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Corporate Law and Privacy Law

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By [Levi Parsche](#) (Articled Clerk)

As 2022 winds to a close, it's a good time to review some of the legislative changes that have impacted Atlantic Canada in the last year — and consider what's ahead for 2023. This statutory snapshot focuses on recent developments in corporate law and privacy law.

Corporate Law

Corporate law has seen many legislative changes in the past year, including significant changes to the director election process for *Canada Business Corporations Act (CBCA)* corporations and new requirements for beneficial ownership registers in some Atlantic provinces.

Director Election Process Under CBCA Regulations

A new director election process for public *CBCA* corporations was implemented through new *CBCA regulations*. Under the new regulations, effective August 31, 2022, all public corporations incorporated under the *CBCA* are now required to comply with the following governance practices for electing directors:

- (i) individual voting (separate vote for each candidate; no slate voting);
- (ii) annual elections; and
- (iii) majority voting for director candidates.

Individual voting (separate vote for each candidate)

Under the new election process, directors of public *CBCA* corporations must be elected on an individual basis. This is a change from the previous regulations, which allowed directors to be elected as part of a slate.

Annual elections

The new regulations require directors to be elected annually. Under the previous regulations, directors could be elected for a maximum three-year term.

Majority voting for director candidates

Under the previous regulations, when there is an uncontested election for a director position (i.e. only one candidate for director), shareholders are required to either vote “for” the candidate, or they may “withhold” their vote. The new rules require shareholders to either vote “for” or “against” the sole candidate, and the candidate must receive a majority of “for” votes in order to be elected as a director. If a candidate does not receive a majority of “for” votes, they may not be appointed by the board before the next annual meeting, except if their appointment is required to ensure the board meets the residency requirements for independent directors.

If an incumbent director does not receive a majority of “for” votes, they may be able to continue as director for a 90-day transition period.

The impact of this new election process

The new requirements apply to all public *CBCA* corporations. For public corporations listed on the Toronto Stock Exchange (TSX), there may not be much of a practical impact as the new requirements are largely similar to those currently required by the TSX.

Even before August 31, 2022, the TSX required all issuers to hold annual director elections and use individual rather than slate voting. Directors of TSX-listed issuers were also required to offer to resign if they did not receive a majority of votes. However, the board held discretion to not accept their resignation in “exceptional circumstances”. The new amendments remove this discretion.

These amendments will impact issuers listed on the TSX Venture Exchange (TSXV) and the Canadian Securities Exchange (CSE). Under the TSXV and CSE requirements, staggered elections and slate voting are permitted, as long as there is shareholder consent to those provisions. The new amendments remove those options, requiring compliance with annual and individual voting, regardless of the desire of shareholders. Similarly, the TSXV and CSE do not currently require candidates to receive a majority of votes. As such, *CBCA* corporations listed on the TSX and CSE need to revise their election processes to comply with the amendments.

Private corporations are allowed to adopt the new election standards, or continue under the previous rules.

Beneficial Ownership Register Requirements in NB and NL

This year saw amendments to corporation legislation in New Brunswick and Newfoundland and Labrador. Corporations incorporated in these provinces are now required to maintain a register of individuals with significant control over the corporation (i.e. a beneficial ownership register).

For corporations incorporated under New Brunswick’s *Business Corporations Act*, the new beneficial ownership requirements became law in June 2022, with Bill C-95. New Brunswick corporations and beneficial owners could face fines of up to \$10,200 if they do not comply.

For corporations incorporated under Newfoundland and Labrador’s *Corporations Act*, aside from public corporations, the amendments came into force in April 2022, with Bill 24. Additionally, the residency requirement for directors of Newfoundland and Labrador corporations was removed. In Newfoundland, non-compliance with the new beneficial register requirements can result in significant fines for directors, officers, or shareholders (up to \$200,000), imprisonment up to six months, or both. Additionally, corporations may be fined up to \$5,000 for failing to maintain a register.

These developments in NB and NL align with other recent legislative amendments.

The *CBCA* was amended in June 2019 to require corporations to maintain a beneficial ownership register. These changes were introduced alongside the beneficial ownership verification requirements under the federal *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*. Canada introduced these requirements to increase corporate transparency and prevent tax evasion and money laundering (both domestically and internationally).

In Nova Scotia, corporations under Nova Scotia’s *Companies Act*, except certain public companies, may soon be required to prepare and maintain a beneficial ownership register. The

amendment requiring the register, [Bill 226](#), has not been proclaimed in force despite receiving royal assent in March 2020.

In PEI, private corporations formed under PEI's *Business Corporations Act* have been required to maintain a beneficial ownership registry since September 2020. The register must be maintained annually.

For further information on the requirements for beneficial ownership registers in each of the Atlantic provinces, please see our client updates specific to [New Brunswick](#), [Newfoundland and Labrador](#), [Nova Scotia](#), and [Prince Edward Island](#).

Privacy Law

2022 saw the introduction of two landmark federal privacy bills – Bill C-26 and Bill C-27. If enacted, these bills could significantly impact privacy law in Canada.

Bill C-26 – *An Act Respecting Cyber Security*

[Bill C-26](#), first introduced in June 2022 and now undergoing its second reading, aims to address gaps in federal cybersecurity law. If implemented, Bill C-26 would give the federal government broad powers over protecting critical infrastructure from cybersecurity threats. The Bill is divided into two parts:

- Part I – amends the *Telecommunications Act*.
- Part II – enacts the *Critical Cyber Systems Protection Act (CCSPA)*.

Enacted under Part II, the *CCSPA* would support the continuity and security of “vital services and systems” of the Canadian economy against disruptive cyberattacks. The *CCSPA* defines these vital services/systems as:

- (i) telecommunications services;
- (ii) interprovincial or international pipeline and power line systems;
- (iii) nuclear energy systems;
- (iv) transportation systems that are within Parliament's legislative authority (under federal jurisdiction);
- (v) banking systems; and
- (vi) clearing and settlement systems (i.e. systems that assist with the transfer or exchange of funds between and within banks).

The *CCSPA* would require these vital services to:

- **establish and implement a cyber security program** that sets out how the organization will ensure the protection and resilience of its cyber systems;
- **mitigate supply-chain and third-party risks;**

- **report cyber security incidents** to the Communications Security Establishment (through its Canadian Centre for Cyber Security); and
- **comply with Cyber Security Directions.** The CCSPA would empower the Governor in Council to issue Cyber Security Directions (CSD). CSDs could direct a sector or organization to comply with any measure identified in the CSD, in order to protect a critical cyber system, within a specified timeframe. Failure to comply with a CSD could result in penalties including fines or imprisonment.

Bill C-27 – Digital Charter Implementation Act, 2022

[Bill C-27](#) was first proposed in June 2022, and is currently undergoing its second reading. If implemented, Bill C-27 would govern organizations that use, collect, or disclose personal information for commercial activities. The Bill is designed to update the federal private sector privacy law, and would repeal the *Personal Information Protection and Electronic Documents Act (PIPEDA)*.

The Bill is divided in three parts:

- Part I creates the *Consumer Privacy Protection Act (CPPA)*, which would replace *PIPEDA*. The *CPPA* would apply to the collection, use and disclosure of personal information obtained in the course of commercial activities, including international activities.
- Part II creates the *Personal Information and Data Protection Tribunal Act*, which would create the Personal Information and Data Protection Tribunal, and empower it to enforce the *CPPA*.
- Part III creates the *Artificial Intelligence and Data Act (AIDA)*, which would regulate international and interprovincial trade and commerce in artificial intelligence systems, as well as create prohibitions and associated penalties in relation to artificial intelligence systems. Artificial intelligent systems, as defined in the *AIDA*, are technological systems that “autonomously or partly autonomously, processes data related to human activities through the use of a genetic algorithm, a neural network, machine learning or another technique in order to generate content or make decisions, recommendations or predictions.”

Given how widely artificial intelligence is used across a variety of sectors, including transportation, healthcare, finance, manufacturing, and advertising, the *AIDA* may have a significant impact on many sectors.

For more information on the *AIDA*, please see our recent [client update](#) on Bill C-27.

Conclusion

The approach of a new year brings new opportunities for companies in multiple sectors to review their current processes and policies. In reviewing these policies, companies should keep in mind the amendments we have seen to corporate legislation in 2022. Additionally, businesses should keep an eye on two major privacy bills, Bill C-26 and C-27 which, if implemented, could require significant amendments to privacy policies and practices going forward.

This update is intended for general information only. If you have questions, please reach out to a member of Stewart McKelvey's [Corporate Governance](#), [Cybersecurity](#), or [Privacy](#) teams.

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CHARLOTTETOWN, PE

65 Grafton Street
Charlottetown, PE C1A 1K8
P 902.892.2485
F 902.566.5283
charlottetown@stewartmckelvey.com

FREDERICTON, NB

501-140 Carleton Street
Fredericton, NB E3B 3T4
P 506.458.1970
F 506.444.8974
fredericton@stewartmckelvey.com

HALIFAX, NS

Queen's Marque
600-1741 Lower Water Street
Halifax, NS B3J 0J2
P 902.420.3200
F 902.420.1417
halifax@stewartmckelvey.com

MONCTON, NB

Suite 601, Blue Cross Centre
644 Main Street
Moncton, NB E1C 1E2
P 506.853.1970
F 506.858.8454
moncton@stewartmckelvey.com

SAINT JOHN, NB

Suite 1000, Brunswick House
44 Chipman Hill
Saint John, NB E2L 2A9
P 506.632.1970
F 506.652.1989
saint-john@stewartmckelvey.com

ST. JOHN'S, NL

Suite 1100, Cabot Place
100 New Gower Street
St. John's, NL A1C 6K3
P 709.722.4270
F 709.722.4565
st-johns@stewartmckelvey.com

