robust. Additionally, of the Surveyed Companies that allocate a percentage of bonus to the achievement of ESG metrics, 62% of TSX60 and 81% of CEC41 allocate between 10% and 25% of bonus to quantitatively defined ESG metrics. With these figures in mind, the majority of the market is trending in the direction of disclosing a defined allocation percentage of ESG metrics in bonus calculations.

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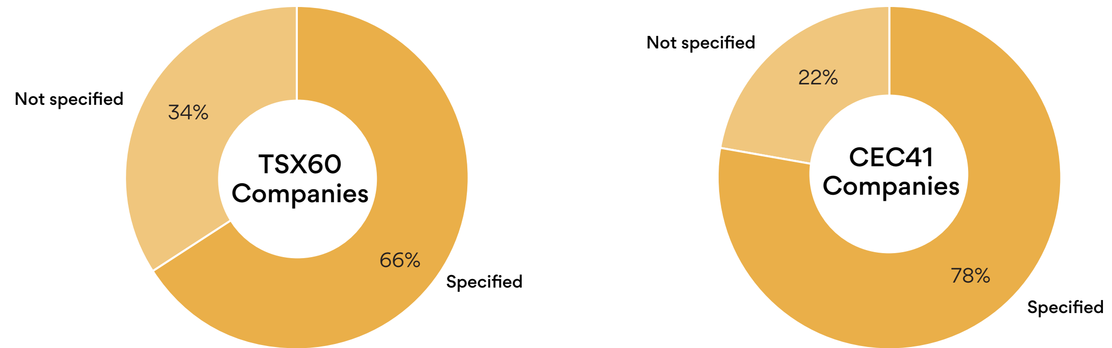
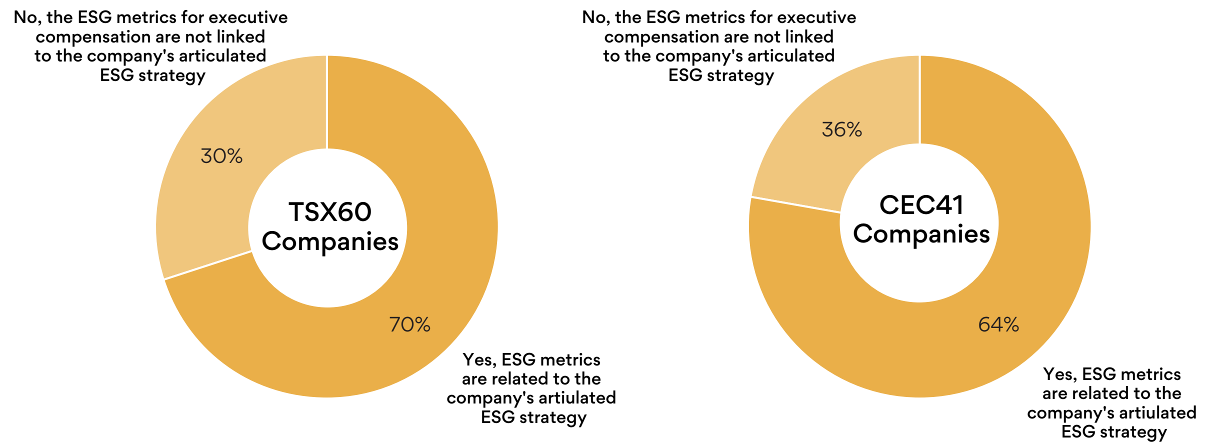
Figure 4E – The chart below shows the percentages of companies in the TSX60 and CEC41 that disclose a specific percentage of short-term variable compensation that is tied to ESG metrics.



We found that where Surveyed Companies tie executive compensation to ESG metrics, most often those metrics are related to the company's articulated ESG strategy (e.g. where a company sets an ESG related target, progress towards that target is tied to compensation outcomes).

Figure 4F - Of the Surveyed Companies that tie executive compensation to ESG metrics, the chart below identifies the percentage of companies which explicitly connect ESG compensation metrics to their articulated ESG strategy.



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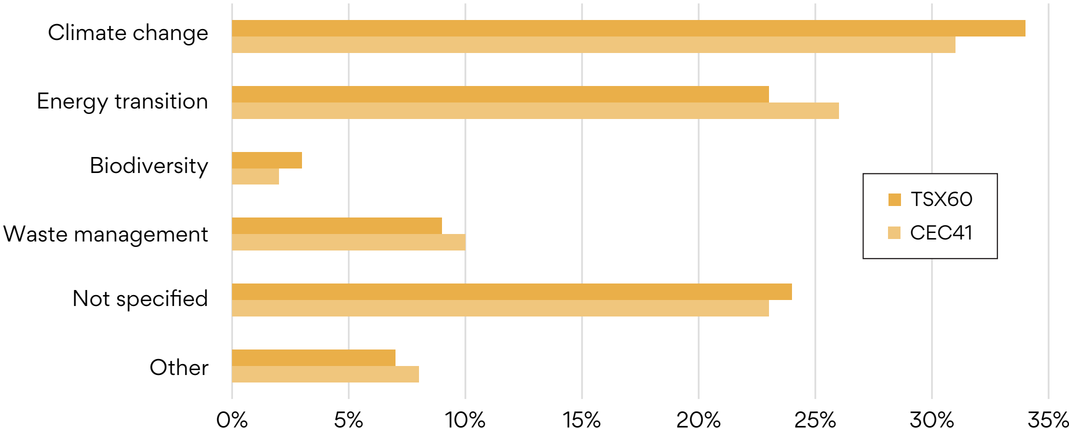
We found that the data demonstrates that metrics pertaining to energy transition and climate change are the most commonly disclosed 'E' metrics, which is consistent with the fact that these issues are well established in the market. We note that emerging topics, such as biodiversity (the subject of the 2022 COP15 conference in Montreal) are at present infrequently tied to executive compensation.

Figure 4G - The chart below identifies certain common environmental issues that the Surveyed Companies tied to executive compensation.



We found that the data demonstrates that metrics pertaining to health and safety and diversity, equity and inclusion, are the most commonly disclosed 'S' metrics. We note that emerging topics, such as human rights/modern slavery and equitable pay, remain infrequently disclosed, but we expect disclosure of these metrics to increase in the future as a result of both heightened awareness and new regulatory requirements in these spaces.

Figure 4H - The chart below identifies certain common social issues that the Surveyed Companies tied to executive compensation.

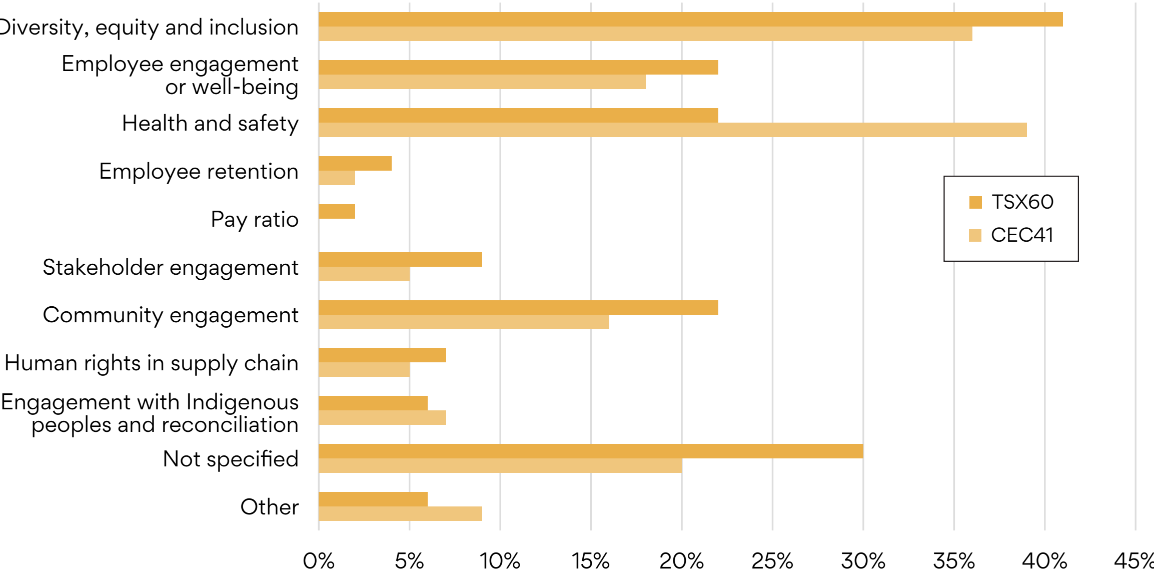


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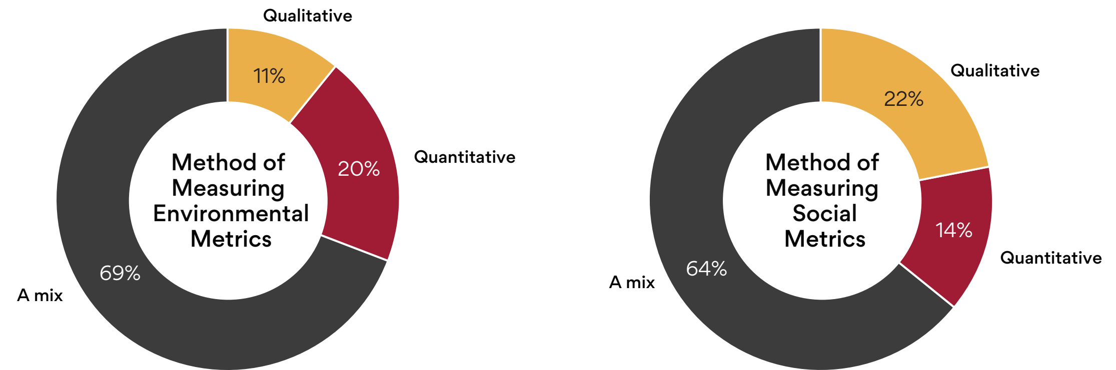
Figure 4I - The charts below identify the method by which the Surveyed Companies evaluate achievement of environmental and social metrics for executive compensation decisions.



This Study reviewed how the Surveyed Companies describe the ESG metrics they consider in executive compensation decisions. Our data indicates that among the Surveyed Companies that disclose their methodology, the majority use a mix of qualitative and quantitative evaluations, rather than relying solely on either quantitative measurements or qualitative evaluations. Of the Surveyed Companies that specify how they measure achievement of environmental metrics, 11% use only qualitative metrics, 20% use only quantitative metrics, and 69% use a mixed approach. Of those same companies that measure achievement of social metrics, 22% use only qualitative metrics, 14% use only quantitative metrics, and 64% use a mixed approach. While the majority of the Surveyed Companies use a mixed approach, the fact that companies measuring environmental metrics are slightly more likely to use exclusively quantitative analysis could reflect the fact that those 'E' metrics are more often based in statistics (i.e., emissions targets). [8]

8. In this Study "quantitative" metrics include any disclosure where a company defined mathematically assessable matters such as:
(a) defined reductions in GHG emissions (e.g. reduction of CO_2e emissions measured in tonnes); or
(b) defined targets in health in safety metrics (e.g. 50% fewer workplace accidents).
In this Study "qualitative" metrics include general disclosures, such as "progress on our Net Zero pathway" or implementing general policies.

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B. ESG Disclosure

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, its materiality to investors, and the intended reader.

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 (a) the MD&A if it consists of material information that may not be fully reflected in an issuer's financial statements, or in order to help investors understand what the financial statements show and do not show; and (b) in an AIF if it is necessary to describe a company's operations and prospects, including material risks and other external factors that may impact the company.

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 and websites. 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.

While the Prior Study noted the presence of 'E' and 'S' information in many companies' Continuous Disclosure Documents required by securities laws, this Study notes fewer instances of such disclosure in Continuous Disclosure Documents and increased disclosure in many companies' Sustainability Reports. Such Sustainability Reports often contain comprehensive disclosure on a company's 'E' and 'S' risk and opportunity profile and 'E' and 'S' - related goals and targets.

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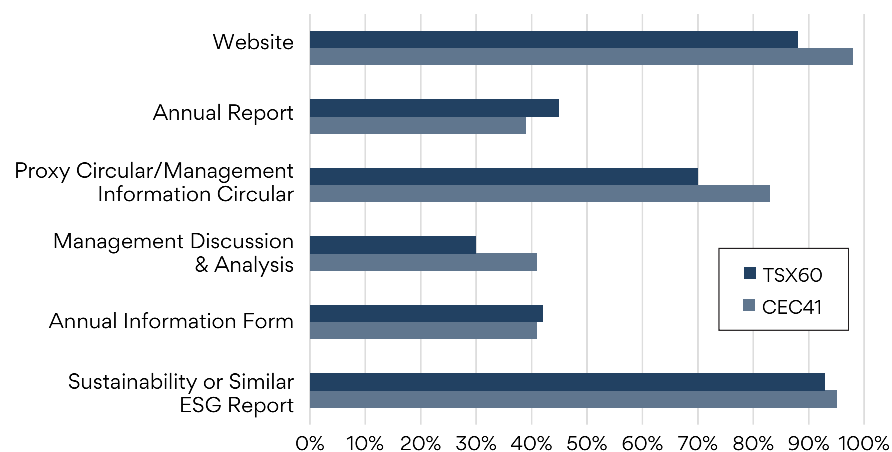
The information provided in Sustainability Reports generally goes beyond what is disclosed in Continuous Disclosure Documents, which is primarily focused on information that is mandated under applicable securities laws. In fact, over 95% of TSX60 and CEC41 companies published a Sustainability Report. 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 65% of TSX60 and CEC41 companies) disclose 'E' and 'S' information in their Circulars (primarily related to executive compensation and governance matters; *Figure 5A*). This move to consolidate voluntary 'E' and 'S' disclosures in a standalone Sustainability Report makes such reporting more accessible to non-investor stakeholders. How this move will be impacted when mandated forced labour and child labour disclosure and climate change disclosure requirements come into force will be a trend that we will continue to monitor.

Figure 5A – For the surveyed TSX60 and CEC41 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%.



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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) as described further below:

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.[9] While the SASB standards are being incorporated into the International Sustainability Standards Board (ISSB) reporting framework discussed below, as sector-specific guidance, the SASB standards were an independent reporting standard for the period covered by this report.

TCFD Recommendations

This is a set of climate-related financial disclosure recommendations established by the Taskforce on Climate-related Financial Disclosure (TCDF) 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.[10] The TCFD was disbanded concurrently with the completion of its mandate on October 12, 2023. The TCFD Recommendations are now monitored by the ISSB (as they now form part of the IFRS S2 standard referenced below).

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.[11]

While the SASB Standards, TCFD Recommendations and GRI Standards are 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.

9. SASB, *About Us*. Online: https://www.sasb.org/about
10. TCFD, *About*. Online: https://www.fsb-tcfd.org/about
11. GRI, *A Short Introduction to the GRI Standards*. Online: https://www.globalreporting.org/media/wtaf14tw/a-short-introduction-to-the-gri-standards.pdf

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ISSB released two standards, the first with respect to general sustainability-related disclosure requirements (IFRS S1) and the other with respect to climate-related disclosure requirements (IFRS S2). IFRS S1 and IFRS S2 are effective for reporting periods beginning on or after January 1, 2024 and we expect increasing consolidation on the ISSB reporting standards. The TCFD Recommendations have been fully incorporated into the IFRS S1 and IFRS S2[12].

In July of 2020, the Taskforce on Nature-related Financial Disclosures (TNFD) was formed to develop a risk management and disclosure framework relating to evolving nature-related risks. The TNFD published its final recommendations in September 2023 (the TNFD Recommendations)[13]. The TNFD Recommendations utilize four recommendation pillars of governance, strategy, risk and impact management; these four pillars are consistent with the approach of the TCFD Recommendations, IFRS S1 and IFRS S2.

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.

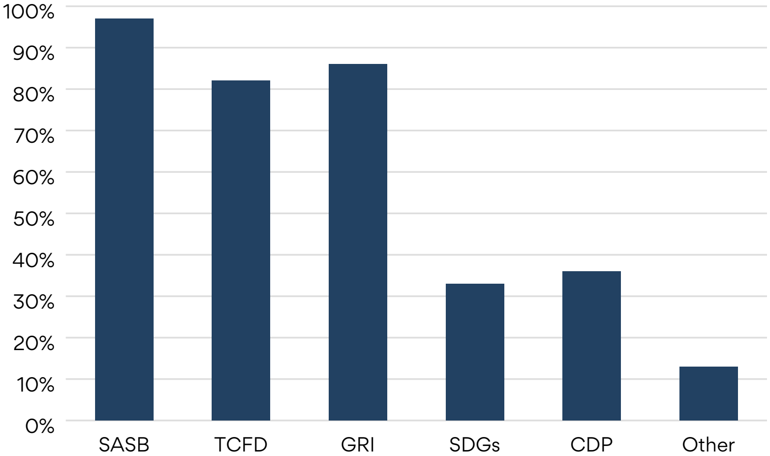


Figure 6B – For the Surveyed Companies, since most companies reference more than one framework or standard in their ESG disclosure, the chart below illustrates the combinations of the three most prominent reporting frameworks and standards with other prominent and non-prominent frameworks and standards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

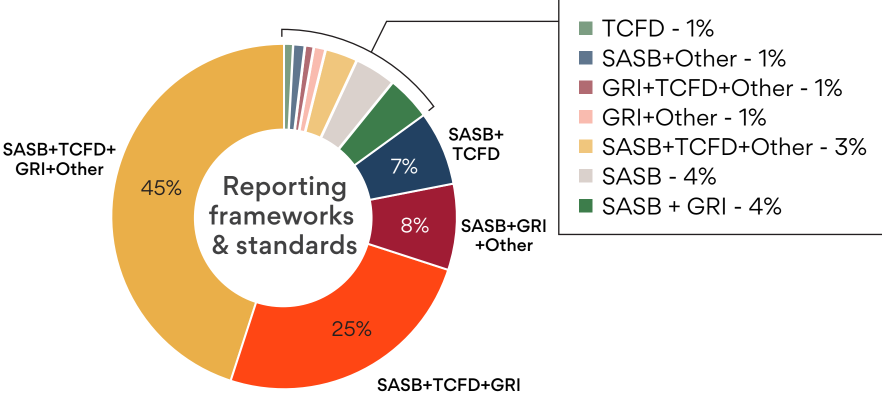
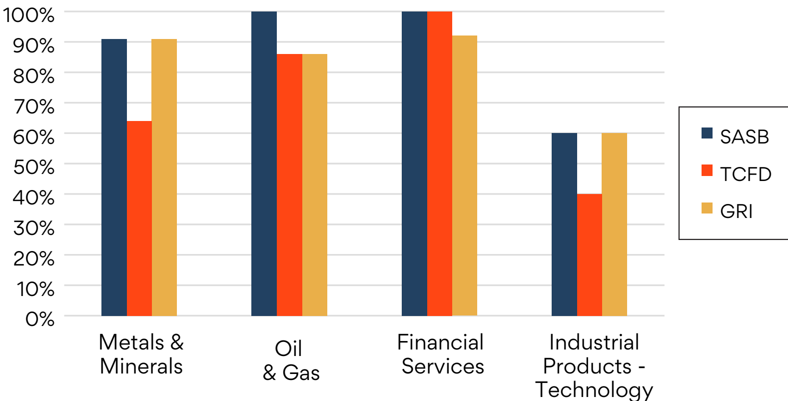


Figure 6C – For the Surveyed Companies, the percentage of companies, on an industry basis that identified the use of a prominent ESG standard or framework are presented below.



12. IFRS. *ISSB and TCFD*. Online: https://www.ifrs.org/sustainability/tcfd
13. The TNFD Recommendations can be found online here: https://tnfd.global/wp-content/uploads/2023/08/Recommendations_of_the_Taskforce_on_Nature-related_Financial_Disclosures_September_2023.pdf?v=1695118661

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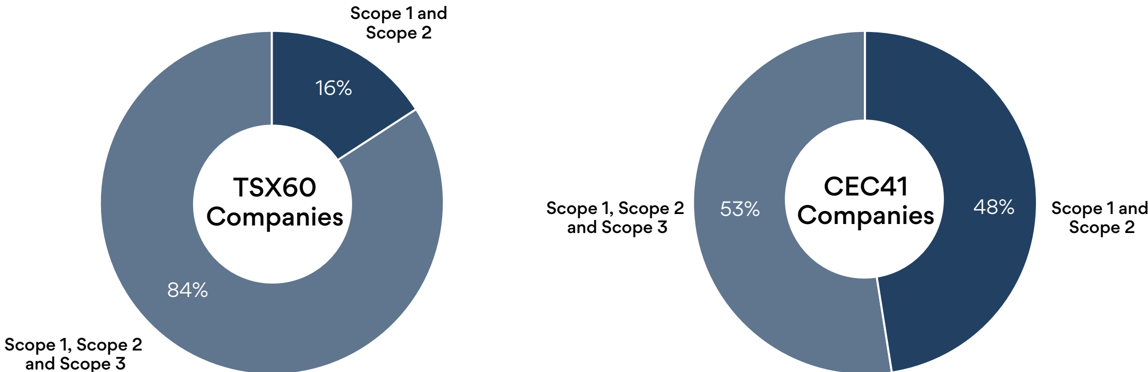
GHG Emission Disclosure

This Study found that 95% of the Surveyed Companies disclosed a GHG emissions inventory[14], with 29% of these companies disclosing only Scope 1 and Scope 2 emissions and 71% disclosing Scope 1, Scope 2 and Scope 3 emissions. While the majority of Surveyed Companies disclosed Scope 3 emissions, there was a wide variety in the categories of Scope 3 emissions that were disclosed; some companies disclosed many categories and some limited their disclosure to Scope 3 emissions resulting from air travel for business.

It is notable that the disclosure of GHG emissions was one of the few areas where this Study uncovered a significant difference between CEC41 and TSX60 companies. Of the CEC41 companies that disclosed GHG emissions inventories approximately 48% disclosed Scope 1 and Scope 2 emissions and approximately 53% disclosed Scope 1, Scope 2 and Scope 3 emissions. Only approximately 16% of the TSX60 companies that disclosed GHG emissions inventories disclosed only Scope 1 and Scope 2 emissions, with the remaining 84% disclosing Scope 1, Scope 2 and Scope 3 emissions.

Figure 6D – The chart below shows the percentages of companies in the TSX60 and CEC41 that disclose Scope 1 and Scope 2 emissions or Scope 1, Scope 2 and Scope 3 emissions.



Scope 1 Emissions - Direct emissions that are directly controlled by the reporting entity (e.g. emissions from fuel used in company vehicles).

Scope 2 Emissions - Emissions that are indirectly caused by the reporting entity's activities and are not within the control of the entity (e.g. emissions caused by the generation of electricity used in company premises).

Scope 3 Emissions - These include indirect emissions not within the control of the reporting entity and that are not included in Scope 1 or Scope 2. These emission are typically generated by activities in a company's value chain (e.g. emissions resulting from the use of products sold, franchises). They are generally divided into 15 categories:

1. Purchased goods and services
2. Capital goods
3. Fuel-and-energy-related activities
4. Upstream transportation and distribution
5. Waste generated in operations
6. Business travel
7. Employee commuting
8. Upstream leased assets
9. Downstream transportation and distribution
10. Processing of sold products
11. Use of sold products
12. End-of-life-treatment of sold products
13. Downstream leased assets
14. Franchises
15. Investments

See Greenhouse Gas Protocol, "Scope 3 Calculation Guidance". Online: https://ghgprotocol.org/scope-3-calculation-guidance-2

14. GHG emissions inventory is a quantified list of an organization's GHG emissions and emissions sources calculated in accordance with standardized methodologies.

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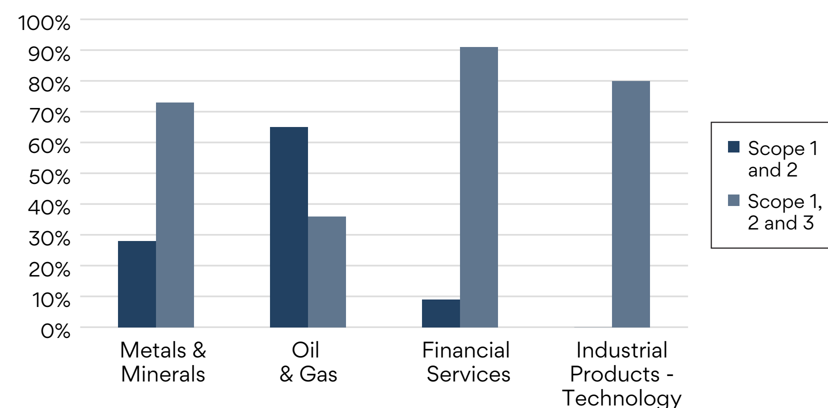
This Study also found a marked difference in the scope of GHG emissions disclosed across different sectors. Surveyed Companies operating in sectors that produce high-emitting products (e.g. Oil and gas) or that produce products that may require significant processing after production (e.g. Metals and minerals) were more likely to limit their GHG emission disclosures to Scope 1 and Scope 2. These companies were also very likely to limit the categories included in Scope 3 emissions if they were disclosed.

GHG emissions disclosure by Financial Services companies is somewhat unique given the nature of 'financed emissions', and the international attention they have begun to receive in recent years. Financed emissions are the indirect GHG emissions attributable to Financial Services companies due to their involvement in financing an emitting activity and are generally reported as Investments (Category 15) Scope 3 emissions.

Nearly all of the Surveyed Companies in the Financial Services sector disclose Scope 1, Scope 2 and Scope 3 emissions (including some financed emissions). However, the inclusion of financed emissions in disclosures is an emerging practice and, at present, the scope of financed emissions disclosed is relatively limited and varies between institutions. The reason for this is twofold: (1) the measurement of Scope 3 emissions is widely acknowledged to be the most difficult category of GHG emissions to accurately measure, and (2) the broad scope of industries that receive financing (or other financial support or services that constitute financing for the purpose of 'financed emissions') from financial institutions make it methodologically difficult to calculate financed emissions. For these reasons, and to avoid producing inaccurate reporting, many Surveyed Companies in the Financial services sector are incrementally expanding the scope of their financed emissions disclosures as better data and methodologies become available. It is notable that most of the Surveyed Companies in Financial services have committed to disclosing financed emissions related to high-emitting industries first.

Figure 6E – The chart below shows the percentages of companies on an industry basis that disclose Scope 1 and Scope 2 emissions or Scope 1, Scope 2 and Scope 3 emissions.



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Assurance

The demand for consistent, comparable, transparent and reliable ESG information from investors continues to grow. Furthermore, organizations are increasingly looking to mitigate exposure to risk from civil or regulatory proceedings alleging that disclosed ESG information is misleading or constitutes a misrepresentation. To meet these demands and pressures, some companies have either commenced taking, or continue to take, proactive measures to enhance the reliability of their ESG disclosures by obtaining appropriate assurance on publicly disclosed ESG-related information.

Recently proposed amendments to the regulatory framework in Canada and globally, including the United Kingdom and the European Union, may have served as initial catalysts for companies to seek out ESG-related assurance. However, despite the initial desire to prescribe regulations, particularly around climate-related disclosures, we are now seeing a delay from regulators in finalizing their previously proposed regulations (partially as a result of anti-ESG movement in the U.S.).

For example, in 2021, as part of its consultation process for proposed National Instrument 51-107 *Disclosure of Climate-related Matters in Canada* (Proposed National Instrument 51-107), the Canadian Securities Administrators' (CSA) specifically asked for comments on whether some form of assurance should be required for GHG emissions reporting. What the final rule is in respect of this type of assurance is still uncertain, as the development and implementation of the Proposed NI 51-107 have been delayed since 2022. However, a 2023 annual report from the Alberta Securities Commission has confirmed that work on the Proposed NI 51-107 continues.

In the United States, the Securities and Exchange Commission (SEC) deferred the implementation of its climate change disclosure rule to the spring of 2024.[15] The rule as originally proposed in 2022 aimed to mandate disclosure of Scope 1 and 2 emissions, with limited assurance for large accelerated filers in 2024 and accelerated filers in 2025, transitioning to reasonable assurance after two years.[16]

Similarly, in October 2023, the European Commission proposed to delay the implementation of its European Sustainability Reporting Standards for two years, which would have required applicable companies to obtain limited assurance, escalating to reasonable assurance after three years, of certain sustainability-related data.[17]

15. Soyoung Ho. Thomson Reuters: "SEC Once Again Delays Action on Final Climate Disclosure Rule". (December 12, 2023). Online: **https://tax.thomsonreuters.com/news/sec-once-again-delays-action-on-final-climate-disclosure-rule/#:~:text=The%20Securities%20and%20Exchange%20Commission,but%20filed%20in%20early%20October**
16. Available to download online: **https://www.sec.gov/files/rules/proposed/2022/33-11042.pdf** at page 216
17. Available to download online: **https://finance.ec.europa.eu/system/files/2023-10/231017-proposal-sustainability-reporting-standards_en.pdf**

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Also, in October 2023, the United Kingdom also reversed its original position on disclosure requirements which was initially tabled[18] with the *"The Companies (Strategic Report and Directors' Report) (Amendment) Regulations 2023"*.[19] These regulations would have required applicable large businesses to disclose an assurance policy statement, including an explanation of whether, and if so how, the company intends to seek external assurance over some or all of the company's resilience statement. As part of the resilience statement, which is intended to summarize the company's risk-management approach to building or maintaining resilience over the short, medium and long-term, a company would have been required to disclose the impact of climate-related risks and sustainability-related risks. The United Kingdom stated that it plans to deliver a new reform package with a simpler framework for investors and businesses.

Despite the regulatory delays, companies have nonetheless begun, or continue to, obtain some form of assurance in respect of certain sustainability-related information. This might be a result of the company's own desires to avoid risks of greenwashing by ensuring the correctness of the disclosures made. On the financial reporting process, companies typically (and are required to) have internal controls over financial reporting (ICFR) to ensure that the financial data which flows through the organization, and which is ultimately reflected in the financial reports, are correct and accurate. In Canada, under National Instrument 52-109 (*Certification Of Disclosure In Issuers' Annual And Interim Filings*), each of the chief executive officer and the chief financial officer of an issuer must, in the case of the annual filing, file certifications attesting to such officer's responsibility over, and design of, the ICFR, and that they have reviewed and there are no material misrepresentations in the annual information form, annual financial statements, and the annual MD&A (annual filings).

Such a certification is not explicitly required in connection with the publication of the Sustainability Reports or the publication of other sustainability information elsewhere outside of the annual filings. However, National Instrument 52-109 also requires non-venture issuers to establish and maintain disclosure controls and procedures to ensure that information required to be disclosed in its annual filings, interim filings or "other reports" is accurate. As issuers are increasingly incorporating forward-looking information disclaimers into their Sustainability Reports, there may be an implicit acknowledgement that such reports may be subject to the civil liability for secondary market disclosure regime. If this is the case, Sustainability Reports could be considered a form of "other report" and so the certifications required by National Instrument 52-109 could potentially apply to Sustainability Reports as well. In any event, such public disclosures may still be subject to greenwashing claims and other claims of misrepresentations. Therefore, companies may be seeking assurance for such disclosures to assist in avoiding such claims regardless of whether or not such disclosures are subject to ICFR certifications.

In addition to providing an internal diligence exercise with respect to potential greenwashing claims, external assurance is also being obtained to accommodate the expectations of external stakeholders for credible data.

Irrespective of the catalyst for *why* such assurance is being obtained, this Study sheds some interesting insights regarding how many companies are seeking out this type of assurance, the subject matter being assured, whether the opinion sought is reasonable or limited in scope, and who the assurance service providers are.

18. Department of Business and Trade (United Kingdom). "Burdensome legislation withdrawn in latest move to cut red tape for businesses". (October 16, 2023). Online: **https://www.legislation.gov.uk/ukdsi/2023/9780348250220/data.pdf**
19. Available to download online: **https://www.legislation.gov.uk/ukdsi/2023/9780348250220/data.pdf**

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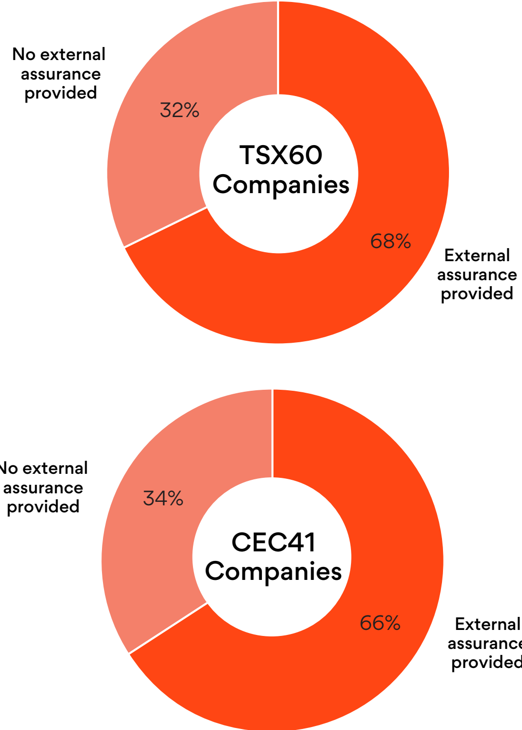
Was Some Form of External Assurance Obtained?

Almost 70% of each of the TSX60 and CEC41 companies (approximately 68% and 66%, respectively; *Figure 7A)*, respectively, obtained one or more forms of external assurance relating to their ESG or sustainability-related disclosures. This represents a meaningful increase from our Prior Study.

Figures 7A – For the surveyed TSX60 and CEC41 companies, the charts below illustrates whether or not the companies obtained some form of external assurance or verification relating to ESG or sustainability disclosures.



On an industry basis, some discernible patterns emerge. All of the Surveyed Companies in the Oil and Gas industry have obtained some form of external ESG-related assurance (100%; *Figure 7B*). More than half of each of the Surveyed Companies in each of the Transportation and Environmental Services, Utilities – gas/electrical utilities, Metals and Minerals, and Financial Services industries had some form of external assurance related to their ESG-disclosures (approximately 80%, 75%, 73%, and 58% respectively; *Figure 7B*).

Figure 7B – For the Surveyed Companies the charts below show the percentage of companies, on industry basis, that have received some form of assurance on ESG-related matters.

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What Is The Subject Matter Of The Assurance?

Although the majority of the Surveyed Companies obtained some form of external assurance in respect of their ESG-related disclosures, there is no one size fits all as to *what* that assurance looks like.

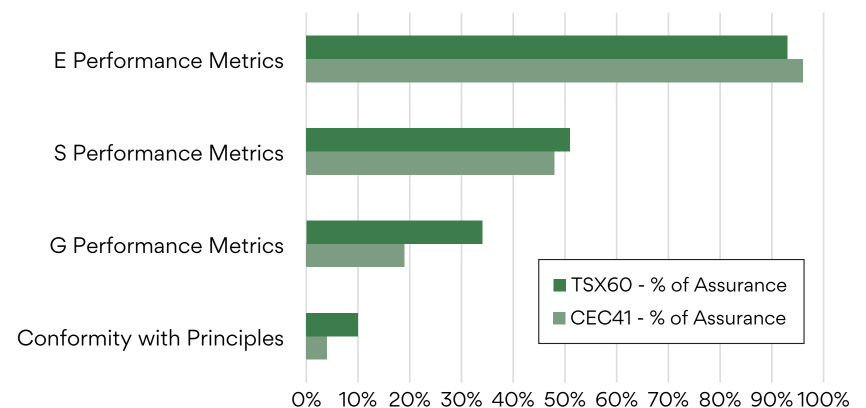
The types of topics covered in the scope of assurance engagement vary. However, the leading metrics that companies most often seek assurance for are environmental metrics. Approximately 93% and 96% of the TSX60 and CEC41 Surveyed Companies that obtained external ESG-related assurance obtained some form assurance in relation to one or more environmental metrics (*Figure 7C*). Of the vast scope of environmental metrics covered, GHG emissions is a primary focus, but other matters covered include for example, water, electricity and energy consumption.

In contrast, approximately half of the Surveyed Companies that obtained ESG-related assurance obtained assurance pertaining to social performance metrics, whereas only approximately 34% of TSX60 and 19% of CEC41 companies that received ESG-related assurance obtained assurance related to governance performance metrics. (*Figure 7C*). On the social side, this included metrics such as health and safety, human rights, executive management or workforce diversity, community investment or community impact, and employee engagement. As to governance, it includes code of conduct or anticorruption training, board diversity, and data security.

So why has the environment emerged as the leading choice for assurance scope? One potential explanation is that climate-related disclosure rules being proposed by regulators suggest regulators are considering including assurance requirements as part of disclosures. In addition, obtaining assurance provides companies with comfort that their disclosures are better vetted and thus the risk of a greenwashing or misrepresentation claim may be mitigated.

It is also worth noting that a small handful of companies (typically mining companies) have also obtained some form of assurance regarding their conformity with certain principles (*Figure 7C*). In this Study, 'Conformity with Principles' refers to assurance being obtained in respect of a company's adherence or conformance to specific guidelines and standards as established or outlined by well-known organizations within the ESG space. Examples of such principles include the International Council on Mining and Metals Mining Principles (ICCM Principles), the Responsible Gold Mining Principles (RGMP), and the Conflict-Free Gold Standard. These guidelines encompass a wide array of criteria, ranging from environmental conservation and community engagement to human rights protection and supply chain transparency. By aligning their operations with these principles, mining companies demonstrate their dedication to minimizing environmental impacts, upholding human rights, promoting fair labour practices, and contributing positively to the communities in which they operate.

Figure 7C – For the surveyed TSX60 and CEC41 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%.



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Assurance Regarding Environmental Metrics

In respect of the types of environmental metrics being assured, GHG emissions is the leading metric.

More specifically, of those companies obtaining some form of assurance regarding environmental performance metrics, approximately 60% of TSX60 and 68% of CEC41 companies sought assurance for GHG emissions (*Figure 7D*).

As to what type of GHG emissions were covered, an even split emerges between companies that provided assurance with respect to their Scope 1, Scope 2 and Scope 3 GHG emissions and companies that provided assurance with respect to only their Scope 1 and Scope 2 GHG emissions (approximately 47% and 47%, respectively; *Figure 7E*).

Although some companies are providing assurance with respect to Scope 3 GHG emissions, two points are important to note. First, many companies only provide limited Scope 3 GHG emission disclosure. Business travel accounted for a large portion of assured Scope 3 GHG emissions followed by emissions from end use of sold products. Second, whether or not a company provided broader Scope 3 GHG emission disclosure (for example in relation to grid loss, customers' natural gas usage, and upstream and downstream leased assets), the assurance provided by companies was generally limited to only certain types of Scope 3 GHG emissions.

Figure 8A – For those TSX60 and CEC41 companies which obtained some form of external assurance, the breakdown of assurance with respect to specific types of E Performance Metrics 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%.

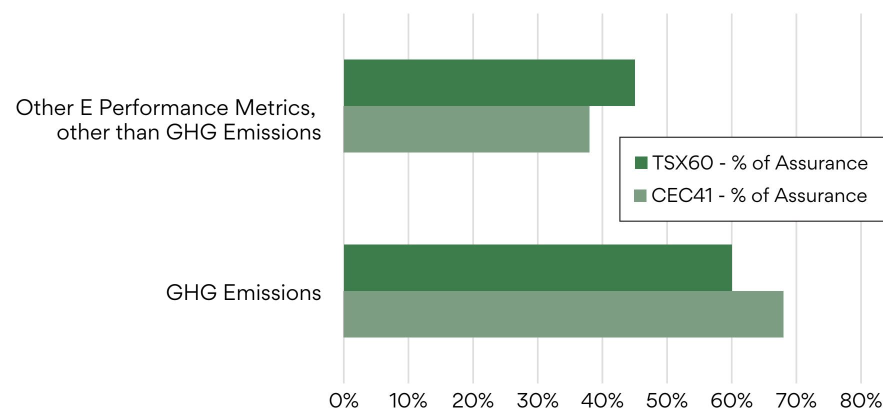
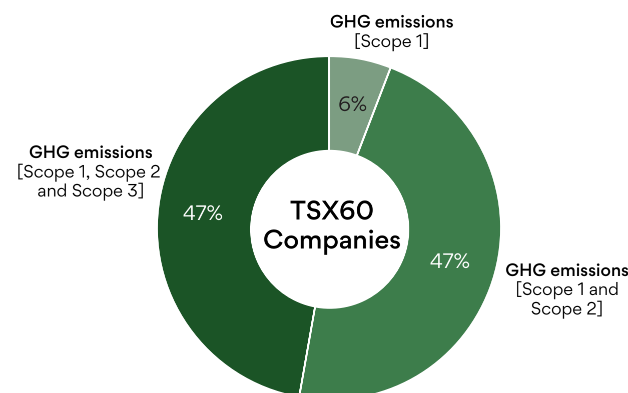


Figure 8B – For those Surveyed Companies which obtained some form of external assurance in relation to GHG emissions, the percentage of such companies that disclose assurance with respect to specific types of GHG Emissions is shown below.



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What Type Of Assurance Opinion Is Obtained?

Since there are no prescribed requirements to obtain assurance of ESG-related matters, a company seeking assurance selects the level of assurance it desires to obtain from the assurance service provider.

Companies may choose to obtain a high level of assurance, in the form of a "reasonable" assurance opinion which provides a positive statement that the information is prepared, in all material respects, in accordance with certain criteria (e.g. as defined by GRI standards, SASB standards, internally developed criteria or definitions, and/or the methodology for determining GHG emissions).

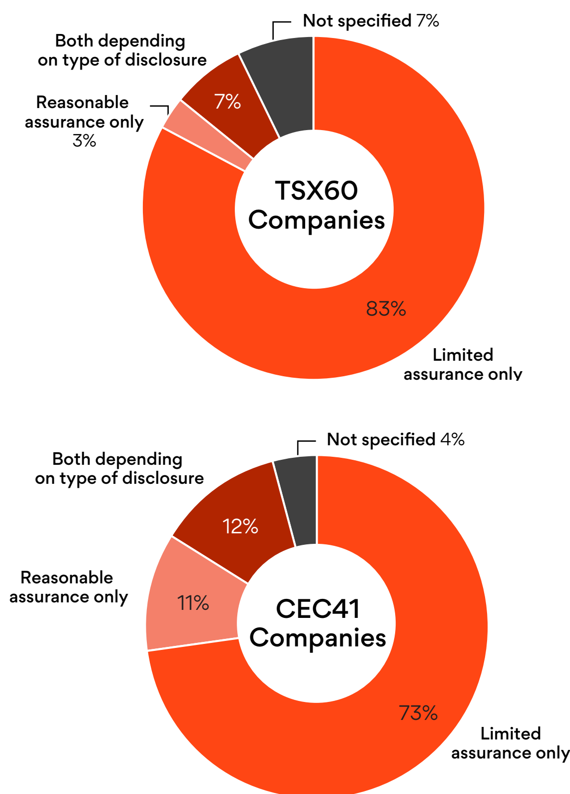
Alternatively, and more commonly, companies may choose to only obtain a "limited" form of assurance which typically includes a negative form of assurance, stating for example that no matters have come to the provider's attention that cause the provider to believe that the information is not prepared, in all material respects, in accordance with certain criteria.[20]

For those TSX60 and CEC41 companies which did obtain one or more forms of external assurance opinions, in the majority of cases, "limited" assurance was obtained (approximately 83% of TSX60 and 73% of CEC41 companies; *Figure 9A)*.

In a handful of cases, "reasonable" assurance was obtained (approximately 3% of TSX60 and 11% of CEC41 companies; *Figure 9A)*.

What is interesting to see is that a number of companies obtained *both* "reasonable" assurance and "limited" assurance for different subject matters. In such cases, it may be that the company obtained a different level of assurance for different properties that it owned or opted to obtain one form of assurance for a category of metrics (e.g., community investment) and another level of assurance for another category (e.g., environmental). Alternatively, in some instances, "reasonable" assurance was obtained for Scope 1 and Scope 2 GHG emissions, while all other ESG indicators, including Scope 3 GHG emissions, was subject to "limited" assurance.

Figure 9A - For the surveyed TSX60 and CEC41 companies which obtained some form of external assurance, the charts below illustrate the scope of such assurance, whether a reasonable or limited assurance opinion is provided.



20. **Note to Reader:** There were also instances where issuers obtained a verification statement from an assurance provider which noted that such document was "not an assurance opinion" and did not state what level of assurance was being provided. For purposes of this Study, these were included in the category of a limited assurance opinion.

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Who Is The Assurance Service Provider?

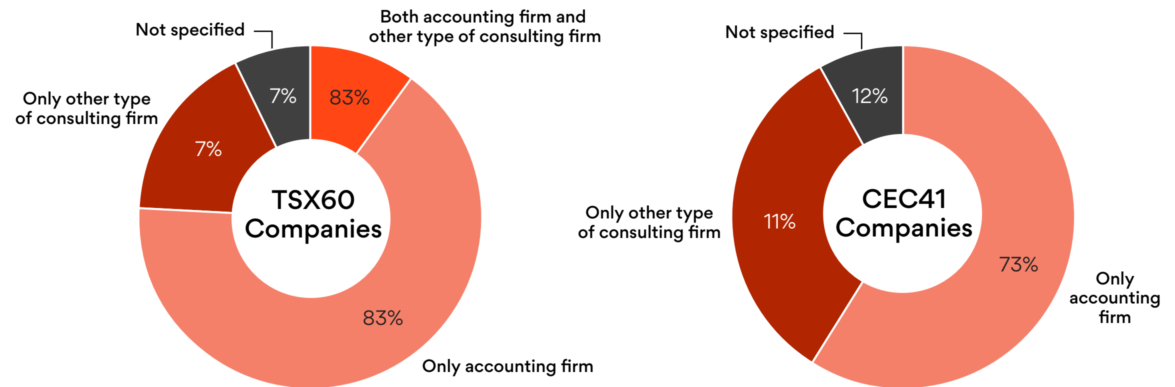
There are a variety of providers offering assurance and verification services in relation to sustainability-related data and processes.

As to preferred providers for such assurance, more than half of the TSX60 and CEC41 companies obtained an assurance opinion or verification statement from only an accounting firm (approximately 66% of TSX60 and 59% of CEC41 companies; *Figure 7J*), followed by other types of consulting firms (such as specialized consulting or engineering firms that provide dedicated services in the realm of sustainability).

Furthermore, there were a handful of TSX60 companies that chose to obtain assurance from both an accounting firm and a sustainability data consulting firm. In these instances, the accounting firm and the sustainability data consulting firm assured different types of data.

Note that in some instances, the sustainability report referred to assurance obtained by a third party, but the report did not specify who the provider was, nor was the assurance opinion made available.

Figure 10A - For the surveyed TSX60 and CEC41 companies that obtained some form of external assurance, the charts below illustrate the type of organization providing such assurance, whether an accounting firm or another type of consulting firm.



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C. 'E' and 'S' Goals and Targets

Environmental and Social Goals and Targets

As public expectations of corporate actors increase, so too does the scope of 'E' and 'S' goals and targets in corporate disclosure. While it may have been acceptable for a corporation to make aspirational statements to "do better" in previous years (even in recent years), the public now expects corporations to be transparent and accountable.

Where a corporation chooses to reference a target (aspirational or otherwise), the public, and investors, increasingly expect *measurable* targets and regular updates on *progress* towards such targets.

Corporations that opt to set a target, but not disclose measurable 'E' or 'S' metrics, face increasing risks of allegations of misrepresentation or, in relation to 'E' claims, allegations of greenwashing.

Corporations (depending on the nature and size of a corporation, its industry, and the engagement or activism of its stakeholders or the public) that opt not to set any 'E' or 'S' targets may be at risk of negative public opinion.

Goals and Targets to Reduce GHG Emissions

This 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. Of the Surveyed Companies, 91% had one or more targets related to reducing its GHG emissions. For this Study, we considered if the Surveyed Companies disclosed a commitment to any of the following types of GHG emission reduction targets[21]:

- **Net-zero target**
  Usually expressed as a plan or commitment to reduce corporate emissions to zero, to the greatest extent possible, by a fixed date and frequently anticipate using carbon offsets to address operational emissions that are not technologically feasible to eliminate.
- **Reduction in absolute GHG emissions**
  Usually expressed as a reduction in metric tonnes of CO_2 equivalent (CO_2e) GHG emissions as compared to a base year (and may include the use of carbon offsets to achieve the reduction).
- **Carbon intensity improvement targets**
  Usually expressed as a reduction in metric tonnes of CO_2 equivalent (CO_2e) GHG emissions per unit of revenue or volume of product as compared to a base year.
- **Carbon neutral target**
  Usually expressed as the use of carbon offsets to net GHG emissions to zero in an annual period and frequently limited to CO_2.

Many of the Surveyed Companies referenced more than one target.

21. **Greenhouse Gas (GHG):** The atmospheric gases responsible for causing global warming and climatic change. The major GHGs are CO_2, methane (CH_4) and nitrous oxide (N_2O). Less prevalent, but very powerful, GHGs include hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and sulphur hexafluoride (SF_6).
Carbon dioxide equivalent (CO_2e): A way to place emissions of various radiative forcing agents on a common footing by accounting for their effect on the climate. It describes, for a given mixture and amount of GHGs, the amount of CO_2 that would have the same global warming ability, when measured over a specified time period.
Definitions are from: United Nations Environment Programme. "Emissions Gap Report 2023". (November 20, 2023). Online: https://wedocs.unep.org/bitstream/handle/20.500.11822/43922/EGR2023.pdf?sequence=3&isAllowed=y.

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This Study shows that 65% of the Surveyed Companies that disclosed having GHG emissions targets disclosed an absolute reduction target. 57% of the Surveyed Companies disclosing GHG emissions targets disclosed a net-zero target (*Figure 11A*).

Compared to the Prior Study, this Study shows a clear trend in more corporations moving to disclose an absolute GHG emissions reduction target. Net-zero targets also remain popular, but unlike the Prior Study do not constitute the most widely referenced target.

Compared to the Prior Study, the number of companies referencing carbon neutral targets has notably decreased. In 2023, many of the most notable greenwashing claims targeted corporations for representation related to carbon neutrality.

Figure 11A – The chart below illustrates the types of goals and targets set by the Surveyed Companies.

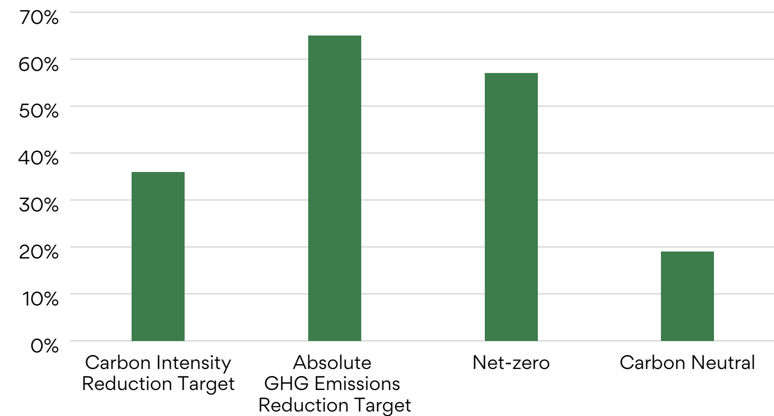
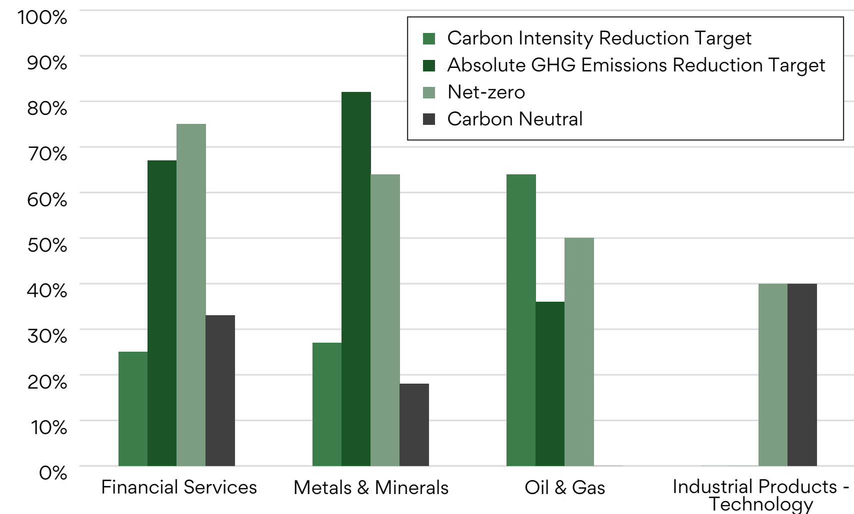


Figure 11B – The chart below illustrates the types of goals and targets set by the Surveyed Companies on an industry basis.



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Continued Role for Voluntary Carbon Offsets

Despite enhanced scrutiny of the voluntary carbon market by media and other stakeholders, of the 91% of Surveyed Companies that disclosed having an GHG emissions reduction target, 48% indicated an intention to use carbon offsets to meet their targets.

Companies appear to be responding to concerns over the voluntary carbon market by developing guidelines and policies around the use of carbon offsets – 40% of the Surveyed Companies that expressed an intention to use carbon offsets also disclosed policies or other limits related to this future use of carbon offsets. These policies or limits ranged from commitments to limit the use of carbon offsets to residual emissions that were not technologically feasible to eliminate for the purpose of achieving net-zero, to commitments to only use carbon offsets generated by the company or its affiliates.

Corporate net-zero by 2050 targets arose following the Paris Agreement, which was reached in 2015 at the UN Climate Change Conference (COP21) in Paris. In the Paris Agreement, all 195 countries in the world agreed to achieve net-zero global emissions by 2050 as part of the global commitment to limit global temperature increase to 1.5 (as compared to pre-industrial levels). To demonstrate a commitment to ongoing progress towards net-zero by 2050, the countries of the world also agreed to reduce absolute emissions by 45% by 2030 (compared to 2010). To show support for the global commitments made in the Paris Agreement, companies have begun to make net-zero commitments that are aligned with the agreement (with a potential for mandated reductions in some sectors starting to emerge).

In accordance with the Paris Agreement's commitment to an interim target, and likely as a result of evidence that indicates countries are not on track to meet these interim targets[22], corporate interim targets are increasingly seen as an indicator of a corporation's commitment to its net-zero targets.

Interim Targets on the Path to Net-zero

This Study also considered whether companies that set GHG reduction targets also set interim reduction targets. Publicly disclosed interim GHG reduction targets are particularly relevant to net-zero targets as these most often have a target date of 2050. Without such interim targets a long term date of 2050 to achieve a goal can appear to be not meaningful. This Study found that, of the Surveyed Companies with net-zero targets, 90% of those have also set interim GHG emissions reduction targets.

22. United Nations, "Are we on track to reach net zero by 2050?". Online: https://www.un.org/en/climatechange/net-zero-coalition

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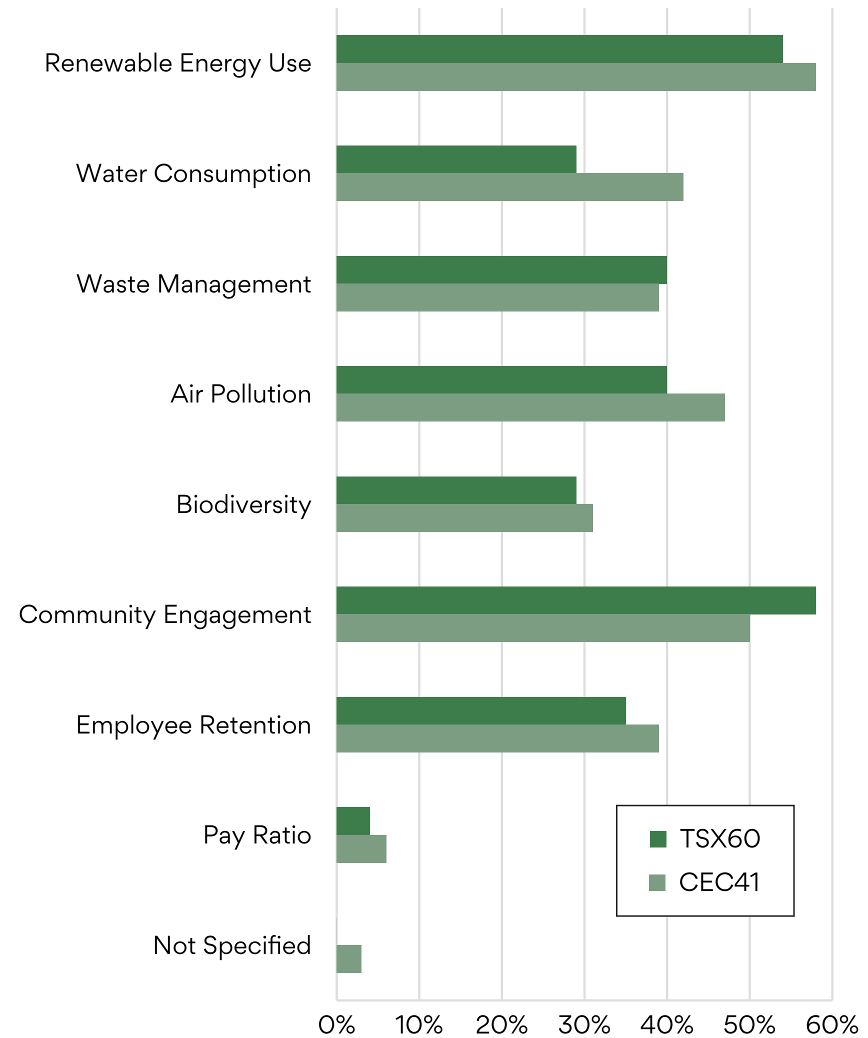
Other 'E' and 'S' Goals and Targets

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 12A – The chart below illustrates the subject matters of 'E' and 'S' goals and targets referenced by the Surveyed Companies.



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D. Shareholder Proposals

Shareholder proposals, which is one form of shareholder activism, continue to gain popularity in Canada. 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 highlight issues which are important to shareholders as well as signal to the corporation's board the shareholders' sentiments towards such issues.

This Study analyzes both ESG-related shareholder proposals which were submitted and went forward to a vote at the annual general meeting, and those proposals which were withdrawn prior to such meeting.

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How Many Companies Received an ESG-Related Shareholder Proposal

We found that approximately 28% of the Surveyed Companies received one or more ESG-related shareholder proposals (*Figure 13A*). Of those companies, approximately 78% had at least one ESG-related shareholder proposal that went to a vote (*Figure 13B*). Conversely, approximately 22% of the companies that received at least one ESG-related shareholder proposal negotiated a settlement for all their proposals. This is generally consistent with the results of our Prior Study.

Of note, more than half (approximately 57%; *Figure 13C*) of the total number of ESG-related shareholder proposals received by all of the Surveyed Companies proceeded to a vote.

Figure 13A – For the Surveyed Companies, the chart below illustrates the proportion of companies that received one or more ESG-related shareholder proposals.

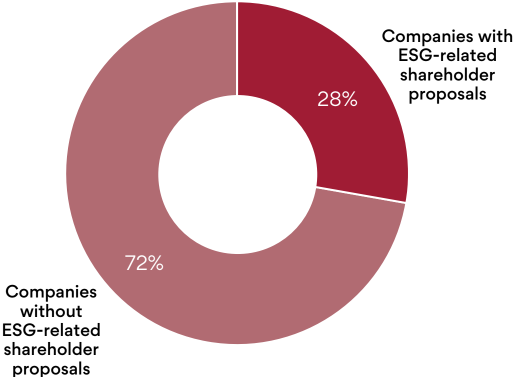


Figure 13B – For the Surveyed Companies that received one or more ESG-related shareholder proposals, the chart below illustrates the proportion of these companies that had at least one ESG-related shareholder proposal that went to a vote.

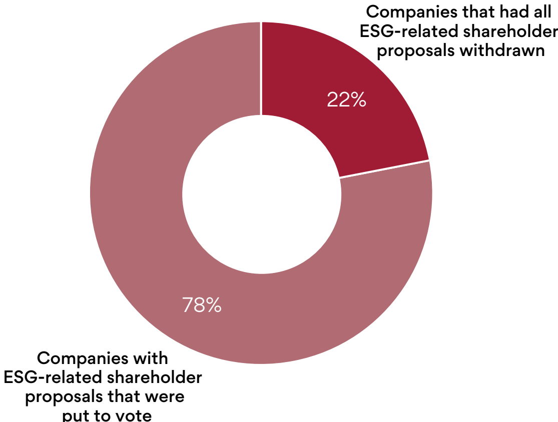
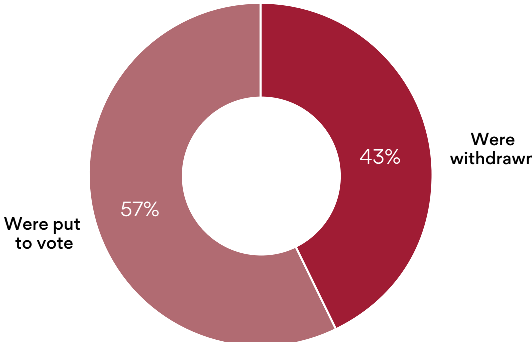


Figure 13C – The below chart illustrates the proportion of the total number of ESG-related shareholder proposals received by all the Surveyed Companies that went to a vote.



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What Is the Subject Matter of the ESG-Related Shareholder Proposals

Of the Surveyed Companies that received ESG-related shareholder proposals, approximately 33% received an environmental-related proposal; 35% received a social-related proposal; 29% received a governance-related proposal and 3% received an anti-ESG shareholder proposal. It is possible for a shareholder proposal to relate to more than one matter. For example, a shareholder proposal focused on board committee oversight is categorized as a governance proposal, while also being classified under the relevant environmental or social category to which it pertains *(Figure 14A)*.

Of these proposals, approximately 73% of environmental-related proposals, 68% of social-related proposals, 27% of governance-related proposals, and all the anti-ESG proposals were put to a vote *(Figure 14B)*.

The lower percentage of governance proposals going to a vote suggests that companies are more inclined to negotiate and settle governance-related matters. In contrast, environmental, social, and anti-ESG proposals were less likely to reach a resolution through settlement.

The types of environment-related proposals received by the Surveyed Companies included a range of matters, including proposals regarding advisory votes on environmental policies (say-on-climate), commitments regarding GHG emissions reductions, environmental policies, reduction of fossil fuel financing, and aligning climate-related lobbying with stated public commitments. Generally, these proposals received low to medium support ranging from approximately 3% to 27%. However, one shareholder proposal did receive majority support of approximately 99%. This proposal requested the company to produce a periodic report outlining how the company's lobbying and public policy advocacy aligns with its net-zero goal.

As to social-related proposals, a large proportion of proposals focused on issues regarding racial equity, human rights, and employee well-being. Notably, there was only one proposal regarding Indigenous engagement and reconciliation. Most of these proposals received moderate levels of support ranging from 11% to 26%, with the highest support seen being 42%. This proposal urged the board of directors to oversee an audit analyzing the adverse impacts on non-white stakeholders and communities of colour.

The governance-related proposals concerned the language skills of the directors, the ethical use of artificial intelligence, and requests to disclose the pay ratios of the compensation of the CEO to the compensation of a general employee or "median worker". These proposals received support in the range of 5% to 12%.

Three anti-ESG proposals, all received by Financial Services institutions, urging them to explicitly reaffirm their commitment to continue to invest in and finance the Canadian Oil and Gas sector. These proposals received low support in the range of 0.87% to 1.25%.

Figure 14A - For the Surveyed Companies, which received one or more ESG-related shareholder proposals, the chart below illustrates the category of such proposal(s) (i.e., whether it was an environmental, social, governance, or anti-ESG related proposal). Note: More than one category may be applicable for any given shareholder proposal, and consequently, the totals for the chart may not add to 100%.

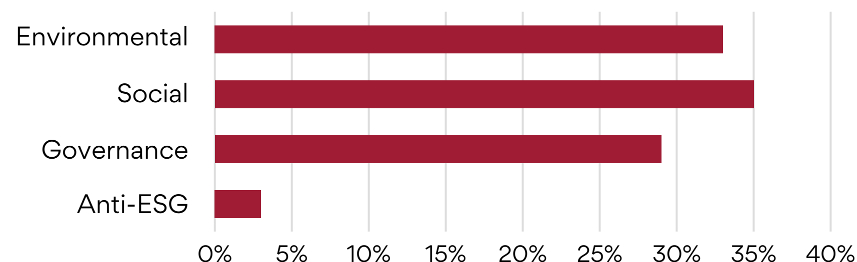
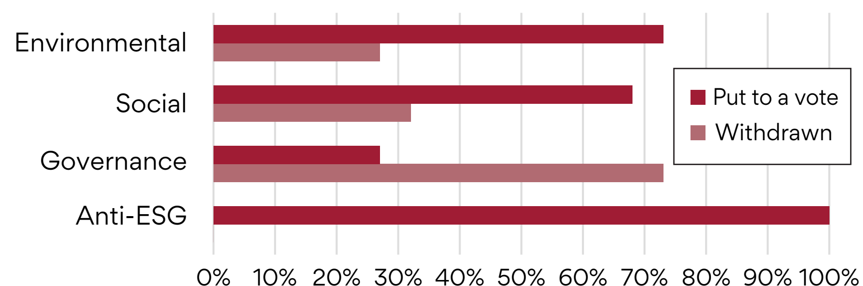


Figure 14B – The chart below illustrates the proportion of a particular type of ESG-related shareholder proposal that was put to a vote.



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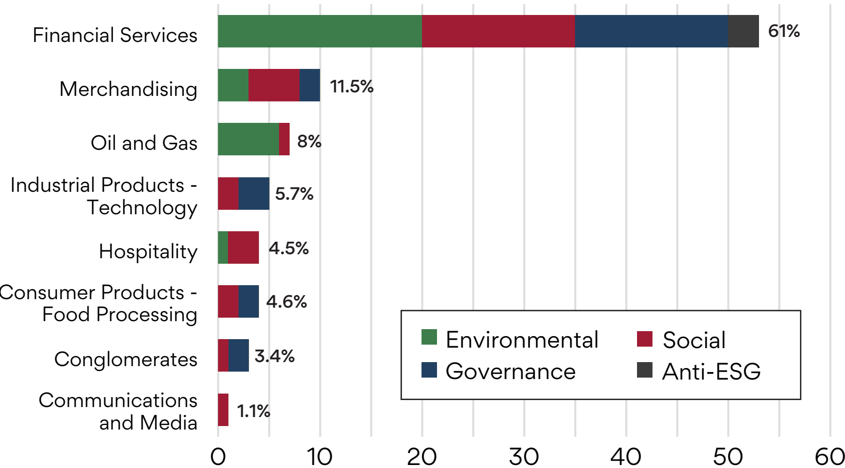
Which Industries Received ESG-Related Shareholder Proposals

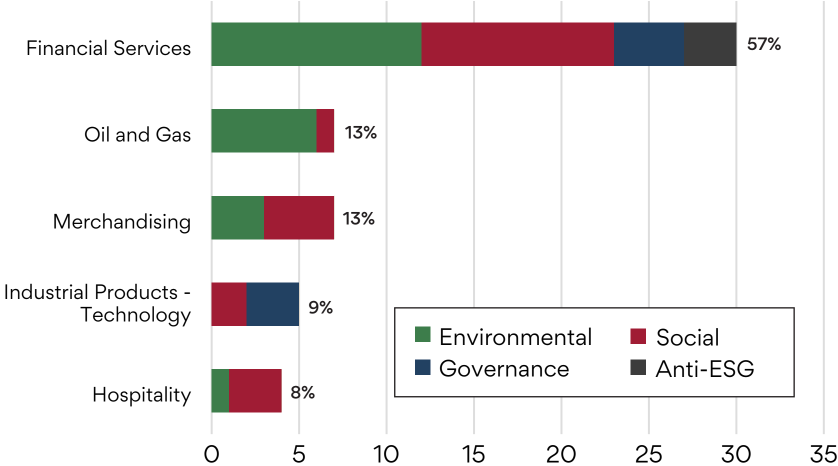
Notably, approximately 61% of all shareholder proposals that were received by Surveyed Companies were received by companies in the Financial Services industry. Furthermore, it is noteworthy that approximately 86% of all shareholder proposals received by companies in the Oil and Gas industry were related to environmental concerns *(Figure 15A)*.

Figure 15A – For the Surveyed Companies which received one or more ESG-related shareholder proposals, the chart below illustrates both the industry of the company that received an ESG-related proposal and the categories of the proposals. Note: More than one category may be applicable for any given shareholder proposal.



Of all of the ESG-related shareholder proposals that went to a vote, approximately 57% were received by companies in the Financial Services industry. Of note, all of the ESG-related shareholder proposals received by companies in the Oil and Gas, Hospitality, and Technology industries went to a vote. On the other hand, all of the ESG-related shareholder proposals received by companies in the Consumer Products – Food Processing, Conglomerates, and Communications and Media industries were settled *(Figure 15B)*.

Figure 15B – For the Surveyed Companies which received one or more ESG-related shareholder proposals that went to a vote, the chart below illustrates both the industry of the company that received an ESG-related proposal and the categories of the proposals. Note: More than one category may be applicable for any given shareholder proposal.



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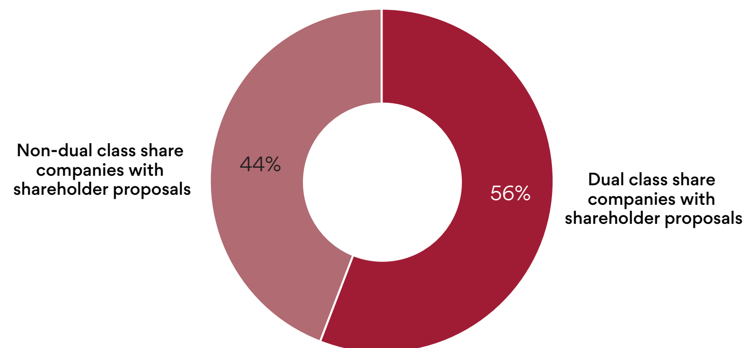
A Note on Dual Class Share Companies and ESG-Related Shareholder Proposals

A dual-class share company is a company with at least two types of share classes with different voting rights. This is typically where founders or a controlling family retain a small proportion of the total outstanding number of shares of the company, but retain significant control due to the voting power associated with such shares.

This Study found that almost one in five companies (approximately 17%) that received an ESG-related shareholder proposal that went to a vote has a dual-class share structure in place (*Figure 16A*). It is noteworthy that only one dual-class share company which received an ESG-related shareholder proposal, had the proposal withdrawn.

It appears that although it is generally exceedingly difficult to get majority approval of a shareholder proposal at a dual-class company, shareholders are still using the shareholder proposal mechanism to bring issues of concern to the forefront.

Figure 16A – For the Surveyed Companies that had one or more ESG-related shareholder proposals that were not withdrawn, the chart below illustrates the percentage of those Surveyed Companies that have a dual class share structure.



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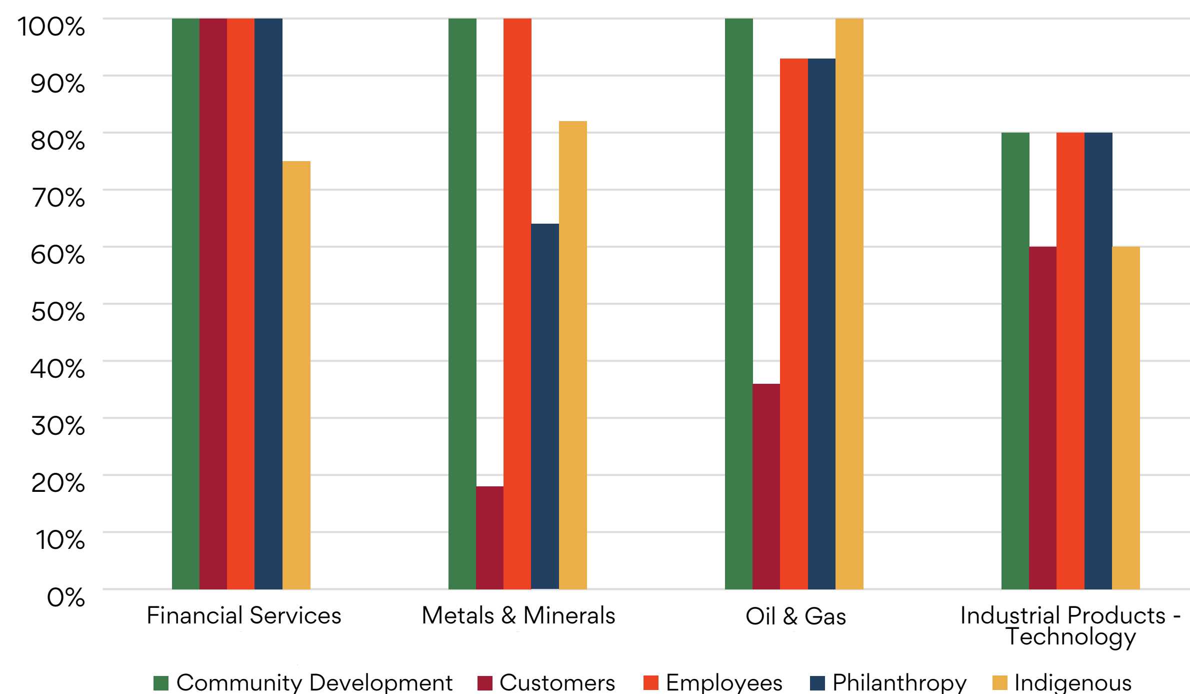
E. Social Issues

The 'S' category within ESG relates to a company's social and human capital and the way in which it interacts with its stakeholders.

Examples of a company's interactions with its stakeholders can include the treatment of its employees with respect to health, safety and labour practices, supply chain management and human rights policies, privacy and data security practices, and product quality and safety. Another important type of interaction between a company and its stakeholders includes the impact on, and relations with, the communities in which it carries on operations or business activities, and in particular a company's engagement with Indigenous peoples. 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 this Study - A Note about Equity, Diversity and Inclusion Disclosure*, EDI has been purposely excluded from this Study.

This Study found that 94% of Surveyed Companies highlight social issues beyond EDI in their public disclosure documents and over 80% of the Surveyed Companies in the Financial Services, Metals and Minerals, Oil and Gas, and Industrial Products – Technology industries disclose social-related information with respect to their employees, and community development and relations (which includes human rights) (Figure 17A). Over 60% of companies disclose information relating to Indigenous reconciliation and engagement. The extent to which companies highlight social issues beyond EDI is similar to the findings from our Prior Study.

Figure 17A – For the Surveyed Companies, the charts below illustrate the 'S' stakeholders or initiatives reported on for the four referenced industries.



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Equitable Pay

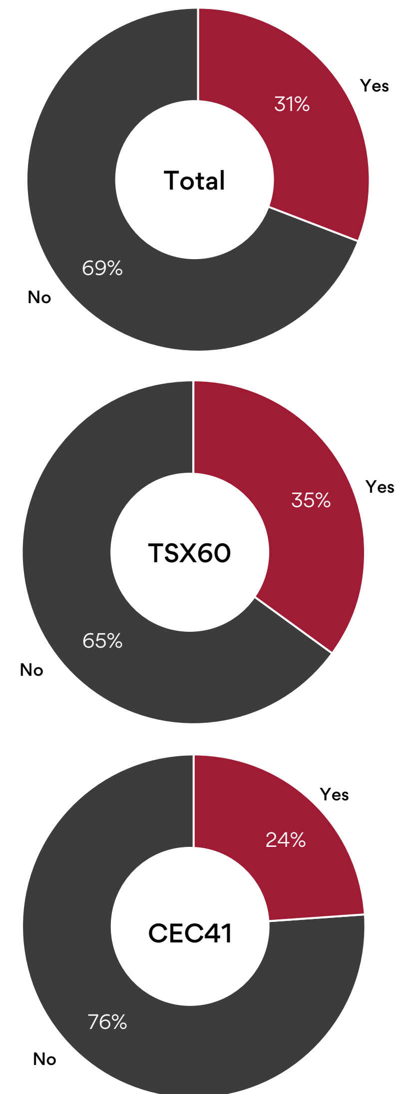
The Canadian legal landscape in relation to compensation has evolved significantly in recent years, at least partially in response to growing public awareness of the impact of systemic discrimination on women and other equity seeking groups. While most jurisdictions have long required "equal pay for equal work" by prohibiting an employer from paying employees differently on the basis of their sex, Ontario, Quebec and the federal sector now all have pay equity laws that mandate "equal pay for work of equal value." These laws require employers to proactively analyze their pay practices to identify and, if applicable, correct wage gaps for predominantly female job classes.

Certain jurisdictions also mandate forms of wage gap reporting to regulators, often referred to as "employment equity" or "pay transparency." This wage gap reporting generally involves reporting the ratio of compensation or elements of compensation (e.g., bonuses) earned by a given equity seeking group as compared to the broader workforce. For example, large employers in the federal sector must report on salary, bonus and overtime wage gaps for women, Indigenous peoples, persons with disabilities and members of visible minorities (defined in the legislation to refer to persons, other than Indigenous peoples, who are non-Caucasian in race or non-white in colour). These wage gaps are in turn published by Employment and Social Development Canada. Similarly, large employers in British Columbia will soon be required to prepare annual pay transparency reports in respect of differences among prescribed groups of individuals in relation to pay, including employees' self-identified gender.

The vast majority of corporations in Canada do not have a legal obligation to disclose and publicly report on wage gaps within their workplaces and none currently have a legal obligation to include this information in their Continuous Disclosure Documents under securities law; however, many have begun to voluntarily do so. In this Study, we found that approximately one-third of the Surveyed Companies have chosen to report on certain wage gaps with quantitative ratios, while the rate is slightly higher among TSX60 companies and lower among CEC41 companies (see Figures 18A).[23]

These percentages are significant given that wage gap ratios are an emerging type of ESG disclosure without a long track record. Furthermore, several other Surveyed Companies have signalled their intention to provide quantitative wage gap disclosure starting from next year.

Figure 18A – For the Surveyed Companies, the charts below illustrate that the percentage of companies that disclose wage gap ratios.



23. In this Study, wage gap information was considered to be disclosed only when companies provided actual figures and ratios, and we excluded those that stated only qualitative statements regarding equitable pay practices.

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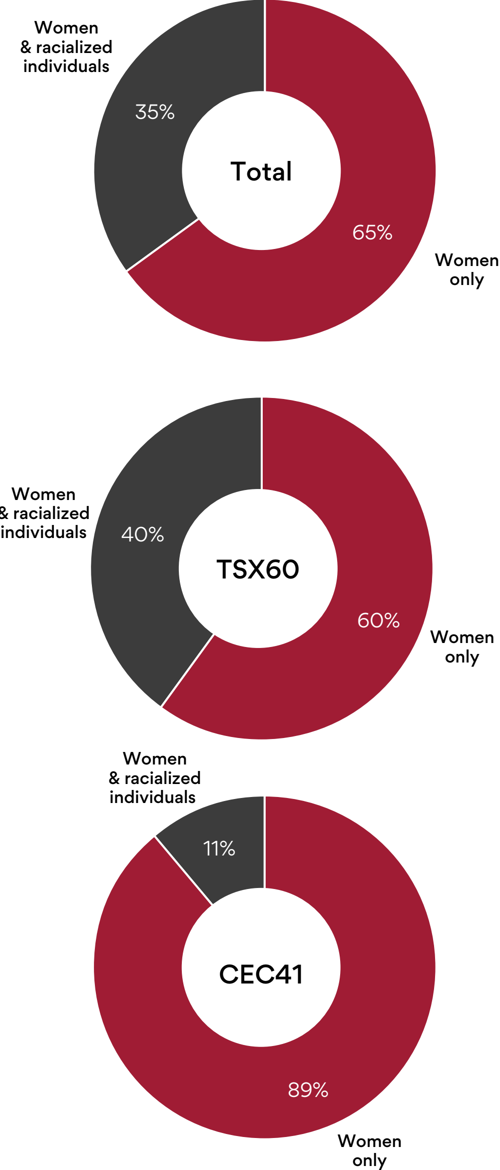
Notably, the ratio of companies that disclose wage gap data is highest in the merchandising and the Financial Services industries, at 50% and 42% respectively.

Of the Surveyed Companies that provide disclosures in respect of wage gaps, all disclose gender-based wage gap data in their reports. Of those same companies, 35% also disclose wage gap data in respect of employees who identify as members of a racial or visible minority(ies). One of the Surveyed Companies also disclosed wage gap data in respect of employees who identify as individuals with a disability(ies).

In addition to these three categories of wage gap disclosure, the scope of review included checking for wage gap disclosure concerning Indigenous people as well as any other specific races; however, none of the Surveyed Companies included such disclosures in their reports. While most of the Surveyed Companies that reported on wage gaps included their disclosure in ESG or Sustainability Reports, one company opted to instead include these disclosures in the Management Proxy Circular and the Annual Report.

Figure 18B – For the Surveyed Companies that have disclosed wage gap data, the charts below illustate the percentage that disclose gender and racial or visible wage gap.



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Forced and/or Child Labour Reporting

To implement Canada's international commitment to contribute to the fight against forced labour and child labour, the Canadian federal government is moving quickly in developing a holistic legislative framework to prevent forced and/or child labour in supply chains. Notably, Bill S-211, *An Act to enact Fighting Against Forced Labour and Child Labour in Supply Chains Act and to Amend the Tariff Act* received Royal Assent on May 11, 2023 and has come into force on January 1, 2024 as the *Fighting Against Forced Labour and Child Labour in Supply Chains Act* (FCLA). The FCLA requires that companies file an annual report identifying, among other things, areas of risk for forced labour or child labour in their supply chains, measures taken to remediate such risks and training provided to employees regarding forced labour and child labour.

Currently, most of the Surveyed Companies (67% of TSX60 and 49% of CEC41 companies) are only reporting on the policies or processes they have in relation to forced and/or child labour, generally stating zero tolerance in their supply chains (*Figure 19A*). Companies are not yet providing the level of disclosure that is required by the FCLA in 2024. For example, only 20% of TSX60 and 10% of CEC41 companies are reporting on the parts of their business or supply chains that carry a risk of forced and/or child labour. We are expecting a dramatic shift in reporting on these issues with the introduction of new reporting requirements in the remainder of 2024.

Additionally, in its March 2023 Federal Budget, the Canadian federal government announced a new commitment to introduce separate legislation by 2024 to "eradicate forced labour from Canadian supply chains." While the details are not extensive, the future legislation will likely go beyond reporting standards, and may introduce a form of mandatory "human rights due diligence."

The European Commission has gone beyond reporting requirements and has adopted a proposal for a Directive on Corporate Sustainability Due Diligence (CSDDD) which is working its way through the EU legislative process. If passed, the CSDDD would introduce and mandate a corporate due diligence duty to identify, prevent, mitigate and account for adverse impacts of companies' operations with respect to human rights and environmental impacts in their supply chains globally. The CSDDD is an extension of the EU's 'European Green Deal' which aims to incorporate sustainability into corporate governance. Some EU countries already mandate corporate human rights due diligence.

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For example, Norway's *Act relating to enterprises' transparency and work on fundamental human rights and decent working conditions (Transparency Act)* mandates that the duty to carry out due diligence extends to every party in the supply chain, including suppliers and subcontractors that are involved at any stage from raw materials to a finished product.[24] The CSDDD would level the playing field for EU members states and provide a harmonized legal framework.

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 2024 and beyond. Evidenced by what appears to be a dual track process consisting of the FCLA, a reporting statute, and potential legislation with mandatory human rights due diligence requirements, a significant level of legislative activity on this topic is currently underway and companies should remain mindful of the dynamic legislative situation.

Figure 19A – For the surveyed TSX60 and CEC41 companies, the chart below illustrates the percentage of such companies reporting or providing disclosure with respect to the matters noted below.

24. Available to download online: https://www.regjeringen.no/contentassets/c33c3faf340441faa7388331a735f9d9/transparency-act-english-translation.pdf

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Indigenous Reconciliation and Engagement

Currently, over 60% of Surveyed Companies disclose information relating specifically to Indigenous reconciliation and engagement.

Surveyed Companies operating in the Oil and Gas, Utilities - Gas/Electrical, and Metals and Minerals industries are more likely to have a plan or policy in relation to Indigenous reconciliation and engagement; the majority of these companies disclosed plans or policies (*Figure 20B*). This outcome is consistent with the reality that these companies operate in industries that are typically required to engage with Indigenous peoples as part of permitting and regulatory processes. Further, companies in extractive industries, such as Oil and Gas or Metals and Minerals, may also be legally obligated to disclose payments made to Indigenous peoples in Canada pursuant to the *Extractive Sector Transparency Measures Act* (or ESTMA).

Only a minority of Surveyed Companies within those industries that are not typically required by law to engage with Indigenous peoples (industrial products, transportation and environmental services, and merchandising) disclosed plans or policies in relation to Indigenous reconciliation and/or engagement.

An interesting exception is the approximately 75% of Surveyed Companies in Financial Services who disclosed plans or policies in relation to Indigenous reconciliation and/or engagement. This is almost certainly due to the role Financial Services companies play in supporting Indigenous economic development and Indigenous economic reconciliation. In particular, the increasing number of Indigenous government entities and businesses that require banking services to support growing economic participation. As we will note later, this is something we expect to increase in coming years.

Figure 20A – Of Surveyed Companies, the chart below illustrates the percentage that disclosed a formal policy or plan relating to Indigenous reconciliation and engagement.

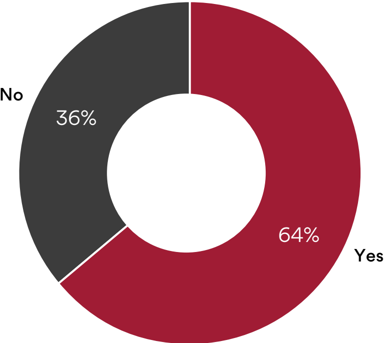
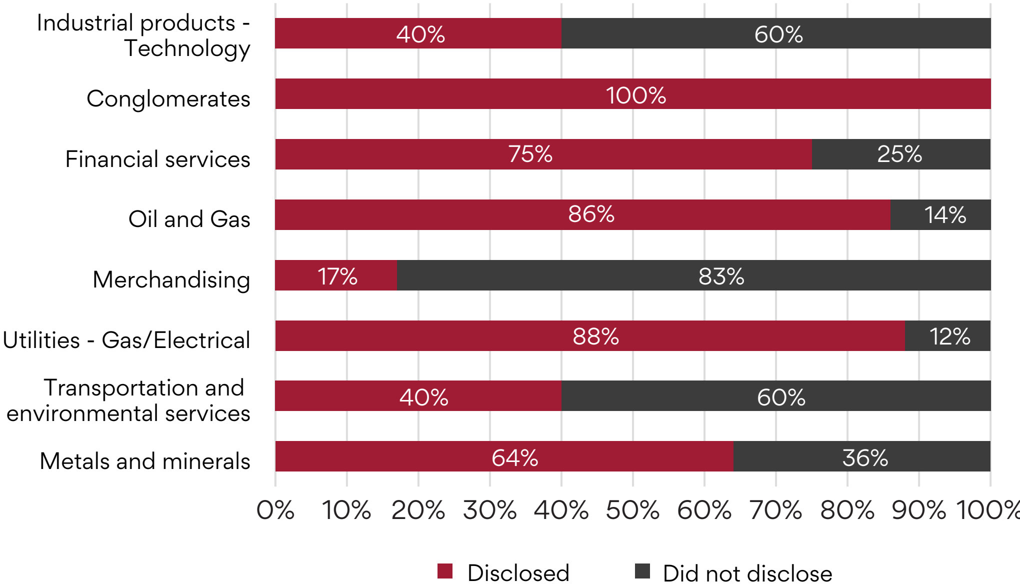


Figure 20B – For the Surveyed Companies, the chart below illustrates the percentage that disclosed a formal policy or plan relating to Indigenous reconciliation and/or Indigenous engagement within eight industries.



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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.

This Study considered whether companies that set some form of GHG emission targets in their Sustainability Reports, 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 the 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 in their Sustainability Reports, we found that nearly all of the Surveyed Companies included FLI disclaimers (i.e., 96% of TSX60 companies and 100% of CEC41 companies). This consistent approach in the market is striking considering that Sustainability Reports contain largely voluntary disclosures. The approach that has been adopted in almost all cases may be an implicit acknowledgement that Sustainability Reports could be seen as documents to which the civil liability regime for secondary market disclosure applies (and thus an attempt to benefit from the safe harbour provisions with respect to FLI disclaimers). However, despite the very consistent inclusion of FLI disclaimers, this Study did not find a universal approach adopted by issuers in this area.

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Identification of GHG targets as FLI

While many issuers specifically identified their GHG emissions targets as FLI, a number of companies did not. Some of the issuers that did not identify GHG emissions 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 GHG emissions matters as FLI appear to be relying on the more general (or boilerplate) 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 emissions targets as FLI, examples of the tailored language used in 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 scope 1 and 2 GHG emissions by *[specified percentage]* by *[date]* and long-term ambition to achieve net zero GHG emissions from operations by *[date]*; our estimate of scope 3 emissions...”.
- “This forward-looking information ... may include ... targets described in our 2022-2024 Global Strategic Action ... reducing our greenhouse gas (GHG) emissions in accordance with established scope 1, 2 and 3 reduction targets”.

Statement of material factors and assumptions

The Surveyed Companies were relatively evenly split on the practice of identifying specific factors, assumptions and risks related to the FLI in connection with GHG emissions targets or ESG disclosures generally. We found that among the Surveyed Companies, 56% of TSX60 companies and 50% of CEC41 companies referred to specific factors, assumptions, and risks in relation to their FLI. Nonetheless, 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 general (or boilerplate) statements identifying factors, assumptions, and risks related to FLI 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 voluntarily in stand alone Sustainability Reports. We also expect to see further attention paid to the quality of FLI disclaimers, including a more tailored approach to dealing with ESG topics.

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Figure 21A – Among the Surveyed Companies that used an FLI disclaimer, the charts below illustrate whether the FLI disclaimer referred to specific, qualitative ESG-related targets or quotas (such as emissions reduction targets or specified ratios concerning diversity, equity, and inclusion issues).

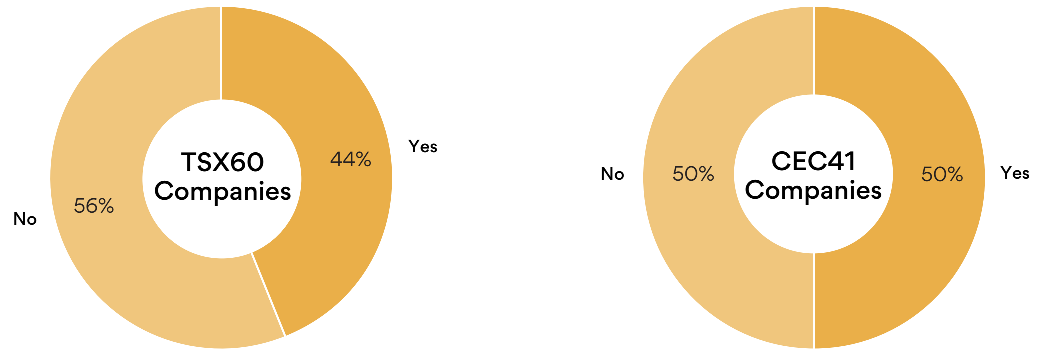
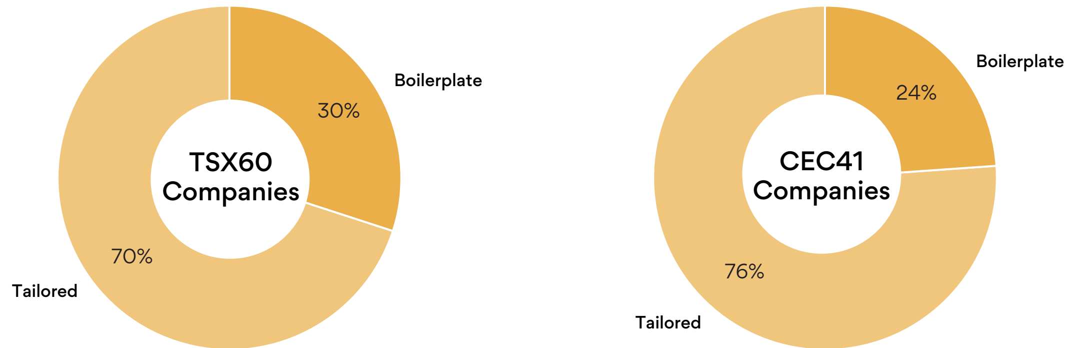


Figure 22B – Among the Surveyed Companies that used an FLI disclaimer, the charts below illustrate whether the FLI disclaimer was boilerplate or tailored. We considered FLI disclaimers to be tailored if they respond directly to particular disclosures and strategies discussed in the Sustainability Report (which may or may not include specific reference to quantitative targets). We considered FLI disclaimers to be boilerplate if they do not respond to particular disclosures in the Sustainability Report itself, but speak more broadly to corporate strategy (which may include general reference to ESG topics).



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Looking Ahead to 2024

Despite pushback in 2023 against the concept of "ESG" in some jurisdictions, we expect to see a continued focus on these topics from investors, regulators and other stakeholders in the coming year.

In some cases, issuers will face countervailing demands from their stakeholders and will need to consider how to address diverging concerns. A focus on risk management will be central to how boards navigate these demands in light of their fiduciary obligations and duty to act in the best interests of the corporation. Companies and their boards will be expected to continue to consider an evolving breadth of ESG-related matters (whether they choose to use the label "ESG" or not), including new and evolving legal and/or mandatory reporting requirements, and assess the materiality of such matters.

We expect that regulators and standard setters will continue to become more important in shaping ESG disclosure. We already see that ESG-related regulations are being promulgated worldwide, such as the European Corporate Sustainability Reporting Directive (CRSD), which came into force in early 2023. In Canada, we expect that a revised draft of the Proposed NI 51-107 "Disclosure of Climate-related Matters" will be published soon after the US Securities and Exchange Commission finalizes its own climate disclosure rule (which is expected in 2024). The CRSD is generally more comprehensive than either of the proposed rules in North America, for example by requiring disclosure concerning Scope 3 emissions and its use of a double materiality standard, and, at this time, it is not yet known if there will be any substituted compliance frameworks (i.e., compliance with an alternative framework being deemed compliance with a mandated framework) to ease reporting for multi-jurisdictional issuers.

Emerging from the United Nations Climate Change Conference (COP28), which took place at the end of 2023, discussions centered on the urgent need for a rapid decarbonization of the global energy system (and economy more generally) to meet the 1.5 target. Led by the COP 28 Presidency, the Global Renewables and Energy Efficiency Pledge gained support from 130 nations, committing to triple renewable energy capacity and double energy efficiency improvements by 2030. Additionally, sector-specific initiatives, such as the Oil and Gas Decarbonization Charter which aims to ensure signatory companies reach net-zero Scope 1 and Scope 2 emissions by 2050 were launched.

With respect to the use of ESG reporting frameworks, we anticipate that we will see a continued consolidation around the use of ISSB-supported standards (e.g., SASB, IFRS S1 and IFRS S2). This move towards ISSB-supported standards may be particularly pronounced in Canada where the Canadian Sustainability Standards Board (CSSB) was established in June 2023 by Financial Reporting and Assurance Standards Canada. CSSB's mandate is to work with ISSB to support the uptake of ISSB standards in Canada and to facilitate interoperability between ISSB standards and any forthcoming CSSB standards.

The creation of the CSSB may also support progress towards the adoption of mandatory climate-related disclosure in Canada. The CSA has indicated it intends to engage with the CSSB as it continues to develop Canada's climate-related mandatory disclosure rules.[25] It is highly likely that these future disclosure rules will rely on the work of the CSSB.

25. Alberta Securities Commission, "2023 Corporate Finance Disclosure Report" at p. 24. Online: **https://www.asc.ca/-/media/ASC-Documents-part-1/Publications/2023/Reports/2023-Corporate-Finance-Disclosure-Report.ashx**

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A consolidation around ISSB-supported standards will likely be accompanied by a drop-off in reliance on the TCFD Recommendations. This is a likely result given the disbanding of the TCFD and the incorporation of the TCFD Recommendations into the ISSB-supported standards.

Moving forward, we also anticipate that biodiversity and nature-related financial disclosures will become more prominent in ESG disclosures. This Study found that 30% of Surveyed Companies disclosed either results or an intention to include results in future disclosures related to biodiversity-related initiatives. Of these companies nearly 50% indicated an intention to incorporate the recommendations of the TNFD Recommendations in future ESG disclosure, while approximately one-third indicated an intention to pursue voluntary biodiversity credits. Given the TNFD Recommendations were only released in September 2023, we anticipate that we will begin to see companies take preliminary steps towards incorporating this standard into their ESG disclosure in 2024.

In 2023, concerns around the integrity of the voluntary carbon market broke into the public discourse following the publication of strongly worded criticisms of the markets in multiple publications in January. There have been a number of developments throughout the year in response, including: the release of The Integrity Council for the Voluntary Carbon Market's *Core Carbon Principles Assessment Framework* in March 2023; the release of the Voluntary Carbon Markets Integrity Initiative's *Claims Code* in June 2023; and the launch of various integrity initiatives at COP28 in December 2023. In 2024, we anticipate the pace of these various integrity initiatives will continue to gather momentum and the implementation process will begin. It remains to be seen whether these integrity initiatives will have the desired effect of reassuring observers that the voluntary carbon market rests on firm foundations.

Corporate buyers of voluntary carbon offsets should be aware that the use of carbon offsets and the quality of the carbon offsets purchased may affect the market's perception of their climate-related commitments. We expect to see more corporations disclosing detailed guidelines in respect of how carbon offsets will contribute to their climate goals and the types of carbon offsets that they are willing to purchase.

In Canada, we expect the risk to corporations of greenwashing allegations to be impacted by proposed amendments to Canada's *Competition Act* which were introduced to the House of Commons on November 30, 2023 as part of Bill C-59. Bill C-59 introduces an amendment that, if passed as proposed, would create liability under the *Competition Act* for any representation related to "a product's benefits for protecting the environment or mitigating the environmental and ecological effects of climate change that is not based on an adequate and proper test." Though Bill C-59 is limited to product-related claims, we expect the enhanced attention to potential greenwashing claims, as well as other trends, to drive greater focus on the integrity of corporate ESG disclosures in 2024.

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, which is a trend we have already seen developing. Concurrently, we expect that companies will increasingly consider how to establish and develop internal controls with respect to such data and they will need to continue to develop strong internal reporting processes to ensure that they report accurately and consistently for different purposes. Since audit committees are starting to have more of a role in ESG matters, this may signal a shift to the finance function within organizations being responsible for internal controls for ESG reporting.

Artificial intelligence (AI) is also likely to become a significant topic in ESG. First, from a stakeholder's perspective, AI may make it easier for various companies' ESG disclosures to be analyzed and compared. Second, companies will have to assess their use of AI and the impacts of such use on its stakeholders (e.g., privacy risks concerning the use of third-party AI platforms; the impacts of trained algorithmic biases, known or unknown, on decision making; or the environmental impacts of the power use of large-scale AI systems).

Other ESG-related topics may also emerge or receive heightened focus in 2024 either due to investor attention or new legal requirements. For instance, the FCLA in Canada and the SEC's rules on Cybersecurity Risk Management, Strategy,

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Governance, and Incident Disclosure each created new, ESG-related disclosure requirements for North American companies, focusing stakeholder attention and requiring boards to ensure that they have the right expertise to respond. While some of these changes are foreseeable, boards must also plan to adapt as risks present themselves and require work by companies in order to respond.

We expect to continue to see the intersection of business and human rights issues. This is based on the recent developments related to regulatory reforms being implemented and considered both domestically and internationally in relation to potential legislation mandating some level of human rights-related due diligence. The legislation on this topic continues to evolve and companies should remain mindful of the continuing developments.

We anticipate continued development of Indigenous reconciliation plans by companies across all industries. In its Call to Action #92, The Truth and Reconciliation Commission of Canada calls upon the corporate sector in Canada to adopt the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) as a reconciliation framework and to apply its principles, norms, and standards to corporate policy and core operational activities involving Indigenous peoples and their lands and resources.[26] In recent years, we have seen British Columbia and the federal government implement UNDRIP through new legislation.[27] In line with these efforts to implement UNDRIP, we expect more companies across all industries will undertake efforts to adopt UNDRIP principles and standards through the creation of formal policies or plans, such as Reconciliation Action Plans.

We also expect an increased focus on policies relating to Indigenous economic reconciliation, and in particular Indigenous equity participation, especially by companies in the Oil and Gas, Utilities, and Metals and Minerals sectors. In its 2023 Fall Economic Statement, the Canadian Federal government committed to include in its 2024 budget an Indigenous Loan Guarantee Program.[28] As this loan guarantee program is implemented, we anticipate more companies in the Oil and Gas, Utilities, and Metals and Minerals industries will commit to policies around Indigenous equity participation. Securing capital has traditionally been a barrier for Indigenous equity participation in major natural resource projects. We also anticipate that we will see even more companies in the Financial Services sector disclose plans and policies in relation to Indigenous reconciliation and/or engagement.

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

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26. Available to download online: https://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/indigenous-people/aboriginal-peoples-documents/calls_to_action_english2.pdf
27. Available to download online: https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/19044; https://laws-lois.justice.gc.ca/PDF/U-2.2.pdf
28. Available to download online: https://www.budget.canada.ca/fes-eea/2023/report-rapport/FES-EEA-2023-en.pdf at page 62.

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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.

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Glossary

CEC41: A list of 41 TSX-listed companies as of May 24, 2023, selected by Climate Engagement Canada that are strategically engaged for the alignment of expectations on climate risk governance, disclosure, and the transition to a low-carbon economy in Canada.

Continuous Disclosure Documents: Annual Information Forms (AIFs), Proxy Circulars (Circulars), and annual and interim Financial Statements and related Management Discussion & Analysis (MD&A). As described in the "About this Study" section.

CSA: Canadian Securities Administrators, an umbrella organization of Canada's provincial and territorial securities regulators whose objective is to improve, coordinate and harmonize regulation of the Canadian capital markets.

ESG: Environmental, Social and Corporate Governance.

FLI: Forward Looking Information, which encompasses disclosure about possible events, conditions or financial performance that is based on assumptions about future economic conditions and courses of action.

GHG: Greenhouse gasses (e.g. carbon dioxide, methane, nitrous oxide).

GRI: Global Reporting Initiative, which is an independent, international organization that helps businesses and other organizations take responsibility for their impacts, by providing them with the global common language to communicate those impacts. GRI provides the most widely used standards for sustainability reporting, i.e. the GRI Standards.

Prior Study: The Fasken *2023 ESG Disclosure Study - Benchmark survey of ESG-related disclosure and practices by Canadian public companies*, as published in January 2023, and which can be accessed **here**.

SASB: Sustainability Accounting Standards Board. An ESG guidance framework, for 77 industries, that sets standards for the disclosure of financially material ESG information by companies to their investors.

Surveyed Companies: Consists of the 81 public companies listed on the TSX that are covered in this Study, as described in the "About this Study" section, as evaluated on May 24, 2023.

TCFD: Task Force on Climate-related Financial Disclosures, as established by the Financial Stability Board to develop recommendations for more effective climate-related disclosures. The Taskforce on Climate-related Financial Disclosures was disbanded concurrently with the completion of its mandate on October 12, 2023. The TCFD Recommendations are now monitored by the ISSB (as they now form part of the IFRS S2 standard referenced below). For further information please see the "ESG Disclosure" section.

TSX60: A stock market index of the 60 largest companies listed on the Toronto Stock Exchange as evaluated on May 24, 2023.

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The authors wish to acknowledge the tireless contribution of our Articling Students Barbara Clark, Shazad Omarali, and Isabelle Savoie.
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