THE GLOBAL LEGAL POST

CANADA

Jennifer F. Longhurst & Samantha Pettinato
McCarthy Tétrault

This chapter forms part of:

CORPORATE GOVERNANCE

Law Over Borders Comparative Guide 2026

www.globallegalpost.com/lawoverborders

This material was first published in Corporate Governance], Law Over Borders Comparative Guide 2026. Copyright © 2026 Global City Media Ltd

1. What are the overarching principles and sources of governing law or regulation that drive corporate governance practices in Canada?

Canada's corporate governance framework is grounded in corporate and securities law and shaped by stock exchange rules, regulatory guidance, institutional investor and proxy advisor voting policies, and market practice and sentiment.

The federal or provincial corporate statute under which a corporation exists sets out core governance requirements, including in respect of:

- board composition, duties, conflicts of interest and decision-making;
- procedures for shareholder and board meetings, including notice, voting and quorum requirements; and
- shareholder rights, including shareholder proposal and meeting requisition rights, and approval requirements for annual and special business and fundamental changes, like M&A.

Provincial and territorial securities regulation and court and tribunal decisions also inform governance practices — principally through prescribed disclosure, and in some cases by dictating best practices around board process, independence and minority shareholder protections. Core sources include:

- **National Policy 58-201 – Corporate Governance Guidelines (NP 58-201) and National Instrument 58-101 – Disclosure of Corporate Governance Practices (NI 58-101).** NP 58-201 sets out the Canadian Securities Administrators' (CSA) guidance on governance best practices, including board and committee composition, orientation and continuing education, and board assessments. It recommends, for example, a majority of independent directors, separation of the CEO and board chair roles, and fully independent compensation and nominating committees. The guidelines are not prescriptive, reflecting the view that there is no "one-size-fits-all" approach. NI 58-101, in turn, imposes "comply-or-explain" disclosure requirements concerning public issuers' governance practices, including how they adhere to NP 58-201 and concerning director term limits and the representation of women on boards and in executive officer positions. Issuers on a senior exchange (e.g., the Toronto Stock Exchange (TSX)) face higher standards than those on a junior exchange (e.g., TSX Venture Exchange). These baseline policies are supplemented by Multilateral Instrument 61-101 – Protection of Minority Security Holders in Special Transactions (MI 61-101), which governs "material conflict of interest" transactions like insider bids and business combinations and provides for, among other things, the role of special committees in order to protect the interests of minority shareholders.
- **National Instrument 52-110 – Audit Committees (NI 52-110).** NI 52-110 governs the function, powers and composition of an issuer's audit committee and prescribes related disclosure. All public companies must have an audit committee of at least three directors who, subject to limited exceptions, must be "independent" and "financially literate". NI 52-110's independence standards also inform director independence generally and are incorporated into NI 58-101 and NP 58-201.
- **Court decisions and tribunal orders.** Court decisions also shape Canadian corporate governance, addressing issuers' obligations when faced with shareholder proposals and special meeting requisitions, outlining the test

This material was first published in Corporate Governance], Law Over Borders Comparative Guide 2026. Copyright © 2026 Global City Media Ltd

that must be met for investors (and others) to bring a statutory "oppression remedy" against issuers, and dictating the processes boards and management must follow in discharging their duties. The division of authority between courts and securities regulators in this area remains blurred, and securities tribunal decisions (often coming out of hearings under regulators' "public interest" jurisdiction) also signal which practices are legitimate versus those which may invite enforcement action or other remedies.

Governance practice is also shaped by:

- **Stock exchange rules.** Issuers listed on a stock exchange must comply with that exchange's listing requirements, including its governance rules. Though often viewed as less central than corporate and securities laws, exchange requirements materially influence practice — the TSX's rules, for example, helped shape Canada's "majority voting" framework and the legitimate scope of advance notice by-laws.
- **CSA guidance and commentary.** The CSA and provincial regulators periodically publish guidance to help issuers interpret and apply securities laws. Although not binding, this guidance serves an important practical function and lets regulators give real-time feedback to market participants.
- **Investor voting policies and sentiment.** Institutional investors often push public companies to exceed minimum legal standards, principally through articulated voting policies and positions. Their pressure, for example, drove widespread adoption of majority voting in Canada well before it became mandatory under TSX rules and, later, Canada's federal corporate statute, the Canada Business Corporations Act.
- **Additional guidance and peer practice.** Canadian governance is also informed by governance organizations, proxy advisory firms, industry practice and peer benchmarking. Bodies like the Canadian Coalition for Good Governance (CCGG) and the Institute of Corporate Directors (ICD) help boards translate legal requirements and evolve best practices into action. Proxy advisors like Institutional Shareholder Services (ISS) and Glass Lewis & Co. (Glass Lewis) maintain Canadian-specific benchmark voting policies that guide their subscribers on director independence, diversity, executive compensation and shareholder proposals (among other areas); because their views can swing shareholder meeting outcomes, they materially shape issuers' practices.

Canadian corporate governance is therefore best understood as a complex, multi-source system that collectively defines what "good governance" means in practice.

2. What regulatory bodies are responsible for establishing rules and regulations surrounding corporate governance?

In Canada, responsibility for setting corporate governance rules is shared across several bodies. For all companies, the first layer of regulation comes from corporate law regulators and the courts, operating through federal and provincial corporate statutes and their judicial interpretation. Certain industries also have sector-specific regulators: banks, for example, are overseen by the Office of the Superintendent of Financial Institutions (OSFI), which maintains its own Corporate Governance Guideline.

This material was first published in Corporate Governance], Law Over Borders Comparative Guide 2026. Copyright © 2026 Global City Media Ltd

For public companies, a second layer of regulation is imposed by the provincial and territorial securities regulators, whose governance framework includes NI 58-101, NP 58-201, NI 52-110 and MI 61-101. Through the CSA, regulators develop securities law, policy and instruments and issue periodic guidance, such as the CSA's 2024 guidance on conducting virtual and "hybrid" shareholder meetings. Securities tribunal decisions further shape governance practice. Stock exchanges, like the TSX, are quasi-regulatory bodies that also influence public company governance through their listing rules and policies.

By contrast, organizations like the CCGG and ICD are not regulators but remain highly influential. CCGG (the representative organization of leading institutional investors in Canada with trillions of dollars of assets under management) through its policies, its annual best practices report and publications, such as Building High Performance Boards, shape investor and market expectations on key governance issues. The ICD and TMX Group similarly influence governance norms through thought leadership, including their 2022 joint publication, Charting the Future of Canadian Governance.

3. Who are the key stakeholders implicated by changes to corporate governance regulations and best practices?

Changes to corporate governance regulations and practice affect, and are also driven by, a broad set of market participants. Public companies and their boards and management teams are most directly impacted — they bear primary responsibility for maintaining good governance with a view to serving the best interests of the company. Corporate secretariats and legal teams, in-house and external, must also navigate evolving standards, as they translate the rules into practice.

Institutional and retail shareholders and asset managers are also key. Governance changes affect their investments, the disclosure they receive and how they vote — often reshaping engagement strategies and proxy voting behavior. For institutional investors and asset managers, those changes also feed back into internal voting policies and how they evaluate portfolio companies. They, in turn, proactively drive further governance change.

Proxy advisory firms like ISS and Glass Lewis are another influential constituency: their voting recommendations can shape outcomes on director elections, say-on-pay, shareholder proposals and M&A transactions.

Finally, courts, tribunals and regulators round out the list of affected stakeholders, given their roles in establishing, interpreting, enforcing and refining the governance framework over time.

4. What external factors are currently shaping the corporate governance landscape?

Economic, geopolitical and stakeholder-driven forces are reshaping Canada's corporate governance landscape. Boards are operating under constant disruption — trade and tariff uncertainty, geopolitical tension, growing protectionism, shrinking capital markets and rapid technological change — sharpening scrutiny

This material was first published in Corporate Governance], Law Over Borders Comparative Guide 2026. Copyright © 2026 Global City Media Ltd

over how directors oversee strategy, opportunity and risk, and making it increasingly challenging for boards and management to discharge their respective duties.

Regulators have grown more attentive to the competitiveness of Canada's capital markets, influencing the pace and direction of certain initiatives. US anti-DEI (diversity, equity and inclusion) and anti-ESG (environmental, social and governance) sentiment and related legal and regulatory actions, together with broader geopolitical pressures, have prompted some Canadian regulators to pause or slow previously-announced initiatives — including proposed enhancements to diversity and climate disclosure rules — to support market competitiveness, efficiency and resilience. An underlying concern is that Canadian public markets are already strained, and reforms must balance the need to protect investors without making Canada less attractive or its regulation unduly onerous. In a similar vein, the CSA has recently moved to reduce regulatory burden and ease capital raising in Canada — temporarily relaxing certain initial public offering (IPO) requirements and adding flexibility for post-IPO financings. These steps build on broader modernization efforts to make Canada's securities regime more flexible in a period of shrinking public markets and to ensure any expanded regulation is grounded in cost-benefit analysis.

Institutional investors and proxy advisors continue to exert significant influence, often setting expectations above minimum legal requirements. Notably, their respective Canadian and US policies are not always aligned: for example, in Canada, ISS and Glass Lewis both continue to apply board diversity voting policies, whereas in the US ISS has suspended its policy and Glass Lewis still applies one.

Finally, with shareholder activism remaining at sustained highs in Canada — focused on governance, strategy, capital allocation and M&A — it too continues to shape the corporate governance and M&A landscapes, amplified by an increasingly engaged media in these high-stakes situations. No issuer is immune: underperformance relative to peers, governance deficiencies, ineffective board or leadership composition or succession, or strategic or operational missteps feature prominently in activist demands.

5. What are the main corporate governance concerns that boards and businesses are currently facing?

Canadian boards face a widening set of concerns in an increasingly complex environment. Beyond navigating long-standing baseline issues — linking executive pay to performance, incentivizing sustainable growth, deterring excessive risk-taking, overseeing leadership succession, assuring financial integrity and compliance, and acting as fiduciaries for investors — today's heightened issues include:

- **AI governance.** As Canadian public companies race to understand and integrate AI into their operations and governance, effective oversight of the technology has become a pressing issue. Stakeholders are demanding clearer guidance on AI-related risks and opportunities, and regulators and governance advocates are responding. The CSA has emphasized that issuers

This material was first published in Corporate Governance], Law Over Borders Comparative Guide 2026. Copyright © 2026 Global City Media Ltd

should adopt procedures governing AI use and disclose their AI activities and related risks, while cautioning against "AI washing." Glass Lewis has introduced a policy on board oversight of AI. Many issuers have adopted responsible-use policies that distinguish legitimate deployments from unduly risky ones, and boards are tailoring crisis management plans to AI and other technology-related risks. As AI advances, boards are expected to ensure AI governance is understood at the board level, embedded in strategy and operations, and matched by the requisite skills and experience.

- **Board diversity.** Board diversity remains a focus in Canada despite some anti-DEI sentiment in the United States. Momentum has slowed, but gender diversity disclosure requirements remain in place for senior public issuers and federally incorporated public companies. Issuers' DEI reporting language has softened or grown more nuanced, yet the expectation persists that boards and management reflect diversity of thought, experience and attributes — and disclosure obligations still apply. For dual-listed issuers and those with significant US operations or shareholders, the challenge is satisfying Canadian disclosure requirements while managing DEI-related litigation and anti-DEI sentiment abroad.
- **Shareholder proposals and engagement.** Shareholder proposals rose in Canada in 2025, with financial institutions again receiving a disproportionate share. Although typically advisory, these proposals give shareholders a powerful platform on environmental, social, compensation and governance issues. With robust shareholder engagement (both director- and management-led) now the norm for public companies, issuers should engage proponents and respond substantively: proposals that attract significant support can signal shareholder sentiment and reveal vulnerabilities for activists. At the same time, most proposals come from a small group of proponents each proxy season and draw low shareholder support — raising the question whether Canada's relatively more shareholder-friendly regime is being misused by the few at the expense of the broader shareholder base, and is due for reform.
- **Crisis and risk management.** With activism at sustained highs and organizational risks expanding, boards are expected to be taking a more active role in crisis and risk oversight — in some ways not that different than the US *Caremark* duty. In an environment of rapid disruption and geopolitical uncertainty, preparedness and nimbleness have become critical lines of defense; boards that fail to adapt will be increasingly vulnerable to activists and litigation. Issuers are under pressure to maintain credible crisis playbooks so they can respond quickly across a broad range of scenarios.

See our Market Insights chapter for additional discussion on these and other topics.

6. In what ways is quantitative data driving corporate governance practices?

Quantitative data shapes Canadian corporate governance in two principal ways. First, it drives benchmarking and precedent: public companies routinely measure their practices against peers, proxy advisor expectations and market norms. The aim is to avoid being an outlier, since governance that looks materially weaker

This material was first published in Corporate Governance], Law Over Borders Comparative Guide 2026. Copyright © 2026 Global City Media Ltd

than peers' invites shareholder criticism and activism. At the same time, boards are reluctant to be market leaders, so peer-data benchmarking tends to drive convergence around industry norms.

Second, decisions surrounding executive compensation and pay-for-performance alignment are particularly data-driven. Canadian issuers must provide detailed compensation disclosure in their annual proxy materials — objectives, risks, elements, determination methodology, performance conditions and alignment with corporate and individual goals — and this disclosure is closely scrutinized by investors and proxy advisors. ISS and Glass Lewis use compensation scorecards to inform their voting recommendations, which can materially affect say-on-pay outcomes and director election results. Boards and compensation committees therefore lean heavily on performance metrics, peer-group comparisons and compensation consultant advice to keep their programs in balance.

More broadly, quantitative data is shifting governance from a qualitative exercise into a more precise, metric-oriented discipline. Boards and management increasingly rely on hard data to help them manage enterprise risk and benchmark their ESG standings. Investors are demanding measurable benchmarks and targets across strategy, ESG (including climate), DEI and compensation concerns — both to enforce accountability and to assess the quality of issuers' plans, operations, performance, governance and results.

7. What internal business practices and structures are effective in ensuring compliance with corporate governance requirements?

Public companies need governance systems that are informed, self-critical, tailored and adaptable — good governance is not the end, but rather the means to drive sustainable, long-term value for the benefit of investors and all stakeholders in an ever-evolving world where disruption is now the norm. The following practices help boards deliver good governance:

- **Diverse, independent and well-composed boards.** Boards are typically most effective when:
  - they combine a complementary mix of skills, attributes, backgrounds and experience;
  - include a majority of independent directors; and
  - refresh regularly to maintain "effective challenge" of management.

  The market continues to emphasize board effectiveness and renewal, with growing pressure to address skills gaps (including in AI) and underperformance through refreshment and robust evaluations.
- **Sound governance policies.** Boards should adopt *and* regularly review governance policies, mandates, charters, position descriptions and codes of conduct as needs and best practices evolve. Under Canada's "comply or explain" model, the existence and quality of these internal policies is crucial, and boards bear responsibility for setting and maintaining them.
- **Continuing education.** Ongoing education is essential for boards and management to keep pace with evolving requirements, market trends, investor expectations and emerging issues like cybersecurity, AI and sustainability, particularly in today's era of disruption.

This material was first published in Corporate Governance], Law Over Borders Comparative Guide 2026. Copyright © 2026 Global City Media Ltd

- **Strong support functions.** Companies should maintain strong corporate secretariat and legal teams with governance expertise, backed by experienced external advisors, to guide boards and management in fulfilling their increasingly complex (and frequently conflicting) duties.
- **Think like an activist.** Adopting an activist mindset pays off. That means tracking investor expectations, eliciting unvarnished stakeholder feedback, assessing governance through an outside investor's lens, identifying vulnerabilities, stress-testing scenarios through tabletop exercises, engaging shareholders and proactively educating the board. Doing so keeps companies agile and responsive.
- **Process is paramount.** Boards must not only establish policies governing, but also demonstrate, sound processes, both in the day-to-day and, especially, in high-stakes decisions. This includes:
  - director access to senior management and potential successors;
  - progress reports to monitor and assess strategic plans;
  - constructive challenge of management and external advisors when warranted;
  - a culture of open discussion and dissent; and
  - identifying and mitigating actual or perceived conflicts in decision-making.

There is no "one-size-fits-all" approach to governance. The most effective structures pair strong fundamentals with regular self-assessment and a willingness to adapt.

8. Are there any corporate governance practices that are more of a driving force in specific industries or sectors?

While good governance is imperative for every Canadian public company, certain practices take on greater prominence in particular industries.

In mining, oil and energy, practices relating to environmental and social sustainability and Indigenous relations are under focus. Board oversight in these industries extends beyond legal compliance to proactive community engagement, environmental impact management, technological innovation (such as renewable energy and resource conservation) and the formation of long-term partnerships with Indigenous communities, thereby producing stronger sustainability policies, more tailored disclosure, sharper focus on the social license to operate, and meaningful differentiation.

Canadian real estate investment trusts (REITs) and commercial developers are also adopting specialized governance practices to mitigate physical climate risk and, for residential REITs, to address mounting scrutiny over housing financialization.

In financial services, boards face sustained pressure from shareholders, regulators and public-interest organizations to demonstrate "effective challenge" — a practice demanded by their OSFI regulator. Major financial institutions are frequent targets of shareholder proposals (often eight to 15 per year) on issues ranging from climate strategy and Indigenous reconciliation to supply chain accountability, human rights, fossil fuel investment, country-by-country reporting, operational resilience and AI risk. Boards in this sector are expected to

This material was first published in Corporate Governance], Law Over Borders Comparative Guide 2026. Copyright © 2026 Global City Media Ltd

provide more active oversight, more robust disclosure and frequent director-led shareholder engagement.

Supply chain accountability is a growing focus across natural resources, financial services and other sectors, driven in particular by the Fighting Against Forced Labour and Child Labour in Supply Chains Act. The Act requires "in-scope" entities to report on steps taken to prevent forced and child labor, prompting companies to strengthen supply-chain oversight and, in the case of financial institutions, to scrutinize their lending practices.

In manufacturing and technology, the rise of AI is pushing boards to build genuine technology fluency rather than simply delegating these issues to management. Boards are adopting responsible AI-use policies and developing crisis management plans for AI-related risks.

Across every sector, there is a sustained focus on good governance. Issuers must maintain strong fundamentals and continuously test whether their practices remain effective and responsive to evolving risks and stakeholder expectations. And as nearly every company becomes, to some degree, a technology company, robust cybersecurity policies and risk oversight remain mission critical.

This material was first published in Corporate Governance], Law Over Borders Comparative Guide 2026. Copyright © 2026 Global City Media Ltd

AUTHOR BIOGRAPHIES



Jennifer F. Longhurst
Jennifer F. Longhurst is a partner in McCarthy Tétrault's Business Law Group in Toronto and Co-Lead of the firm's Critical Situations & Shareholder Activism and Corporate Governance groups. She is recognized as a leading advisor to boards, special committees, investors, and business leaders on complex public M&A transactions, shareholder activism, and corporate governance matters. Jennifer provides strategic, integrated advice to help her clients navigate high-stakes situations, including proxy contests and activist campaigns, unsolicited M&A transactions, securities compliance issues, contested meetings, and corporate governance issues and disputes. Her practice spans a broad range of industries, including mining, energy, financial services, real estate, private equity, and telecommunications. Jennifer has advised on many of the most high-profile Canadian and international public M&A transactions and proxy contests. She is a frequent author and speaker on corporate governance and securities law topics and is widely recognized by leading legal directories for her work in these areas.



Samantha Pettinato
Samantha Pettinato is a partner in McCarthy Tétrault's Business Law Group in Toronto. She practices corporate and securities law, with a focus on M&A, corporate governance, capital markets, and shareholder activism. Samantha advises boards of directors, special committees, investors, and business leaders across a range of industries, with notable experience in the metals and mining and financial services sectors. Samantha assists clients with executing a variety of complex transactions, including arrangements, reverse take-overs, going-private transactions, take-over bids, public offerings, strategic investments, private placements, and stock exchange listings. She also frequently provides advice to public companies on corporate governance matters and ongoing securities law requirements. Samantha speaks regularly on corporate governance and securities law topics and has been recognized by Best Lawyers in Canada as "Ones to Watch" in the areas of corporate law, securities law and M&A.

FIRM PROFILE

McCarthy Tétrault
McCarthy Tétrault is a leading Canadian law firm delivering strategic, innovative solutions to clients in Canada and around the world. With offices in Canada's major commercial centers, New York City, and London, UK, our lawyers work seamlessly across practice areas and regions. We advise on all aspects of business law, litigation, tax, real estate, and labor and employment law, and work with all levels of government to develop laws and regulations that shape the Canadian market. Through our focus on innovative service delivery, we drive value for clients through project management, alternative fee arrangements, and our MT>Divisions platform.

This material was first published in Corporate Governance], Law Over Borders Comparative Guide 2026. Copyright © 2026 Global City Media Ltd