Retirement Age and Term Policies – A New Focus

Special Survey 2011

KORN/FERRY INTERNATIONAL

In Partnership with Patrick O'Callaghan and Associates

Special Report: *Retirement Age and Term Policies - A New Focus*

INTRODUCTION

The issues of retirement age and term limit policies on boards have received increased attention in recent years. We have been analyzing governance disclosure in proxy circulars for Canada's top 300 corporations since 1993[1]. There was little disclosure regarding these policies in the nineties but by 2005, 24% of the corporations disclosed information regarding retirement ages or term limits. In 2010, 52% of the corporations provided disclosure on one or both of these issues and we expect to see this increase dramatically over the next few years.

Canadian boards are getting older. In 1997, 8% of directors were 71 or older. In 2010, 15% of directors fell into this category. The 61 to 70 category has also increased, going from 39% in 1997 to 45% in 2010. In all other age categories, the numbers have decreased since 1997.

An increased focus on retirement ages and term policies is not a surprise to us. It is consistent with the increased emphasis boards have placed on recruiting, attracting, selecting and retaining directors who have the skills, experience and background to provide effective oversight and add value to the corporation. Boards are increasingly engaged in strategy, risk assessment and management succession planning. Ensuring the corporation has attractive compensation policies and board operating policies including a position on retirement and terms is ever more important in attracting and retaining the very best directors in a highly competitive market. We interviewed 154 Canadian directors and reviewed our proxy circular data of Canada's largest 300 corporations for 2010 in an effort to provide some perspectives on the use of policies to retire directors from the board when they have attained a specific age and/or have served a specific term length. Nearly all of the interviewed directors emphasized the need for active, engaged and experienced directors, but most argued this was not necessarily a function of having reached a particular age or having served on the board for a specific length of time.

[1] Data in this Report derived from a survey of 154 directors, and *Corporate Board Governance and Director Compensation in Canada: A Review of 2011*, published by Korn/Ferry International in Partnership with Patrick O'Callaghan and Associates, as well as previous editions of this publication

Current Practice - Retirement Age

Director Retirement Ages

	2010	2009	2008	2007	2006	2005
Retirement from the board at age 65	<1%	0	0	0	0	0
Retirement from the board at age 70	12%	14%	11%	13%	9%	9%
Retirement from the board at age 71	<1%	1%	<1%	<1%	<1%	<1%
Retirement from the board at age 72	6%	5%	5%	3%	3%	3%
Retirement from the board at age 73	1%	0	0	0	0	0
Retirement from the board at age 75	4%	5%	5%	4%	3%	3%
Formal Policy, age not specified	<1%	<1%	<1%	1%	1%	1%
Specify there is no director retirement age	23%	18%	14%	14%	5%	5%
Combined Retirement age/term limit	1%	0	<1%	<1%	3%	3%
No disclosure	52%	56%	64%	63%	76%	76%

What they emphasized was the need for board renewal. A retirement age and/or term limit should be considered as one of a number of methods to refresh and add new experience to the board. The strongest theme that emerged is that there is not a single perfect age or policy that applies to all corporations. Directors emphasized that the history, culture and complexity of the company and the specific strategic challenges confronting the corporation are key considerations in implementing such policies. Board chair leadership, director performance, and the current age diversity of the board are equally important.

In 2010, 25% of Canada's top 300 boards had a retirement age for directors and 23% had no retirement age (the remaining 52% did not disclose this information). For the actual practices of the corporations that disclosed their retirement age policy for 2010, please see the appendix at the end of this report.

Retirement Ages

While the most common retirement age is 70, many of the interviewed directors indicated that their boards were examining the possibility of extending their retirement age. The most frequently mentioned target ages were 72 and 75. Directors indicated that an extension of the retirement age was important if they were to be competitive in recruiting CEOs in their early to mid sixties who were preparing to retire or who had just retired.

Directors who supported the use of a retirement age made the following arguments:

- Boards need to have a mechanism in place that ensures board renewal. A retirement age provides a clear expectation for directors and assists the board in planning for transition in an explicit manner. They argued that it is extremely difficult to ask a director to resign, and having an explicit policy removes the awkwardness around transition.
- Retirement ages do not have to be absolute and many corporations provide for annual extensions or exceptions beyond the retirement ages in specific cases.
- Without a retirement age, there is too much dependence on the board chair's ability to transition directors off theboard at an appropriate time. While some board chairs are skilled in this area, they are seen to be more the exception than the rule. Therefore a retirement age removes this pressure from the board chair and provides a clear transition point. It also provides for consistent practice when board leadership changes.
- Directors acknowledged that individual director evaluation has become more prevalent and ideally might replace the need for retirement ages at some point. But most felt that director evaluation processes are not yet refined or mature enough to depend on them for board renewal versus a retirement age.
- A fixed retirement age makes it easier for the board to plan its composition over a longer period of time. Mandatory retirement age is a great tool to drive renewal of the board. No one is irreplaceable, and with a policy in place you can plan for orderly and adequate succession on the board.
- Directors mentioned that the real performance problems such as lack of preparation or attendance are relatively straightforward to address. The most difficult situations are where a director is well liked and has made a contribution historically, but whose performance has diminished or whose performance is just average; whose skills and background no longer fit the board's changing composition needs; or who has become too close to management. Participants felt that while a strong chair can deal with an extreme performance issue, it is much more difficult to ask a well-liked director to leave for a less obvious reason. Having a retirement age provides the chair and the director with a way to deal with the situation gracefully.

No Retirement Age

Directors who supported a no retirement age polic made the following arguments:

- It doesn't make sense to lose experienced directors who are adding value to the board because of an arbitrary retirement age.
- Having no retirement age helps to attract a broader range of candidates, especially recently retired CEOs because of the potential to have a longer tenure on the board. Potential directors find a no retirement age policy attractive, and a factor when comparing board opportunities. Having a fixed retirement age does not reflect the changing demographic of a healthy, engaged baby boomer generation moving into their mid sixties.

- A board with a strong and effective individual director evaluation process does not need a retirement age because directors are retired based on their performance, not on their age. Action can be taken in a timely fashion and there is no need to carry a director beyond their ability to make a significant contribution to the board.

- Boards are doing a much more comprehensive review of the skills, experience and background that are required for a board. Undertaking this process leads directors and/or board chairs to recognize it may be time for an individual director to move off the board.

- The role of an effective board chair is to coach directors and advise them when it is time for them to retire. Board chairs now recognize this is one of their critical roles and are becoming more skilled in undertaking this function.

As disclosure about retirement practices on boards has increased, some boards have gone beyond just stating what their practices are, and are providing narrative to help shareholders understand their position on this issue. In their 2007 information circular, TELUS Corporation provided a very comprehensive discussion for their decision to end their use of retirement age for directors:

> *The Board removed the requirement that directors retire at the age of 70. This decision was based on an extensive review led by the Corporate Governance Committee. The Corporate Governance Committee examined the purpose for the requirement, the correlation between a director's age and effectiveness, and the need for regular Board rejuvenation. It considered the profile and age of the current directors and their years of service, the Board renewal that has taken place organically, the robust annual evaluation of directors already in place, the need to keep crucial talent on the Board beyond age 70, the expectation of increased competition for qualified directors among large public companies, and the fact that five out of the 12 directors would reach age 70 before the 2010 annual general meeting including relatively new directors who would have served on the Board for well under ten years at that time. Maintaining a mandatory retirement age of 70 would cause the Company to lose qualified directors who would have served on the Board for a relatively short tenure. The Corporate Governance Committee considered alternatives such as raising the mandatory retirement age to 72 or another age, setting maximum terms of service and creating an explicit discretion to waive the requirement on an exception basis.*
>
> *Ultimately, the Corporate Governance Committee concluded that, with a vigorous evaluation process in place, mandatory retirement is not the optimal means of ensuring Board renewal and age is not the optimal means of ensuring director effectiveness, and that with the present tenure and profile of the Board, maintaining a mandatory retirement age at 70 or another age is not in the best interests of the Company. This assessment was supported by data on market trends which indicate that more companies are waiving retirement age in order to retain board talent, shifting towards a reliance on competence assessment rather than age, and increasing the average age of directors to overcome increasing difficulty in recruiting current CEOs from other businesses to serve on boards.*

Current Practice - Term Limits

Few boards disclose their practices on term limits. We believe that this is because there is a very low percentage of boards with term limits. In 2010, only 14% of Canada's top 300 corporations addressed the issue in their annual circulars, with 3% having a term limit and 11% stating they did not. Few of the corporate directors we surveyed for this special report had term limits although they were all familiar with them with respect to not-for- profit boards on which they were members. They indicated that most of the not-for-profit boards had terms rather than retirement ages. This is often because directors are prepared to provide their advice and counsel to not-for-profits for a limited period of time and generally without remuneration.

The major Canadian banks often lead the way on various corporate governance practices and over the past few years a number of the banks have introduced term limits in addition to their retirement age policy. We expect that those banks without term limits will likely introduce them within the next few years.

Term limits are often introduced in combination with a retirement age policy where a director leaves the board when reaching the age or the term limit, whichever comes first. Essentially the advantage of term limits versus retirement age applies when a director is appointed at a relatively young age. For examples of actual policies, see the appendix at the end of this special report.

The advantages and disadvantages for term limits are essentially identical to those for retirement age. On the up-side, term limits provide ongoing board renewal and on the down-side, they can cause the board to lose a valued director prematurely.

Retirement Age and Terms - Future Considerations

As the focus on board effectiveness continues to grow, boards are concentrating on ensuring they have the board composition policies and procedures that meet the needs of the corporation and are consistent with its strategic objectives. Our survey participants were split on the role that retirement age and term limits play in this process. Some feel retirement age and term policies are an essential way to ensure that renewal happens and to focus the board on engaging in the composition planning and nomination process. Others feel they are a hindrance to optimal board composition in that they remove valuable, contributing directors at an arbitrary date. Regardless of the stance, in most cases the reasoning is tied to board composition needs and leadership far more than to a belief that after reaching a certain age or tenure, an individual is no longer a capable director.

With this dichotomy in practices and opinions, what should boards be doing? The most intuitive answer may be that with strong individual director assessment coupled with an experienced and effective board chair, retirement and term limits may not be necessary. However, many directors we interviewed indicated that while individual director evaluation has come a long way in recent years, few boards truly have a robust enough evaluation process coupled with a board chair who has the experience and inclination to deal with the more subtle and awkward director performance issues.

There is clearly no single right answer that applies to all boards. Reaching a decision may involve some uncomfortable discussion. However, it is a discussion that is necessary in order to get to a decision that fits the board's needs. Some of the questions a board might wish to ask itself include:

- Does our board regularly undertake a careful review of its current and future composition needs and adjust board succession and recruitment plans objectively? Is board composition planning flexible enough to react to changes in strategy and director performance?
- Does the presence or lack of a retirement or term limit affect our ability to attract new directors? Does it send the appropriate signal to investors regarding our ability to manage director performance and board succession planning?
- Is our individual director assessment program, including its follow-up component, truly robust enough to identify and address problems with director performance and contribution? Is our board culture such that directors participate in this assessment without reservation and are prepared to support the results?
- Does our board chair have the experience, the will and the support of the board to handle the most obvious performance problems, and especially the more subtle and difficult decisions regarding director performance?
- Would we ask a well-liked director who doesn't want to leave the board to do so if there were a valid reason, even if there is no extreme performance problem? Do personal relationships and respect for a director preclude making the best decision with regard to board composition needs?
- How do we value and balance regular rotation of fresh perspectives with long term experience and institutional knowledge on the board?

Appendix: Director Retirement and Term Limit Policies Disclosed in Proxy Circular Data for Fiscal 2010[2]

Company	Retirement	Term Limit	No Retirement Age	No Term Limit
ACE Aviation Holdings Inc.	75*			
Aecon Group Inc.			X	X
Ag Growth International Inc.	70			
Agnico-Eagle Mines Limited			X	
Agrium Inc.	72			
Air Canada	75			
AltaGas Ltd.	75			
Alamos Gold Inc.			X	
ARC Energy Trust	70			
Astral Media Inc.			X	
ATCO Ltd.	70			
Aurizon Mines Ltd.			X	
Bank of Montreal	70	15 years for new directors (effective Jan 1/2010) and 20 years for current directors and chair		
Bank of Nova Scotia	70	Scotiabank implemented new term limits in December 2010 (to become effective April 2011). Existing directors will retire at the earlier of 10 years from April 1, 2011 or age 70, provided that if an existing director has not served a 10 year term at the time of achieving age 70, their term will be extended for additional years in order to complete a minimum 10 year term. For new directors, retirement will be the earlier of age 70 or 15 years, provided that if a director has not served a 10 year term at the time of achieving age 70, their term will be extended for additional years in order to complete a minimum 10 year term.		
Barrick Gold Corporation	72			
Baytex Energy Corp.			X	
BCE Inc.		10 years, in certain circumstances, the 10 year term limit can be extended	X	
Bell Aliant Regional Communications Income Fund			X	
Boardwalk Real Estate Investment Trust		9 years, may be extended under certain circumstances		

[2] Derived from *Corporate Board Governance and Director Compensation in Canada: A Review of 2011*, published by Korn/Ferry International in Partnership with Patrick O'Callaghan and Associates. Does not include those corporations that did not disclose their director retirement and/or term limit policies.

* Board states that it can make exemptions to the retirement age policy.

Appendix: Director Retirement and Term Limit Policies Disclosed in Proxy Circular Data for Fiscal 2010[2] (Continued)

Company	Retirement	Term Limit	No Retirement Age	No Term Limit
Bombardier Inc.	72			
BPO Properties Ltd.			X	X
Brookfield Asset Management Inc.			X	
Brookfield Properties Corporation			X	
Calfrac Well Services Ltd.			X	
Calloway Real Estate Investment Trust			X	
Cameco Corporation	72			X
Canada Bread Company, Limited				X
Canadian Apartment Properties Real Estate Investment Trust			X	
Canadian Imperial Bank of Commerce		15 years, but the Corporate Governance Committee has the power to determine that it is in the best interests of CIBC to recommend for re-election a director who has served the maximum period.	X	
Canadian National Railway Company	75			X
Canadian Natural Resources Limited	75			X
Canadian Oil Sands Limited	72			
Canadian Pacific Railway Limited	72			
Canadian Real Estate Investment Trust			X	
Canadian Utilities Limited	70			
Canadian Western Bank	75			
Canfor Corporation			X	
Catalyst Paper Corporation	70			
CCL Industries Inc.			X	
Centerra Gold Inc.	72			

[2] Derived from *Corporate Board Governance and Director Compensation in Canada: A Review of 2011*, published by Korn/Ferry International in Partnership with Patrick O'Callaghan and Associates. Does not include those corporations that did not disclose their director retirement and/or term limit policies.

* Board states that it can make exemptions to the retirement age policy.

Appendix: Director Retirement and Term Limit Policies Disclosed in Proxy Circular Data for Fiscal 2010[2] (Continued)

Company	Retirement	Term Limit	No Retirement Age	No Term Limit
CGI Group Inc.			X	X
Chartwell Seniors Housing Real Estate Investment Trust			X	
Cineplex Galaxy Income Fund			X	
CML Healthcare Income Fund			X	
Cogeco Cable Inc.	72			
COGECO Inc.	72			
Cominar Real Estate Investment Trust			X	
Corus Entertainment Inc.			X	
Crescent Point Energy Corp.	75			
Davis + Henderson Income Fund			X	
Detour Gold Corporation			X	X
Dollarama Inc.			X	
DundeeWealth Inc.				X
Eldorado Gold Corporation	73			
Emera Inc.	70			
Empire Company Limited	70			
Enbridge Inc.	70			
EnCana Corporation	71			
Enerplus Resources Fund	72			X
Ensign Energy Services Inc.	73*			
Equinox Minerals Limited			X	
Finning International Inc.	70*			
First Capital Realty Inc.			X	X
FirstService Corporation			X	
Fortis Inc.	70	12 years, or age 70, whichever comes first		
Forzani Group Ltd. (The)	72			
Franco-Nevada Corporation	72			X
Freehold Royalties Ltd.				X

2 Derived from *Corporate Board Governance and Director Compensation in Canada: A Review of 2011*, published by Korn/Ferry International in Partnership with Patrick O'Callaghan and Associates. Does not include those corporations that did not disclose their director retirement and/or term limit policies.

3 Unless the member is a lineal descendent of John William Sobey

4 Retirement age is increasing to 73 in 2011 and a director may be asked to remain on the board for an additional two years if the Board unanimously approves the extension; however, that director would not be eligible to serve as Chair of the Board or Chair of any of the Board's four standing committees.

* Board states that it can make exemptions to the retirement age policy.

Appendix: Director Retirement and Term Limit Policies Disclosed in Proxy Circular Data for Fiscal 2010[2] (Continued)

Company	Retirement	Term Limit	No Retirement Age	No Term Limit
Gammon Gold Inc.			X	
Gildan Activewear Inc.	72			
Goldcorp Inc.			X	
Groupe Aeroplan Inc.	75*			
H&R Real Estate Investment Trust	75			
Harry Winston Diamond Corporation			X	
Home Capital Group Inc.				X
HudBay Minerals Inc.	70			
Husky Energy Inc.			X	
Iamgold Corporation			X	
IESI-BFC Ltd.			X	
Imperial Oil Limited	70			
Industrial Alliance Insurance and Financial Services Inc.	70			
Inmet Mining Corporation			X	X
InnVest Real Estate Investment Trust			X	
Intact Financial Corporation	70			
Inter Pipeline Fund			X	
Ivanhoe Mines Ltd.			X	
Keyera Facilities Income Fund			X	
Kinross Gold Corporation	70			
Laurentian Bank of Canada			X	
Linamar Corporation	70*			

[2] Derived from *Corporate Board Governance and Director Compensation in Canada: A Review of 2011*, published by Korn/Ferry International in Partnership with Patrick O'Callaghan and Associates. Does not include those corporations that did not disclose their director retirement and/or term limit policies.

* Board states that it can make exemptions to the retirement age policy.

Appendix: Director Retirement and Term Limit Policies Disclosed in Proxy Circular Data for Fiscal 2010[2] (Continued)

Company	Retirement	Term Limit	No Retirement Age	No Term Limit
MacDonald, Dettwiler and Associates Ltd.			X	
Magna International Inc.			X	X
Major Drilling Group International Inc.	70			
Manitoba Telecom Services Inc.	72			
Manulife Financial Corporation	72			
Maple Leaf Foods Inc.				X
Methanex Corporation			X	X
Metro Inc.	70			
NAL Energy Corporation	72			
National Bank of Canada		15 years, exceptional circumstances may allow for a director to be reelected beyond the term limit		
New Gold Inc.			X	X
Nexen Inc.	75			X
Nordion Inc.	70*	15 years		
Northgate Minerals Corporation			X	
North West Company Fund	70			
Onex Corporation	72			
Pacific Rubiales Energy Corp.			X[5]	X
Parkland Income Fund	70*			
Pason Systems Inc.			X	
Pembina Pipeline Corporation	70			X
Pengrowth Energy Trust				
Penn West Energy Trust	65[6]			
Peyto Energy Trust	75			
Potash Corporation of Saskatchewan Inc.	70			

[2] Derived from *Corporate Board Governance and Director Compensation in Canada: A Review of 2011*, published by Korn/Ferry International in Partnership with Patrick O'Callaghan and Associates. Does not include those corporations that did not disclose their director retirement and/or term limit policies.

[5] There is no set retirement age for directors although directors are expected, but not required, to retire at the age of 80. Reviewed on a case-by-case basis.

[6] At this age directors offer their resignation and annually thereafter.

* Board states that it can make exemptions to the retirement age policy.

Appendix: Director Retirement and Term Limit Policies Disclosed in Proxy Circular Data for Fiscal 2010[2] (Continued)

Company	Retirement	Term Limit	No Retirement Age	No Term Limit
Precision Drilling Corporation			X	
Primaris Retail Real Estate Investment Trust			X	X
Progress Energy Resources Corp.	70			
Provident Energy Trust			X	X
Rogers Communications Inc.			X	
RONA Inc.	70			
Royal Bank of Canada	70*			
Rubicon Minerals Corporation				X
Savanna Energy Services Corp.		12 years, but the Board has discretion to waive this requirement.		
Sears Canada Inc.	70			
ShawCor Ltd.	Not Specified			X
Sherritt International Corporation			X	X
Shoppers Drug Mart Corporation			X	
Silver Wheaton Corp.			X	
Sino-Forest Corporation			X	
SNC-Lavalin Group Inc.	70			
Stantec Inc.			X[7]	X
Sun Life Financial Inc.	70			X
Suncor Energy Inc.	Not Specified			
Superior Plus Corp.			X	

[2] Derived from *Corporate Board Governance and Director Compensation in Canada: A Review of 2011*, published by Korn/Ferry International in Partnership with Patrick O'Callaghan and Associates. Does not include those corporations that did not disclose their director retirement and/or term limit policies.

[7] Although the board has not adopted a formal policy regarding the retirement age of directors, it believes that once a director reaches the age of 72 his or her continued service on the board should be reviewed by both the Corporate Governance and Compensation Committees and the board of directors as a whole.

* Board states that it can make exemptions to the retirement age policy.

Appendix: Director Retirement and Term Limit Policies Disclosed in Proxy Circular Data for Fiscal 2010[2] (Continued)

Company	Retirement	Term Limit	No Retirement Age	No Term Limit
Talisman Energy Inc.	70	10 years, board has discretion to recommend renewal. Chair is reviewed every 3 years with a possible extension of Chair's position up to a further 3 years.		
Teck Resources Limited	75			
TELUS Corporation			X	
Thomson Reuters Corporation			X	X
Tim Hortons Inc.			X	
Toromont Industries Ltd.	72			
Toronto-Dominion Bank	70	If director has not served 10 year term, the board may make a one time decision to extend director's service until the end of the 10 years term or age 75, which-ever comes first		
Torstar Corporation	70			
TransAlta Corporation	72	15 years		
Transat A.T. Inc.			X	
TransCanada Corporation	70	7 years		
Transcontinental Inc.			X	
Trican Well Service Ltd.	70			
Vermilion Energy Inc.	70			X
Wajax Income Fund	70*			
West Fraser Timber Co. Ltd.	70*			
WestJet Airlines Ltd.			X	
Yamana Gold Inc.	75			
Yellow Media Inc.			X	

2 Derived from *Corporate Board Governance and Director Compensation in Canada: A Review of 2011*, published by Korn/Ferry International in Partnership with Patrick O'Callaghan and Associates. Does not include those corporations that did not disclose their director retirement and/or term limit policies.

* Board states that it can make exemptions to the retirement age policy.

THE ART & SCIENCE OF TALENT

www.ignitionsc.com

FSC

Mixed Sources

Product group from well-managed forests and other controlled sources

Cert no. SW-COC-001563

www.fsc.org