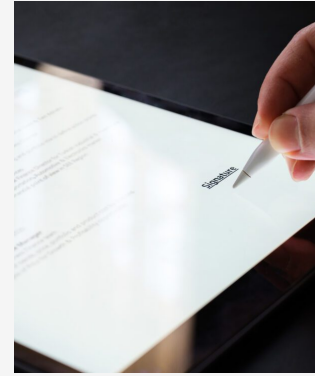


Corporate transparency registers: what private companies need to know as requirements get stricter across Canada

JULY 18, 2024 6 MIN READ



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This article was updated on July 18, 2024.

In recent years, requirements for private companies to disclose corporate ownership information on what are often referred to as “transparency registers” have swept across Canada. All Canadian jurisdictions apart from Alberta, Yukon, the Northwest Territories and Nunavut have now adopted legislation requiring transparency registers. The goal of these registers is to increase corporate transparency and accountability by listing individuals with significant control (ISC).^[1]

While there are broad similarities across the Canadian jurisdictions with respect to transparency register requirements rules, there are unfortunately differences as well. This creates a complex compliance environment for organizations with entities formed across Canada. In this Update, we seek to both explain the regime and highlight certain of these differences.

One of the most notable features of transparency registers is whether or not they are publicly accessible. In most Canadian jurisdictions, these registers can only be accessed by bodies such as police forces, governmental tax entities and regulators. However, the landscape is changing as some jurisdictions are moving towards creating registers with greater public access:

- As of January 22, 2024, federal corporations are required to file transparency register information with Corporations Canada. This information is made available to the public.
- Federal corporations are subject to the steepest fines in Canada associated with contravening rules related to transparency registers.
- In British Columbia, legislative changes to implement a publicly accessible register received royal assent on May 11, 2023, and will come into force by regulation (timing of which remains to be determined).
- In Québec, registers are already publicly accessible and, as of July 31, 2024, it will be possible to search the *Registraire des entreprises du Québec* (the REQ) by the name of a

natural person. However, in accordance with the *Act respecting the legal publicity of Enterprises* (the LPA), certain personal information — such as the date of birth or residential address (if a professional address is disclosed) of an individual or the name and domicile of a minor — will not be included in these searches.

For the purposes of this Update, we will focus on the regime as it exists now and as it is anticipated to evolve. However, we note that these rules raise not only challenging interpretative questions for clients with complex ownership structures, but also legitimate concerns regarding the ability of companies and individuals to privately order their affairs, in addition to creating potentially significant compliance costs.

Key themes

Fundamentally, each transparency regime sets out

- who is caught by these requirements
- what must be disclosed pursuant to these requirements
- who can access the register
- the penalties associated with non-compliance

Comparison

Set out below is a summary of the beneficial ownership transparency regimes across the key Canadian jurisdictions. While most jurisdictions follow a similar model, there are key differences among the regimes.

As mentioned, “ISC” refers to an individual with significant control (or, in Québec, natural persons who are ultimate beneficiaries), with significant control generally defined to capture ownership or control of 25% or more of the voting power or value of an entity.

Jurisdiction	Federal (CBCA)	Ontario (OBCA)	Quebec (LPA)	British Columbia (BCBCA)
In-force date	June 13, 2019, with new regulations in effect as of May 4, 2023. Public access took effect on January 22, 2024.	January 1, 2023	March 31, 2023 Feature to enable a search by name effective on July 31, 2024.	October 1, 2020 Provisions related to public registry will come into force by regulation (timing of which public access remains to be determined).

Jurisdiction	Federal (CBCA)	Ontario (OBCA)	Quebec (LPA)	British Columbia (BCBCA)
Application	Privately-held CBCA corporations.	Privately-held OBCA corporations.	All entities (not just corporations) registered to carry on business in Québec, regardless of the jurisdiction of incorporation, with certain exemptions.	Privately-held BCBCA corporations.
Requirement to file with corporate registrar?	Yes	No	Yes	Not currently, but will be required once provisions related to public registry come into force.
Who is listed in the register	All ISCs.	All ISCs. Similar to federal requirements.	All ISCs, but broader than federal/Ontario requirements because individuals with influence, general partners, limited partners, trustees and beneficiaries of a trust are also captured.	All ISCs, but broader than federal/Ontario requirements because individuals who can appoint the majority of the board of directors are also captured.
Are joint owners captured?	Yes	Yes	Yes	Yes

Jurisdiction	Federal (CBCA)	Ontario (OBCA)	Quebec (LPA)	British Columbia (BCBCA)
Penalties for corporations	Up to \$5,000 for contravening the registration rules or failing to disclose and for the dissolution of the entity. Up to \$100,000 for failing to send register information to the director appointed by the Ministry.	Up to \$5,000.	Not less than \$1,000 nor more than \$10,000 (\$500/\$5,000 for individuals), doubled for a subsequent offence, and/or the dissolution of the entity or cancellation of its registration.	Up to \$100,000.
Penalties for directors/officers	Up to \$1,000,000 and/or imprisonment.	Up to \$200,000 and/or imprisonment.	Not less than \$1,000 nor more than \$10,000, doubled for a subsequent offence.	Up to \$50,000.
Penalties for shareholders	Up to \$1,000,000 and/or imprisonment.	Up to \$200,000 and/or imprisonment.	Not less than \$500 nor more than \$5,000, doubled for a subsequent offence for a natural person; not less than \$1,000 nor more than \$10,000, doubled for a subsequent offence for a legal person or other entity.	Up to \$50,000 for a natural person; up to \$100,000 for a legal person or other entity.

Jurisdiction	Federal (CBCA)	Ontario (OBCA)	Quebec (LPA)	British Columbia (BCBCA)
Who can access the register	<p>Law enforcement, tax authorities, shareholders, creditors and certain other regulatory bodies. Corporations Canada has created a publicly accessible register. Corporations Canada may provide the information to FINTRAC.</p>	<p>Law enforcement, tax authorities and certain other regulatory bodies.</p>	<p>Publicly accessible register in force March 31, 2023. Fully searchable register by name of natural persons starting on July 31, 2024.</p>	<p>Law enforcement, tax authorities, directors and certain other regulatory bodies. Publicly accessible register has been proposed.</p>
Information available in register	<p>Personal information and information pertaining to the individual's status as an ISC. A description of steps taken each year to verify ISCs and any other prescribed information must also be provided. Certain details are excluded from the public register.</p>	<p>Personal information and information pertaining to the individual's status as an ISC. A description of steps taken each year to verify ISCs and any other prescribed information must also be provided.</p>	<p>Personal information and information pertaining to the individual's status as an ISC, including type of control exercised, or percentage of shares, interests or units held or beneficially owned. Certain details will be excluded from the public register.</p>	<p>Personal information and information pertaining to the individual's status as an ISC. A description of steps taken each year to verify ISCs and any other prescribed information must also be provided.</p>

Jurisdiction	Federal (CBCA)	Ontario (OBCA)	Quebec (LPA)	British Columbia (BCBCA)
Other	A corporation that is unable to identify any ISCs must set out a statement and a summary of the steps taken to try to identify these individuals.			A corporation unable to identify any ISCs must set out required information that the corporation was able to confirm in respect of the ISC, and provide a summary of the steps taken to confirm the information.

[1] In Québec, the standard is natural persons who are ultimate beneficiaries of private companies. However, for ease of reading, in this Update we refer to Québec “ultimate beneficiaries” as ISCs.