**CBCA vs OBCA**

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| **Topic** | **CBCA** | **OBCA** |
| **COST TO INCORPORATE** | Online: $200; otherwise: $250 | Online: $300; otherwise: $360 |
| **PUBLIC VS PRIVATE COMPANIES** | \* Refers to public companies as distributing corporations | \* Refers to public companies as offering corporations |
| **Classes of Shares**  | **s. 6(1)(c)(ii)** – Articles of incorporation can specify if there will be 2 or more classes of shares and the rights, privileges, restrictions, and conditions attaching to each class of shares**s. 24(3)** – At least one class of shares must be voting, entitled to receive dividends, and to receive the assets remaining on dissolution (if only one class of shares, it must have those 3 rights) | **s. 22(7)** – Articles of incorporation can specify if two or more classes of shares or two or more series within a class of shares will have the same rights, privileges, restrictions, and conditions **s. 22(3)** – At least one class of shares must be voting and entitled to receive the remaining property of the corporation upon dissolution (if only one class of shares, it must have those 2 rights) |
| **Pre-Incorporated Contracts** | **s. 14(1)** – Corporations may adopt written contracts only that were made pre-incorporation | **s. 21(1)** – Corporations may adopt written **or oral** contracts that were made pre-incorporationEven if there is evidence that the subjective intention of the parties was never to hold individuals liable (like in *Black v Smallwood*) **s. 21** now holds people personally liable |
| **Independent Directors** | **s. 102(2)** – Public corporations must have at least 3 directors and at least 2 of them must NOT be officers or employees of the corporation or its affiliates  | **s. 115(2)(b)** – a public corporation must have at least 3 directors**s. 115(3)** – at least 1/3rd of public corporation directors must NOT be officers or employees of the corporation or its affiliates |
| **Canadian Residency Requirement for Directors** | **s. 105(3) –** at least 25% of directors of a corporation must be resident Canadians. If less than 4 directors, at least 1 director must be a resident.**s. 105(3.1)** – If Parliament requires corporations operating in a specific sector to maintain a specific level of Canadian ownership or control/restrict number of voting shares of shareholders, then a **majority of the directors** must be resident Canadians**S. 2(1)** Canadian resident defined as ordinary Canadian citizen or permanent resident who has been ordinarily resident in Canada for more than one year after the time at which he or she first became eligible to apply for Canadian citizenship | **s. 118(3)** – at least 25% of directors of a corporation must be resident Canadians, unless the corporation is not resident to Ontario. If there are less than 4 directors of a corporation (resident in Ontario or not), at least 1 director must be a resident.*International Baslen Enterprises* 🡪 if only 1 director and he/she is not resident Canadian, must restore residency quorum before business is conducted |
| **Limitation Period for Director Liability for Unpaid Wages** | **s. 119(3)** – suit must be brought within 2 years of director ceasing to be director | **s. 131(2)** – no limitation period, but other conditions |
| **Interested Directors Contracts** | **s. 120(5)** – directors, officers, employees, agents, or mandatories of the corporation or an affiliate who have a personal interest can vote on their own remuneration* This only applies to officers, employees, agents, or mandatories who are ALSO directors
* However, under good corporate governance, officers never vote on their own salaries, so this rarely comes up

**s. 120(6.1)** – Shareholders can examine the portion of the directors’ meeting minutes that contain disclosures under this sectionNormally, shareholders are forbidden from viewing director meeting minutes | **s. 132(5)** – only directors who have a personal interest can vote on their own remuneration\* no provision allowing shareholders to view portion of minutes relating to disclosure |
| **Duty of Care** | **s. 122(1)(a)** and **(1)(b)** – duties may apply to more than just the corporation (*People v Wise*; *BCE*) | **s. 134(1)(a)** and **(1)(b)** – duties apply ONLY to the corporation (amended after *People v Wise*). |
| **Defence of Due Diligence for Director Liabilities** | **s. 123(4)** – due diligence defense applies to all s.118 liabilities (corporation sells shares at lower than market value for consideration other than money) **AND** s.119 liabilities (unpaid employee wages)  | **s. 135(4)** – due diligence defense applies to s.130 (liability when corporation sells shares at lower than market value for value other than money), **but not** s. 131 (liability for unpaid employee wages) |
| **Standing to Bring Shareholder Proposal** | **s. 137(1.1)** – must be registered shareholder or beneficial owner of shares, continue to hold shares for 6 months before submitting proposal, and own at least 1% of outstanding shares or at least $2000 in market value of shares (whichever is less)* In order to prevent shareholder with shares in competing company to be able to make a proposal against management

**s. 137(5)(a)** – corporation does not have to submit proposal in proxy circular with a statement of report if it is not received before 90 days of the anniversary date of the previous year’s meeting**s. 137(5)(e)** – corporation can refuse to include proposal in proxy circular if being abused to secure publicity  | **s. 99(1)** – must be a registered shareholder of shares entitled to vote or beneficial owner of shares entitled to vote [**no time or proportion of share restriction** – 1 share is good enough].**s. 99(5)(a)** – corporation does not have to submit in proxy circular if not received before 60 days of anniversary of meeting (diff. for non-offering corporation)\*Includes no provision allowing corporation to refuse to include if being abused to secure publicity |
| **Unanimous Shareholder Agreement** | **s. 146(3)** – **transferees and purchasers** (of new shares) are bound by unanimous shareholders agreements**s. 146(4)** – if transferee or shareholder not given notice of USA, has 30 days to rescind the transaction\*Does not specify how to amend USAs\*Does not specify ability to arbitrate | **s. 108(4)** – **only transferees** are bound by unanimous shareholder agreements**s. 108(9)** – if transferee was not given notice of USA, and share certificate had no reference to USA, has 60 days to file notice of objection* **108(10)** – file notice of objection = (a) rescind; (b) demand transferor pays fair value, as determined at day of delivery

**s. 108(6)(a)** – can amend USAs only as set out in OBCA**s. 108(6)(b)** – directors can go to arbitration to resolve disputes surrounding USAsNOTE: directors cannot attend arbitration for any other dispute as it would fetter their discretion. |
| **Proxy Validity** | **s. 148(3)** – Proxy is valid only at the meeting in respect of which it is given or any adjournment thereof (for both private and public corporations) | **s. 110(2.1)** – Proxy is valid at any public company meeting for one year after it was initially introducedImplies that proxies of private corporations are valid anytime until revoked |
| **Proxy Solicitation** | **s. 149(2)** – Public corporations and private corporations with more than 50 shareholders must solicit proxies | **s. 111** – Only public corporations are required to solicit proxies |
| **Breach of Proxy Legislation – Remedy** | **s. 154(1)** – an interested person or Director may apply to a court for a restraining order or a mandatory injunction against the meeting | **s. 253(2)** – only the Ontario Securities Commission can apply to a court for a restraining order or mandatory injunction against the meeting. |
| **Sending Out Financial Statements** | **s. 159(1)** – Corporation must send out copies of financial statements to shareholders not less than 21 days before annual meeting of shareholders except to shareholders who have said they do not want one (positive obligation) | **s. 154(3)** – Public corporations must send out copies of financial statements only to shareholders who say they want one, not less than 21 days before annual meeting of shareholders (negative obligation)**s. 154(4)** – Private corporations must send out copies of financial statements to shareholders not less than 10 days before annual meeting of shareholders except to shareholders who have said they do not want one (positive obligation) |
| **Statutory Response to Unequal Distribution of Voting Rights** | *Mandatory Assignment of Voting Rights to Shares*:**s. 183(3)** Re: Amalgamation **s. 189(6)** Re: Sale of assets **s. 188(4)** Re: Switching jurisdictions*Fundamental Transactions to Be Approved Separately by Every Class of Shareholder, Whether or Not Those Shares Carry Voting Rights***s. 183(4)** Re: Amalgamation**s. 189(7)** Re: Sale of assets**s. 176** Re: Amendments of articles of incorporation | DOES NOT PROVIDE FOR MANDATORY ASSIGNMENT OF VOTING RIGHTS TO SHARES*Fundamental Transactions to Be Approved Separately by Every Class of Shareholder, Whether or Not Those Shares Carry Voting Rights***s. 170** Re: Amendment of articles of incorporation**s. 176(3)** Re: Amalgamation**s. 184(6)** Re: Sale of assets |
| **Derivate Action** | **s. 239(1)** – complainant must give 14 days’ notice to directors in all circumstances | **s. 246(2.1)** – complainant not required to give the 14 days’ notice in 246(2) if all directors are defendants in the action |
| **Oppression Remedy** | **s. 241** – complainant can seek relief only for actual actions of the company | **s. 248** – complainant can seek relief for both actions **and threatened** actions of the company |