

March 30, 2022

Edward J. Waitzer
Chair, Independent Review Committee on Standard Setting in Canada
c/o 277 Wellington Street West
Toronto, ON M5V 3H2

Re: Comments on the Independent Review Committee on Standard Setting in Canada (“the Committee”) Consultation Paper.

The First Nations Financial Management Board (“the FMB”) is pleased to provide you with comments on the Consultation Paper.

General Comments

The FMB supports the creation of a Canadian Sustainability Standards Board (“CSSB”) that acknowledges, respects and reflects Indigenous Rights in Canada. To do this, First Nations, Inuit and Métis Peoples must have a voice in both Canadian and international standard setting activities and have a permanent seat in all national standard and regulation setting bodies. The accounting and assurance profession, including CPA Canada and its provincial regulatory bodies, must do more to increase the number of Indigenous Peoples represented in executive leadership, governing bodies and standard setting boards.

FMB acknowledges that the Committee’s three concept approach includes the recognition of the constitutional rights of Indigenous Peoples, the United Nations Declaration on the Rights of Indigenous Peoples¹ (“UNDRIP”) and Truth and Reconciliation Commission of Canada Calls to Action. To ensure that Indigenous rights are honoured, FMB asserts that all Canadian accounting, assurance and sustainability standards must be created through consultation and cooperation with Indigenous Peoples and in accordance with Articles 18 and 19 of UNDRIP and the Truth and Reconciliation Commission’s Call to Action 92 that state:

***Article 18 - Right to Self-Representation** - Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.*

***Article 19 - Consent, Consultation, and Cooperation** - States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain*

¹ Now reflected in the *United Nations Declaration on the Rights of Indigenous Peoples Act*

their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

The Truth and Reconciliation Commission’s Call to Action 92 on “Business and Reconciliation” requires businesses to: “(i) Commit to meaningful consultation, building respectful relationships, and obtaining the free, prior, and informed consent of Indigenous Peoples before proceeding with economic development projects. (ii) Ensure that Aboriginal Peoples have equitable access to jobs, training, and education opportunities in the corporate sector, and that Aboriginal communities gain long-term sustainable benefits from economic development projects. (iii) Provide education for management and staff on the history of Aboriginal Peoples, including the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal rights, indigenous law and Aboriginal-Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights and anti-racism.”

The draft 2022-2027 Strategic Plan published by the Public Sector Accounting Board reflects new proposed commitments in this area:

“We recognize that Indigenous Government stakeholders are under-represented within our standard setting process. We are committed to enhancing our relationship with these stakeholders by establishing more robust channels of communication and building stronger ties with these communities. This could include the development of specific working groups where appropriate.

We will also collaborate with Indigenous Government institutions to better understand the unique needs and challenges faced by these stakeholders. It is our intention that we improve the way we engage with and understand these communities while continuing to serve the broader public interest.”

A CSSB’s take on the value of a corporation, the definition of public interest and its stakeholder audience must be broader than just an investor focus on enterprise value.

In Canada, the duty of a corporation’s directors to act in the best interests of the corporation comprehends a duty to treat individual stakeholders affected by corporate actions fairly and equitably (BCE, Wise). The fiduciary duty of directors is a “broad, contextual concept”. In considering what is in the best interests of the corporation, directors must consider the interests of various stakeholders including shareholders, employees, creditors, consumers, governments, including Indigenous governments and the environment (and, we would emphatically add, Indigenous peoples).

It is beyond a more narrow view in the U.S of a corporation’s duty only to focus on maximizing shareholder value (Revlon).

We think sustainability reporting should be intended for a broader audience than just investors because:

- A broader, more inclusive approach for public interest and stakeholders is consistent with Canadian regulatory, corporate and securities jurisprudence (e.g., Law Society of British Columbia v. Trinity Western University; BCE; Wise; Re Biovail Corp.);
- Corporate directors will need evidence to do a balancing of stakeholder interests. We think sustainability reporting is the basis for corporations to have evidence to make those decisions and fulfill their fiduciary duty and duty of care;
- We think that part of treating affected stakeholders fairly and equitably means providing them with information on how the corporation affects them and the reporting regulatory regime should reflect that; and
- Indigenous peoples are affected by corporate actions and the corporations operate within traditional territories. There is an UNDRIP and treaty obligation and an Indigenous stakeholder expectation to report on the state of the sharing relationship with Indigenous peoples.

A CSSB would play an important role in augmenting the International Sustainability Standards Board's focus on enterprise value for investors. Furthermore, in the case of public sector sustainability reporting, all Canadians have an interest in sustainability reporting.

It is paramount that Indigenous People are included in creating sustainability standards as they are disproportionately impacted by climate change because they tend to live geographic regions experiencing rapid climate change, and because they have a close relationship to and depend on the environment and its natural resources².

Indigenous Peoples are critical actors in the fight against climate change and the mitigating of its detrimental impacts. The UN Intergovernmental Panel on Climate Change's recent reports have acknowledged with "high confidence" that adaptation efforts benefit from the inclusion of local and Indigenous knowledge³. Additional studies show that ancestral lands and land under title by Indigenous Peoples are the most biodiverse and best conserved on the planet⁴.

² National Collaborating Centre for Indigenous Health (NCCIH) (2022), Climate Change and Indigenous People's Health in Canada. In P. Berry & R. Schnitter (Eds.), Health of Canadians in a Changing Climate: Advancing our Knowledge for Action. Ottawa, ON: Government of Canada. [Chapter 2 — Health of Canadians in a Changing Climate](#)

³ Bob Henson, "Key takeaways from the new IPCC report", Yale Climate Connection (August 9, 2021). Available at: <https://yaleclimateconnections.org/2021/08/key-takeaways-from-the-new-ipcc-report>

⁴ Frontiers in Ecology and the Environment, "Importance of Indigenous Peoples' Lands For the Conservation of Intact Forest Landscapes," (January 6, 2020), <https://esajournals.onlinelibrary.wiley.com/doi/full/10.1002/fee.2148>

Furthermore, the Government of Canada recognizes the importance of Indigenous participation in environmental stewardship and is currently investing over \$100 million in nature conservation projects by Indigenous communities across Canada⁵.

Sustainability standards established in Canada should encourage capital markets to reward corporations that respect Indigenous rights. Additionally, standards should ensure that capital markets participants, such as sustainability index providers and sustainability rating agencies, provide weight to Indigenous factors when rating and ranking sustainability reporting of corporate reporting issuers and investment products. The concept of dual materiality must be part of Canadian sustainability standards and disclosure must keep Indigenous rights holders in mind.

A review of standard setting in Canada last took place between 1996 and 1998. This would have occurred after the release of the final report by the Royal Commission on Aboriginal Peoples in November 1996. This is in addition to a number of other significant legal and policy developments, including UNDRIP and the Truth and Reconciliation reports referenced above. It is not evident that any consideration of these developments and recommendations contained in those reports were considered by Canadian standard setters. This omission must not be allowed to occur again. For Canada's standard-setting oversight councils, CPA Canada and the Committee to create a world-class CSSB, they must fully embrace a holistic consultation process that includes First Nations, Inuit and Métis Peoples. The creation of an inclusive CSSB that implements UNDRIP principles would be an exemplary model for other countries to emulate.

Some jurisdictions, like California and the E.U., may apply reporting standards to businesses doing business in their jurisdiction, and not necessarily based in or reporting in that jurisdiction. We think a similar requirement should apply to Indigenous sustainability reporting for businesses doing business in Canada above a certain revenue, employing more than a certain number of employees, or having a material impact on Indigenous peoples. This may require legislation to enact.

A strategy should be created that identifies the training requirements for the adoption and implementation of any new sustainability standards. In some sectors, such as Indigenous governments, funding sources will need to be secured to deliver this training.

A robust and thorough system of reviews of the quality of sustainability reports will be needed. This will help mitigate the risk of inconsistent application of standards.

Thank you for the opportunity to share our general comments. More detailed responses to the specific questions contained in the Consultation Paper are also included. The FMB sent our Comments on the

⁵ <https://www.canada.ca/en/environment-climate-change/services/nature-legacy/indigenous-leadership-funding.html>

Independent Review Committee on Standard Setting in Canada Consultation Paper to 70 First Nations and 48 First Nations organizations calling for their support for Indigenous participation in creating a new standard setting body. We will share any additional comments with the Committee as they are received from First Nations and First Nations organizations.

Sincerely,

FIRST NATIONS FINANCIAL MANAGEMENT BOARD

Harold Calla, FCPA, FCGA, CAFM
Executive Chair

Responses to Specific Questions in Consultation Paper

Q1. The Committee welcomes comments on this approach to its mandate.

- The FMB is pleased that one of the three concepts that framed the Committee's mandate is Indigenous rights.

Q2. Do you think the development of a common public interest framework would be helpful to Canada's standard-setting boards and oversight councils? Are there critical elements to such a framework?

- A single or common public interest framework would be helpful if it allows for a useful and relevant definition to be adopted and used consistently by each separate standard setting board and oversight council.
- Some critical elements for a public interest framework include:
 - Consistency with, or advancement of, recommendations contained in the Calls to Action in the Final Report of the Truth and Reconciliation Commission of Canada
 - Consistency with, or implementation of, the *United Nations Declaration on the Rights of Indigenous Peoples Act*
 - Recognition of traditional Indigenous knowledge
 - De-colonisation of institutional frameworks and systems.

Q3. Do you have comments on how best to ensure that standard-setting processes reflect and respond to Canada's diverse populations, including the unique rights of and responsibilities to Indigenous Peoples?

- The composition of members appointed to all standard setting Boards and Oversight bodies should reflect the diversity of Canadian society. While this has become an expectation when considering the representation of Canada's francophone population in the province of Quebec, this has not yet carried over into the representation of Indigenous peoples from across Canada.
- The terms of reference for all standard setting Boards and Oversight bodies should be amended to require permanent representation by Indigenous Peoples. This is needed to respond to the glaring under-representation of Indigenous Peoples in corporate Canada as illustrated by some recent findings⁶:

⁶ Diversity of Boards of Directors and Senior Management of Federal Distributing Corporations, Corporations Canada, 2020 Annual Report

- Indigenous persons hold 0.3% of board seats among the 403 distributing corporations that disclosed diversity information.
 - Indigenous persons hold 0.3% of board seats among the 160 venture issuers and 0.3% of board seats among the 243 non-venture issuers.
 - Indigenous persons hold 0.2% of senior management positions among the 403 distributing corporations that disclosed diversity information.
 - Indigenous persons hold none of the senior management positions among the 160 venture issuers and 0.3% of senior management positions among the 243 non-venture issuers.
- Because Indigenous rights are held by the Nations themselves, there must be consultation and cooperation with the Nations and their representatives. Practically, this should be achieved by the creation of a secretariat or standing committee on Indigenous rights in audit, accounting and sustainability. This entity should be staffed by a combination of rights holder representatives and experts from organizations that consider the overlap of Indigenous rights and finance (e.g., First Nations Financial Management Board, First Nations Major Projects Coalition, First Nations Finance Authority, First Nations Tax Commission). The entity could also be created in a joint effort with other financial regulators such as OSFI, the CSA, the provincial financial services regulators, and the Bank of Canada, to create a centre of excellence for Indigenous input into financial regulation.
 - Consideration should be given to the question of whether sustainability reporting standard setting is federal jurisdiction, and in particular Greenhouse Gas reporting and Indigenous reporting standards, and if so, how this fact would change legal expectations around Indigenous representation. We recommend a legal analysis be conducted on this topic.
 - Compulsory Indigenous cultural awareness training should be delivered to all new standard setting staff and board members to be delivered by a high quality and recognized Indigenous service provider.
 - Analyze how UNDRIP and the Calls to Action in the Final Report of the Truth and Reconciliation Commission of Canada should be incorporated into standard setting Terms of Reference and mandates.

Q4. Do you agree that a Canadian sustainability standards board should be established? Are there any special factors, beyond those outlined above, that should be considered in addressing this threshold issue?

- Yes, a Canadian Sustainability Standards Board should be established.
- A CSSB's take on the value of a corporation, the definition of public interest and its stakeholder audience must be broader than just an investor focus on enterprise value.

- A CSSB would support the duty of a director of a Canadian corporation to act in the best interests of the corporation which is wider than the duty of a director of a U.S. corporation only to focus on maximizing shareholder value.
- The impact of climate change and mitigation efforts will both have disproportionate impacts on Canada's Indigenous Peoples, especially those in remote northern communities.
- A CSSB is needed to counterbalance efforts that are needed to reduce carbon emissions by the industrialized parts of Canada (mainly within 100 kilometers of the shared Canada-United States border) with the need to promote economic development in Indigenous communities. Any standards designed to mitigate, slow or reverse climate change must not unduly interfere with or prevent Indigenous Peoples from having opportunities for self-determination and developing their natural resources. There must be a just transition that allows Indigenous Peoples to develop their economies, as Western nations have done. An International standard setting body with a Board of Directors in central Europe will not likely have this perspective.
- Canada is very early in its journey to reconcile with Indigenous Peoples and it is important that new ESG standards support and advance this objective.
- This could be an opportunity for Canada to show how UNDRIP can be implemented within the context of sustainability. This could allow Canada to become the nexus for international leadership in this area.
- The first module that a new CSSB should develop should be an Indigenous module that would include Indigenous knowledge and values with respect to sustainability and ESG.

Q5. Are there any special matters the Committee should consider in developing recommendations with respect to the sustainability assurance standard-setting process and oversight thereof?

- The sustainability standard setting process in Canada should require consultation from Indigenous rights holders. This could be achieved by establishing a permanent national Indigenous advisory body that could interface with all CPA Canada committees and boards and with other professional bodies (e.g., CFA Canada, CIA, CBA) and regulators (e.g., CSA, OSC, OSFI, etc.).

Q6. Do you have concerns about independence in the current standard-setting model that should be addressed and suggestions for how best to do so?

- We do not have any significant concerns about independence and the current standard-setting model or the effectiveness of the safeguards that are in place to protect the public interest.

- The Committee should, however, consider why the current standard-setting model and oversight framework was unable to identify and respond to the systemic under representation of Indigenous Peoples and Indigenous governments that have existed until very recently.
- The Committee should evaluate whether the meaning of ‘public interest’ is truly inclusive of underrepresented and marginalised segments of Canadian society. Changing the composition of standard-setting boards to include more non-CPA professionals could help achieve this and also reduce any concerns around independence.
- Independence should not outweigh the need for diversity, equity and inclusion in all aspect of standard setting work.

Q7. Would the creation of a separate legal entity outside the control of CPA Canada enhance the independence of the Canadian model? Please consider this in the context of independence in fact as well as in appearance and indicate any specific concerns the Committee should be mindful of.

- It is not clear how the creation of a new separate legal entity would improve the quality or reliability of standards set in Canada.
- The current safeguards that exist (independent oversight bodies, transparent and independent appointments of standard setting board members, the strong tradition of volunteerism by board and committee members) appear to be robust and effective. It is not clear how the costs of moving to a US or UK model would outweigh the benefits of doing so.
- Standard setting activity requires financial resources, and it does not generate a commercial product that should be monetised. It is unclear how the risk of undue influence that a single government funding source would create could be managed more effectively than in the current model.
- More resources could be devoted to communicating how any perceived conflicts are in fact being addressed.

Q8. Should the present funding model for Canadian oversight and standard-setting activities be modified to enhance safeguards to independence, real or perceived? Please provide the rationale for your view. Do you have suggestions on how funding sources could be diversified? Do you have any specific suggestions regarding the funding model for an eventual Canadian sustainability standards board?

- Please see comments above in Q7
- We would recommend that the funding model be expanded to allow, and in time require, other professional bodies and regulators to contribute financially to the cost of standard

setting activity. A more diverse range of funding sources should help reduce perceived threats to independence.

- A new CSSB could be funded by both the private and public sector. However, care should be taken to avoid creating the perception that this is a 'pay to play' arrangement.
- The Government of Canada should be approached to fund Indigenous participation in audit, accounting and sustainability.

Q9. With regard to the oversight councils and standard-setting boards, are you satisfied with the current structure and safeguards in place to ensure independence?

- We do not have any significant concerns with the effectiveness of the structure and safeguards in place to ensure independence.

Q10. Do you have comments on how best to include Indigenous Peoples and governments or Indigenous individuals in the current standard-setting process?

- We need more national level administrative capacity to be created and held by a national Indigenous body or secretariat that can act as the intermediary between Indigenous Peoples and Indigenous governments and standard setting bodies. This council should be funded by the federal government of Canada, the CSA, CPA Canada, OSFI etc.
- We need a national forum that could host, facilitate and periodically discuss proposed new or amended standards and their implications to Indigenous governments, organisations and rights holders. Just leaving the responsibility to the very small number of Indigenous professionals who have an understanding of standard setting by CPA Canada is not enough and places too much of a burden on too few people. This forum should crosscut all standard setting bodies so we don't end up having to create different silos
- There should be at least one permanent Indigenous seat on all standard setting boards and committees.

Q11. With regard to a Canadian sustainability standard setting board, do you have any views on the structure, composition and specific competencies needed? Please include any comments on how best to include Indigenous Peoples and governments or Indigenous individuals in the current standard-setting process?

- The natural environment is an intrinsic part of Indigenous culture. Having Indigenous representation on a new CSSB is essential. The competency needed is lived experience and firsthand knowledge, including traditional knowledge handed down from elders, of the

importance of maintaining a sustainable relationship between human existence and the resulting environmental impact

- Having Indigenous individuals who have a foot in both worlds—the Indigenous and the Western—and who can relate to both sets of policy considerations will be important.
- Many Indigenous cultures have lived by sustainability principles for time immemorial – they may not be codified as standards, but they are very relevant. A reclamation of this knowledge is happening within Indigenous youth. There should be some way that youth representation could be obtained.
- Natural resources such as cedar bark, salmon, whales, seals and other natural and living elements are only collected or harvested in a way so as to not deplete the resource for future generations. Ensuring that this concept of ‘Seven Generations’ thinking is reflected in sustainability standards will be important.
- We recommend that all standard setting board and committee members be remunerated in order to ensure a broader representation of the public interest and not deter people from participating. In-kind remuneration may be appropriate in some circumstances to attract Indigenous knowledge keepers.

Q12. Do you have suggestions on how to improve the timeliness and responsiveness of Canadian standard setting?

- Re-think how the actual standards can be published. The concept of doing this in a static ‘Handbook’ seems outdated. Consider how standards could be published in a more interactive manner that allows a user to provide real-time and immediate comments or feedback. Provide a way that allows users to observe and ‘vote on’ suggestions by peers and other stakeholders.
- The traditional approach of publishing a 100+ page written document and asking stakeholders to take the time to read and respond to it in writing should be re-evaluated. Use modern media and technology to make the process more interesting and relevant. New Zealand is a pioneer in plain language consultation.

Q13. Do you have suggestions on how the Canadian standard-setting boards could further influence the relevance and timeliness of international standards adopted for use in Canada?

- Engage the services of public affairs and communication strategy professionals.
- Report on any unique Canadian perspectives.

Q14. Do you have any suggestions to improve stakeholder engagement (users in particular) in the development and ongoing monitoring of the effectiveness of standards? Should different considerations apply with respect to sustainability standards?

- Engage with youth and involve them in the creative problem-solving aspect of this issue.
- Use technology and traditional forms of research.
- Consider initiatives such as the CSA's recent creation of investor panels for consultation.
- Use plain language and directed outreach. Include budget for interpreters of Indigenous languages for inclusion of Elders.

Q15. Given the special considerations relating to sustainability reporting standards, do you have any suggestions on how best to foster (and balance) timeliness with robust stakeholder involvement in sustainability standard setting?

- Create an inclusive and representative national Indigenous advisory body.
- Invest in media content – webinars, podcasts, YouTube content
- Traditional polling and surveys
- Settle on the framework, and dual track initial consultation (using, for example, PowerPoint) with drafting of the consultation document

Q16. Do you have any concerns related to the transparency and accountability frameworks that currently apply with respect to the oversight and standard-setting process? Are there additional considerations that should apply with respect to sustainability standard setting?

- The Committee should consider whether the composition of standard-setting boards should include a more diverse range of people who are not CPAs. This would allow for a broader set of stakeholders to contribute to policy decisions.

Q17. The Committee welcomes views on whether consolidation of boards and/or councils is an option that should be considered. If so, please explain why and how.

- There should be more integration and communication between standard setting boards to exchange viewpoints and to ensure that user needs are understood.

Q18. What are your views on how best to assess effectiveness of standard setting, including the desirability of periodic reviews by independent parties external to the standard-setting system?

- Regular opportunities for feedback should be easily available. Focus groups and advisory bodies could be established.

Q19. Are there matters related to ethics and independence standards that you would like to highlight for the Committee's consideration?

- As mentioned above, there should be comprehensive Indigenous rights training as expanded upon in Truth and Reconciliation Commission Call to Action 92.

Q20. Are there any other matters the Committee should consider as part of its review?

- None at this time