

# CANADA

A Legal Guide for Business  
Investment and Expansion



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# CANADA

## A Legal Guide for Business Investment and Expansion

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- CND: Canadian Dollar
- USD: American Dollar

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– **Michael Kennedy, Editor**  
Patterson Law  
Halifax, Nova Scotia, Canada  
mkennedy@pattersonlaw.ca

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# ABOUT MERITAS

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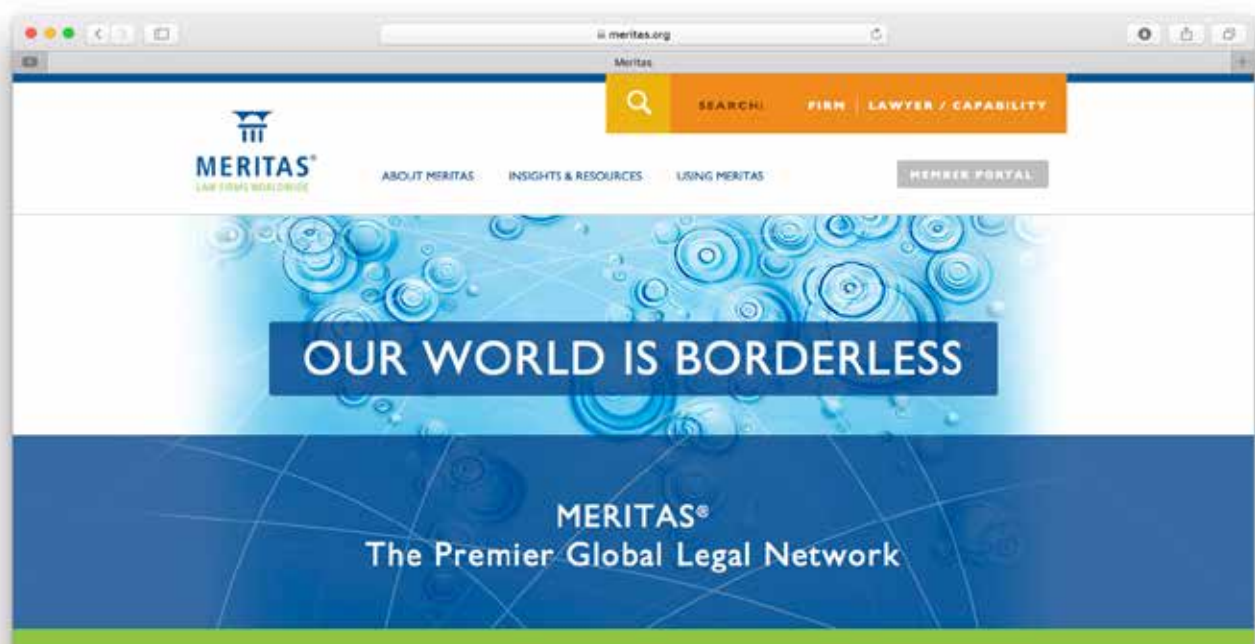
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# INTRODUCTION TO CANADA

**Population: 36,855,215**

**Capital: Ottawa**

**Geographic Area: 9.9 Mil. km<sup>2</sup>**

**GDP: \$1.64 trillion (USD)**

**Major Industries:**

- **Manufacturing**
- **Services**
- **Oil and Gas**
- **Mining**
- **Forestry**
- **Technology**
- **Film and TV**
- **Tourism**

CANADA, the second largest country by land mass in the world, is a country that has become synonymous with hockey, winter, maple syrup and a friendly population. And although the country's population is relatively small in comparison to its significant land mass, with approximately 36.86 million people, Canada has attained significant international status in relation to its trading power, role in international affairs and economic stability. It is for these reasons that there is no better time than now to consider doing business in Canada.

Canada remains one of the strongest trading nations in the world. Canada is the leading North American car manufacturer, holds the world's third largest oil reserves, is one of the world's largest suppliers of agricultural products including wheat and other grains, and is recognized internationally as a world leader in such areas as fibre optics and telecommunications. Canadian exports boast a healthy balance between raw materials and finished goods.

The United States continues to be Canada's largest trading partner in part because of its geographic location (over 90% of Canadians live within 160 kilometers - 100 miles - of the United States-Canada border) and the North American Free Trade Agreement (NAFTA). Canada is the United States' second-largest overall supplier of goods; sixteen States import more goods from Canada than any other country. Most recently, Canada's ongoing trade negotiations with the European Union (EU) finally came into effect in 2017. The Canada-European Free Trade Association Free Trade Agreement (CETA) now gives Canadian businesses access to the markets in the European Union and opens the door for new opportunities for trade with 28 EU member states and increased accessibility to over 500 million people.

Despite its relatively small population, Canada continually punches above its weight class on the international stage. Canada is a member of global organizations including the Group of 7 (G7), Group of 20 (G20), Asia Pacific Economic Cooperation (APEC), Organization for Economic Cooperation and Development (OECD), and the World Trade Organization.

Canada has experienced relative economic and political stability for much of the last century. The global financial crisis in 2008 and 2009 revealed the strength of Canada's well-regulated financial institutions, proving to be a model of prudence to the world.

A map of Canada that outlines the division of the country into ten provinces and three territories is on the facing page. General information on each of the Provinces and Territories which comprise Canada's Confederation, together with information about Ottawa, the Capital of Canada, begins on page 78.

Governmental powers are constitutionally divided amongst the federal and provincial/territorial governments. The Federal Government is primarily responsible for matters of national and international importance, including banking, shipping, criminal law, national defence and foreign affairs. Provincial and territorial governments are primarily responsible for matters that affect the day-to-day life of the country's population, including hospitals, education, labour relations, professional trades, property and civil rights in the province and local works and undertakings. In most cases, interested investors should consult a firm in the provincial or territorial jurisdiction in which they seek to do business.

As a highly multicultural society, Canada has enshrined the importance of personal freedoms in its Constitution through the Charter of Rights and Freedoms. The Charter, as it is commonly known, guarantees fundamental freedoms such as religion, expression, association and peaceful assembly as well as democratic rights, mobility rights, legal rights and equality rights. This has led to Canada being considered a world leader in human rights and a country that generally respects and enshrines cultural heritage rather than encouraging the population to form a homogenous melting pot.

This book provides a general overview of particular matters of interest to businesses considering entry into the Canadian market. Where appropriate, descriptions of both federal and provincial laws are provided. However, this book should not be considered an exhaustive review, and particular businesses may be subject to industry-specific legislation and other legal requirements which are not dealt with in this book. Accordingly, before undertaking any business transaction involving entry into Canada, it is prudent to seek the advice of counsel.



# TOP 10 QUESTIONS

## 1. What laws influence the relationship between local agents and distributors and foreign companies?

Foreign companies doing business in Canada will be influenced by legislation, the common law and various international treaties. Canada's Constitution creates mutually exclusive jurisdictions for federal and provincial legislation. For example, Canada's intellectual property, competition, bankruptcy and criminal laws are solely within the purview of the Federal Government. Provincial legislative authority is granted for the regulation of trade and commerce, education and health within the province. This provincial authority includes legislation, common law and, in the case of Québec, civil law affecting property and civil rights in the province.

The jurisdictional distinctions are often blurry, and the subject matter of federal and provincial legislation sometimes overlaps. In addition, Canada has entered into many international trade and tax treaties with other countries which will influence foreign companies doing business in Canada.

For further discussion of these issues, see Part A of this Guide, "Legal Framework of Canada".

## 2. How does the Canadian government regulate commercial joint ventures between foreign investors and local firms?

Legislation by the Federal Government and each of the provincial

governments regulates ventures between foreign investors and local firms, including agents and distributors. From a contracting perspective, there is no material distinction between business parties who are foreign and those who are local.

The foreign investor will have to comply with the direct investment provisions noted below in question 3 and discussed in more detail in Part E of this Guide, "Foreign Investment and Merger".

In addition, many obstacles to foreign investment have been removed as a result of the various free trade agreements that Canada has negotiated with other countries, such as the North American Free Trade Agreement discussed in detail in Part O of this Guide, "International Trade".

## 3. What role does the government of Canada play in approving and regulating foreign direct investment?

Non-Canadians who acquire control of an existing Canadian business or who wish to establish a new unrelated Canadian business are subject to the federal *Investment Canada Act* (ICA). In either case the non-Canadian investor must submit either a Notification or an Application for Review to the Federal Government. A Notification must be filed each and every time a non-Canadian commences a new business activity in Canada and each time a non-Canadian acquires control of an existing Canadian business where the establishment or acquisition of control is not a reviewable transaction. Only in certain circumstances

does the ICA seek to review or restrict new investments by non-Canadians. In general terms, the transactions which are subject to review under the ICA are larger transactions, and transactions in certain politically and culturally significant sectors (as noted below in question 5). Securities transactions and venture capital deals, acquisitions of control in connection with realization on security, certain financing transactions and certain direct and indirect acquisitions of control by insurance companies are exempt from the ICA. For all other transactions a Notification needs to be filed.

More detailed information on the ICA and direct investment in Canada can be found in Part E of this guide, "Foreign Investment and Merger."

## 4. Can foreign investors conduct business in Canada without a local partner? If so, what corporate structure is most commonly used?

There is nothing preventing a foreign investor from conducting business in Canada without a local partner. All businesses, foreign or local, must register in the appropriate jurisdiction to conduct business; however, these are administrative filings.

Most foreign investors, however, would incorporate a new company in a Canadian jurisdiction in order to carry on their business. This Canadian subsidiary may be a standard limited liability corporation or it might be an unlimited liability corporation, depending on the tax characteristic of the parent's jurisdiction. More detailed



information on the forms of business organization in Canada can be found in Part B of this guide, “Forms of Business Organization”. In addition, the taxation of foreign investors and their Canadian subsidiaries is discussed in detail in Part D, “Taxes and Duties”.

### **5. What steps does the Canadian government take to control mergers and acquisitions with foreign investors of its national companies or over its natural resources and key sectors (e.g., energy and telecommunications)?**

As discussed in question 2, non-Canadians who acquire control of an existing Canadian business, or who want to establish a new unrelated Canadian business, are subject to the federal *Investment Canada Act* (ICA). The transactions subject to review include businesses within a prescribed type of business activity that is related to Canada’s cultural heritage or national identity, and transactions where the Minister responsible has reasonable grounds to believe that an investment by a non-Canadian could be injurious to national security. Notice of the transaction is given to the Review Division of Industry Canada. When a transaction is reviewable under the ICA, the investor is required to file an extensive pre-closing filing called an Application for Review with supporting documents. When a review is conducted, the investor is prohibited from closing the transaction until the Minister’s approval is obtained. Investment reviews under the ICA proceed in

tandem with reviews under the *Competition Act*.

Merger or antitrust review and pre-notification in Canada are governed by the *Competition Act*. Mergers that exceed a certain size threshold require the Commissioner of Competition to be notified prior to completion. Whether a notification filing is required is determined by the value of the assets in Canada and the annual gross revenues from sales in, from or into Canada of the parties to the transaction, and of the target corporation itself.

There are sectors in Canada, such as telecommunications and other broadcast-related sectors, that have ownership restrictions imposed by the Federal Government. In addition, Canada has anti-dumping legislation which imposes duties to prevent unfair competition with domestic Canadian goods.

More detailed information on the direct investment and competition laws in Canada can be found in Part E of this Guide, “Foreign Investment and Merger”.

### **6. How do labour statutes regulate the treatment of local employees and expatriate workers?**

For employers in Canada, the employment relationship is governed by various federal and provincial acts that provide minimum standards for most employees. In most cases, individual or collective agreements will be governed by these minimum standards. Accordingly, Canada cannot be considered a jurisdiction in which

there is employment at will. There are minimum standards which mandate that employees are entitled to receive either notice of the termination of their employment or pay in lieu of notice if their employment is terminated without cause. The legislative requirements are minimum standards only and do not restrict an employee’s right to sue for breach of contract, wrongful dismissal or other damages arising from the termination of his or her employment. In the absence of a written contract to the contrary, termination of employment without cause generally requires significantly longer notice periods than those provided by the legislation. Appropriate reasonable notice periods have been established by common law through the litigation process on a case-by-case basis. The courts consider various factors, including the employee’s age, length of service, position, remuneration, how the employee came to be employed, their chance of finding replacement employment and the manner of dismissal. The judge will consider all of these factors to determine the appropriate “reasonable notice” period.

Reasonable notice established by the common law in Canada often greatly exceeds the obligations of U.S. employers to their employees. The grounds for termination for cause in Canada are also very limited and reserved for the most serious misconduct (for example, where the termination results from acts of dishonesty of the employee, or where the employee has been warned in writing various times and provided

with assistance, yet continues to perform below expectations).

More detailed information on employment law in Canada can be found in Part K of this Guide “Employment Law”. In addition, more detailed information on business visitors (temporary residents), temporary workers, professional workers under the various international trade agreements and permanent residents can be found in Part L, “Immigration Restrictions”.

### **7. How do local banks and government regulators deal with the treatment and conversion of local currency, repatriation of funds overseas, letters of credit and other basic financial transactions?**

Banking, currency and negotiable instruments are regulated uniformly in Canada by the Federal Government. Specifically, all banks in Canada are regulated by the Federal Government. *The Bank Act*, S.C. 1991, c. 46 is the main federal statute which regulates Canadian banking. Canadian banks are divided into three distinct categories. Schedule I banks are domestic banks that are allowed to accept deposits which may be eligible for deposit insurance. Schedule II banks are foreign bank subsidiaries that are authorized to accept deposits which may be eligible for deposit insurance. Foreign bank subsidiaries are controlled by eligible foreign institutions. Schedule III banks are foreign bank branches of foreign institutions that are authorized to do banking business in Canada.

### **8. What types of taxes, duties and levies should a foreign investment in Canada expect to encounter?**

When doing business in Canada, you can expect to encounter sales and transfer taxes, income and capital taxes, and custom and excise duties.

Canada has a 5% goods and services tax (GST) which applies to most goods and services on the purchase price. Those engaged in commercial activity in Canada having worldwide sale of goods and services subject to GST greater than \$30,000 per year must register to collect GST. Registration entitles businesses to input tax credits (ITCs) equal to the full amount of GST paid by them on all business purchases. Some nonresidents carrying on business in Canada are also required to register to collect GST. Most Canadian provinces charge a sales tax ranging between 5% and 10% on tangible property and certain services. Harmonized Sales Tax (HST) has been implemented in Nova Scotia, New Brunswick, Newfoundland, British Columbia and Ontario. HST applies to all goods and services that are subject to GST and ranges between 12% and 15%. Registrants for HST are entitled to claim ITCs. The province of Québec administers its own sales taxes together with the GST. The rate of the Québec sales tax is 9.975%. In addition, a land transfer tax, ranging from .02% to 2%, is payable on the acquisition of real property in each province.

Canada imposes a federal income tax on nonresidents who conduct business or sell real property in Canada. Canada also imposes a federal nonresident withholding tax on certain Canadian source payments. This requirement can be waived if the nonresident is carrying on business through a permanent establishment. Canada has entered into bilateral treaties with many countries which contain tax relief provisions. A foreign tax credit may be available in the nonresident’s own jurisdiction. A corporation incorporated in Canada will be considered a resident of Canada for income tax purposes. This means the corporation will be subject to Canadian income tax on its worldwide income. Foreign businesses can also be carried on through branch operations. Provinces and territories typically impose income tax on corporations carrying on business within the province and some impose a capital tax on corporations.

All goods entering Canada go through a customs inspection at the point of entry. Documentation accompanying goods ascertains the transaction value of the goods (the price paid for the goods by the importer, subject to adjustments for royalties, shipping fees and transportation). The amount of customs duty is determined by the customs tariff that sets out a specific list describing the class of goods and setting out the corresponding rate of duty. Member countries of North American Free Trade Agreement (NAFTA) receive a preferential duty rate. Imported goods, such as alcohol

and tobacco, are subject to a special duty under the customs tariff that is equal to the excise duty paid by Canadian producers.

There are special anti-dumping duties for imported goods sold in Canada at prices that are below the prices in the home market. Dumping occurs when the “normal value” of the imported goods exceeds the “export price.” These anti-dumping duties are imposed to provide Canadian producers with relief from unfair import competition.

More detailed discussion of this topic can be found in Part D of this Guide, “Taxes and Duties”.

### **9. How comprehensive are the intellectual property laws of Canada, and do the local courts and tribunals enforce them objectively, regardless of the nationality of the parties?**

Canada offers a fully developed and modern intellectual property law regime. Through federally based legislation that governs the acquisition and enforcement of intellectual property rights throughout Canada, parties are able to register and protect all aspects of intellectual property, including trademarks, copyright, patents of invention and industrial designs. Canada is also a party to all of the major world intellectual property law treaties and conventions, including the Patent Cooperation Treaty, the Berne Convention and the various World Intellectual Property Organization

treaties. Parties, including those based in foreign jurisdictions, have the ability to enforce their intellectual property rights in either the superior courts of the Canadian provinces, or, more often, in the Federal Court of Canada, which courts are required to enforce Canada’s laws fairly and objectively, regardless of a party’s national origin.

A more detailed discussion of this topic can be found in Part G of this Guide, “Intellectual Property Protection”.

### **10. If a commercial dispute arises, will local courts or arbitration offer a more beneficial forum for dispute resolution to foreign investors?**

Whether or not foreign investors will benefit more from bringing a dispute to private arbitration or to the courts will depend on the nature of the dispute. For example, a foreign investor may benefit from having a complex commercial matter arbitrated privately, as the parties can attempt to select an arbitrator who has experience and knowledge related to the subject matter at issue. Private arbitration can also be beneficial because it is generally a much faster process than court proceedings. In either case, Canadian law, and in particular Canada’s Charter of Rights and Freedoms, guarantees equality under the law, which extends to foreign participants in court or arbitration proceedings, such that neither party to a dispute should benefit (or suffer) from the fact of their national origin.

# A. Legal Framework Of Canada

## 1. **Generally**

Canada is based upon a constitutional monarchy system of government and consists of a confederation of provinces. Canada was brought into existence in 1867 through an act of the British Parliament known as the *British North America Act* (BNA Act).

The BNA Act created a Federal Government, which consisted of a confederation at that time of four provinces. Since then, the additional provinces and territories were created as they joined Confederation and the individual provincial boundaries were expanded over time to form the present framework of ten provinces and three territories.

The BNA Act set out election procedures (primarily based upon the British parliamentary system) for the federal and provincial governments and the structure of the Court system, and also divided the governmental powers between the provinces, as implemented by the provincial legislature, and the Federal Government, as implemented by the Parliament of Canada.

The exception to the common law basis for provincial jurisdiction is the Province of Québec, which at the time of its joining Confederation in 1867 was governed by a civil code regime which is now known as the Civil Code of Québec. The Province of Québec is also governed by the federal laws which apply under the division of powers in the Constitution and, like all other provinces, Québec has passed legislation applying to matters within the jurisdiction of the

provinces under the Constitution. The modern Civil Code in place in Québec recognizes the same legal structures and rights as any modern Civil Code and although the terminology and specifics of various issues are somewhat different, the end result for any business is for the most part indistinguishable from similar results in any western democracy.

In 1982, Canada repatriated its constitution and included in this repatriation process was, among other matters, a Charter of Rights and Freedoms which guarantees that no governmental actions or legislation may, in any manner, interfere with certain fundamental rights of all persons. These rights are therefore entrenched into the Constitution of Canada.

When each of the Canadian provinces joined Confederation, the laws which were in place within the provincial jurisdiction under the BNA Act were preserved. These laws, except within the Province of Québec, were based upon the English common law (and statutory law) as may have been amended, enhanced or altered by the legislative regimes of the particular province prior to joining the Confederation. This is very similar to the underlying structure in the United States. The powers of the Federal Government as outlined in the BNA Act were those based upon the common law and the (statutory laws) of England in effect prior to the initial passing of the BNA Act.

The conclusion one can reach from this is that the Canadian legal framework is one that is very familiar to any foreign entity wishing to do

business in Canada which has previous experience in any common law or civil code jurisdiction including the United States and Europe.

## 2. **Division of Powers**

As mentioned above, a portion of the BNA Act divided the powers between the federal and provincial governments. Although the original framework has for the most part remained intact, the list of powers has been amended, particularly since the advent of new issues which have been identified since Confederation.

The division of powers outlined in the Constitution is very similar to that which exists in the United States. For instance, banking and bills of exchange, ports, import and export, immigration, patents, trademarks, telecommunication, customs and duties, are all within the ambit of the Federal Government, while matters of a local nature and most notably “property and civil rights” vest with the provincial governments. The phrase “civil rights” applies to rights of individuals as recognized by the common law and Civil Codes such as contractual or tort rights, while “property” includes real and personal property and moveable and immoveable property in the Civil Code context. The phrase “property and civil rights” has been determined to include “trade and commerce” within the province. It is this “property and civil rights” designation which affects, for the most part, the day-to-day activities of any business in Canada.

As an example, each province has passed legislation respecting insurance,



corporations, mining, forestry, education, municipal governments, land use, health, labour and employment, real property and land registration systems, personal property security and construction liens.

One of the main distinctions between Canada and the United States is that jurisdiction over criminal law does not vest in the provinces; it is a power over which the Federal Government has exclusive jurisdiction. Note also that the provincial governments are responsible for the creation of municipalities including cities and towns within the provinces. These entities, together with the provincial and federal governments, form the three levels of government in Canada.

The U.S. reader will recognize the framework set up in Canada and although there are differences that many concentrate their discussions upon, it is clear to all that the similarities far outweigh the differences.

### 3. Application of the Division of Powers

While certain business matters, such as banking, taxation and purchase of an existing business in Canada fall under the federal powers, they are nonetheless impacted by the various provincial rules and regulations that govern the day-to-day matters of these transactions.

The first matters to be determined by the foreign entity are the federal issues surrounding the *Investment Canada Act* and the *Competition Act* and in this regard, reference is made to the Foreign Investment and Merger section (Part E) of this Guide.

The next matter to be determined, and this applies to any merger or acquisition, is where in Canada this entity wishes to concentrate its business activities or where in Canada, in the case of acquisition, the target business is located. In other words, in which province or territory is the business to be located. The location will dictate, as outlined above, the laws which will affect the day-to-day operation of the business or which will affect many of the issues associated with the acquisition of the business.

Then there is the issue of what form of entity will own or operate the business. If a foreign-owned entity wishes to acquire an existing business in Canada, it may do so in many different ways such as share purchase, purchase of partnership units, purchase of assets, and assumption of real and personal property leases and obligations. In this regard, reference is made to the Forms of Business Organization section (Part B) on page 17. There are advantages to formation of particular business structures for tax and foreign ownership considerations and it should be noted that any corporation created in Canada under any provincial or federal enabling legislation can carry on business in any province or territory in the country upon registering to carry on business in that province. Care should be taken in choosing the jurisdiction of incorporation in order to ensure that the structure best suits the needs of the business.

The incorporating jurisdiction may be different from the primary place of business and neither precludes the

ability of the business to carry on business and market and sell its products and services throughout the country, provided that the entity or the goods to be sold satisfy such regulatory restrictions which may be in place in the various provinces. Trade between the provinces is generally open and without restriction subject to trade and transportation of particular products or services, which may be the subject of certain restrictions in some provinces.

Taxes, of course, must be considered. Taxation in any multi-layered governmental system is complex. Reference generally is made to Part D of this Guide, Taxes and Duties. Federally, Canada has the *Income Tax Act*, which applies throughout the country, together with an *Excise Tax Act*, which taxes certain goods and services (“goods and services tax” or GST) which again applies across the country. Each province has its own income tax regime which essentially mirrors the federal legislation and imposes certain rates which apply to that province. Most provinces also have some form of provincial sales tax, which may or may not be “harmonized” with the federal GST regimes. On top of that, municipalities charge tax on real estate ownership and conveyancing, and services provided according to schemes in each municipality as approved by the province.

Banking is included in the federal listing of powers under the Constitution, meaning that the creation and regulation of the banking industry in Canada is controlled by the Federal Government through legislation and

its regulatory regime. However, there are also provincial restrictions and requirements that are applicable to banking transactions. For example, if a person wishes to obtain a loan from the bank, the bank would request security generally on real estate or personal property. The form of such security is the subject of the common law, civil law or the legislation in place in each separate province.

As an aside, it is to be noted that the Canadian banking system remained stable throughout the financial crisis of 2008 and the Canadian system has been lauded as one of the best examples of stability in the financial marketplace.

Any business intending to locate in another area must have a location from which to operate. As noted below, there are no overall constraints on foreign ownership and leasing of real property in Canada. There are, however, some constraints in place which are local or provincial in nature. For instance, there may be residency requirements in Prince Edward Island, Québec and Saskatchewan, particularly as such acquisitions relate to agricultural lands. Recently, British Columbia has imposed special taxes with respect to foreign ownership of property in the lower mainland of Vancouver.

#### 4. Legal Concepts

The Canadian legal system recognizes civil rights and remedies in the same manner as most common law and civil law jurisdictions. These rights are loosely categorized as rights in tort and contract with enforcement

remedies available in the form of damages for breach in the case of contracts and damages available for infringement of tortious rights, including negligence. In extreme examples, injunction-type remedies may be available as well. Similar remedies are also available in the Province of Québec although these types of remedies are available pursuant to the Québec Civil Code, in similar, but distinct form.

Each Province has passed legislation enhancing or removing some of the common law constraints and also providing remedies where otherwise none would be available. For instance, each province has passed construction lien legislation which protects persons who have supplied labour and materials for the benefit of the owner of real property. Limitation periods have also been implemented in all provinces respecting causes of actions of all kinds.

The provinces, as noted above, have jurisdiction over “property” located within the province. The term “property” includes both real property (land and anything fastened to it) and personal property. The term “personal property” includes moveable property or “chattels”, as well as personal rights such as contractual rights, shareholders’ rights and other rights associated with personal property of any kind.

With respect to real property, each province has registry systems and legislation dealing with priorities and conveyancing matters with respect to such interests and also deals with security interests in real property such as mortgages, hypothecs and charges on real property. Concepts

such as easements and restrictive covenants (being rights real in Québec) are applicable in all of the provinces, again based upon common law or Civil Code concepts.

Every province has forms of securities and registrations associated with personal property and personal property rights, as may be applicable. These are based upon the common law or Civil Code concepts, as the case may be, as may be implemented by the legislation applicable in each province.

“Real property” also includes the leasing of real property which has become a substantial area of real property law everywhere. Leases are governed primarily by the common law or the Civil Code fundamentals of real property which may be amended or enhanced by provincial legislation. For the most part, the leasing concepts used in Canada will be familiar to any person whose business relies upon the leasing of real property.

The Federal Government has also passed legislation within its areas of jurisdiction which again enhances or amends the common law basis for these areas.

#### 5. Courts, Tribunals and Boards

Generally, the Court system in Canada is created under the Constitution and judges at the superior levels are appointed by the Federal Government. There are no elected judges in Canada. The appointment process, for all Courts other than the Supreme Court of Canada, is a system that consists of appointment review



panels in each province which are tasked with recommending judges from a pool of persons who have applied for appointment. Based upon these recommendations, the Federal Government (or in the case of the lower Courts, the province) selects from the recommendation pool. Similar criteria are used for appointments to the Supreme Court of Canada except that the review panels in place from time to time have national representation.

Every province has lower courts which deal with specific issues, Superior Courts and Courts of Appeal. In addition to this, various boards and tribunals have been created to address certain specific issues both federally and provincially. Appeals are available at every level including to the Supreme Court of Canada. Such appeals only relate to matters of national importance and are in the discretion of the Court.

There is also a Federal Court system which deals with issues primarily in the ambit of exclusive jurisdiction of the Federal Government such as shipping, ports and the *Income Tax Act of Canada*. Superior Courts in all provinces have jurisdiction as well over a broad range of issues, including issues which are, for the most part, included in the federal sphere under the Constitution.

Civil Procedure Rules which govern the form of the actions, the timing of responses by the parties and other elements of the process are specific to each province and the federal Court has similar procedural rules.

## 6. Language Requirements

### a. Federal Laws

English and French are the official languages of Canada. The Constitution of Canada and the *Official Languages Act* guarantee that English and French have equality status and equal rights and privileges as to their use in all institutions of the Parliament and government of Canada. Thus, the following minimum rights for the citizens of Canada are guaranteed in their dealings with Federal Government agencies and federally controlled corporations:

- The full and equal access to the laws of Canada and to the federal Courts in both languages;
- The right of any member of the public to communicate with, and to receive available services from, any institution of the Parliament or the government of Canada in either official language; and
- The right of officers and employees of institutions of the Parliament or government of Canada to have equal opportunities to use the official language of their choice while working together.

The *Official Languages Act* provides as well that every federal institution that regulates persons or organizations with respect to any of their activities that relate to the health, safety or security of members of the public has the duty to ensure, through its regulation of those persons or organizations, that members of the public can communicate with and obtain available services from those persons or

organizations in relation to those activities in both official languages.

For example, the *Consumer Packaging and Labeling Act* and pursuant regulation provide that the common or generic name of the product and a declaration of net quantity are required to be shown on the label of a prepackaged product, in both official languages. However, the identity and principal place of business of the person by or for whom the prepackaged product was manufactured, processed, produced or packaged for resale may be shown in one of the official languages.

With regard to the labeling of drugs, the *Food and Drug Act* and pursuant regulations provide that adequate directions for use are required to be shown on the inner and outer labels of a drug in both French and English if the drug is available for sale without prescription in an open self-selection area.

The *Hazardous Products Act* and implemented regulations provide that for many hazardous products, notably toys, lead-containing food containers, products containing cellulose nitrate, candles and tents, any written statement or warning or other written information must be written in English and in French.

According to the Marking of Imported Goods Regulations, the country of origin of NAFTA goods must be indicated to the ultimate purchaser in French, English or Spanish and the country of origin of non-NAFTA goods must be indicated to the ultimate purchaser in French or English.

### **b. Provincial Laws Other Than Québec**

Bilingual requirements in Canada are not only found in federal statutes but in provincial statutes as well. New Brunswick, Ontario and Manitoba have language-related laws and/or regulations. Most of them relate to the relationship between the citizens and the provincial government. But some of them, like in New Brunswick, relate to consumer issues. The New Brunswick *Insurance Act* provides official languages sections. The insurers doing business in New Brunswick must provide or make available forms and documents relating to insurance contracts in both official languages.

### **c. Québec Language Requirements**

French is the official language of Québec. The Charter of the French Language (the Charter) requires the use of French in virtually every field of activity within Québec. However, English (or indeed any other language) may also be used.

The Office de la Langue Française (the Office) ensures that the French language is the work language in Québec. Therefore, supplemental bilingual requirements must be met in order to do business in Québec.

#### **i. Firm Names for Firms Established In Québec**

A French corporate name is required for a company's incorporation in Québec; an English name may be used in addition to the French name. However, exceptions exist.

#### **ii. Firm Names for Firms Established Exclusively Outside Québec**

A French corporate name is required for a company's incorporation in

Québec, although the inscription of its name may be exclusively in a language other than French.

#### **iii. Use of Trademarks**

A recognized trademark within the meaning of the *Trademarks Act* may appear exclusively in a language other than French unless a French version of the trademark has been registered in Canada.

#### **iv. Contracts and Forms**

Contracts can be written in English or another language. However, some specific legal documents must be drawn up at least in French.

#### **v. Public Signs and Posters and Commercial Advertising**

Excepting commercial advertising on certain media which must exclusively be in French, most public signs, posters and commercial advertising may be in both French and another language.

#### **vi. Websites and Commercial Advertising**

Faxes, emails and internet sites are subject to the same rules and exceptions as those concerning commercial advertising. Exceptions exist for products of a cultural or educational nature. Products available in Québec stores must be advertised in French on the website of a company or dealer which has a place of business or an address in Québec.

#### **vii. Catalogues, Brochures, etc.**

In general, catalogues, brochures, folders, commercial directories and any similar publications must be at least in French. However, catalogues, brochures, folders, commercial

directories and other similar publications available to the public or distributed to the public by way of mass mail or door-to-door delivery may be in two separate versions (one exclusively in French and the other exclusively in the other language).

#### **viii. Computer Software**

All computer software, including game software and operating systems, whether installed or uninstalled, must be available in French unless no French version exists. However, all regulations that relate to the product must be respected.

Software can also be available in languages other than French, provided that the French version can be obtained on equivalent terms.

#### **ix. Product Labeling**

In general, every inscription on or related to a product, must be at least in French. This rule applies also to menus and wine lists.

The French inscription may be accompanied with translations. Exceptions exist.

#### **x. Labour Relations**

Written communications, collective agreements, job offers, and promotions must be at least in French.

#### **xi. Francization of Enterprises**

Some enterprises must register with the Office. Such an enterprise must provide the Office with an analysis of its linguistic situation. The Office will issue a francization certificate if it concludes that the use of French is generalized. Otherwise, the enterprise must adopt and implement a francization program.

# B. Forms of Business Organization

The first issue facing foreigners setting up a business in Canada is the type of entity which should be used to operate the business. Among the most commonly used are:

- Canadian corporations;
- Unlimited liability companies;
- Branch of foreign corporation;
- Various forms of partnerships;
- Co-tenancies and joint ventures;
- Agency and distribution arrangements
- Franchise arrangements

The choice of form of business organization is dependent upon a number of factors. The nature of the business and taxation issues which may revolve around the desirability to consolidate income for tax purposes are two important criteria. Availability of incentive or assistance programs may also impact the decision. Foreign investors should obtain professional legal and accounting advice to determine the most advantageous method of conducting business.

## 1. Canadian Corporations

Most businesses in Canada are carried on by corporations. A corporation is a distinct legal entity which has perpetual existence and is afforded the same right to own property and the right to conduct business as is enjoyed by a natural person.

There are several advantages to utilizing a corporate form of organization. First, the liability exposure of the shareholders of a corporation is limited to the amount of their equity investment. Second, a corporation offers investors access to a wider variety of capital and financing opportunities than most other forms of

organization. Since a corporation is a flexible form of organization for business, various classes of shares and debt instruments may be utilized to provide different levels of shareholder and lender participation which reflect the degree of risk inherent in the investment. Thirdly, there can also be additional tax benefits to incorporation since corporate tax rates are often lower than individual tax rates.

Canadian corporations can either be private or public corporations. Private corporations are generally those which have restrictions on the right to transfer shares (generally the consent of a majority of the directors or shareholders), a limit on the number of shareholders and prohibitions on distributing their securities to the public. Articles of incorporation often contain restrictions to ensure that the corporation is a private corporation. Such restrictions exempt the corporation from additional regulatory and securities law rules that apply to public corporations in areas such as proxy solicitation, takeover bids and public financial disclosure.

Corporations may be incorporated and organized under either the federal *Canada Business Corporations Act* (the CBCA) or the equivalent legislation of each of the provinces and territories. Incorporation and organization under the CBCA does not automatically give rise to a right to conduct business in each province. A federal corporation must register in each province in which it proposes to conduct business. Similarly, a provincial corporation may conduct business in another province, provided an extra-provincial license is obtained. There are some exceptions. For example, owing to a reciprocal

arrangement between Nova Scotia and New Brunswick, corporations incorporated in one of these provinces are exempt from the registration requirements of the other. Alberta and British Columbia have enacted the Trade, Investment, and Labour Mobility Agreement (TILMA), which helps to simplify or eliminate additional registration and disclosure obligations for companies registered in one province but carrying on business in the other. The aim of such legislation is to make the expansion of companies more cost effective by eliminating additional registration and reporting costs. The New West Partnership Trade Agreement (NWTP), which came into effect in 2010, builds upon the TILMA and added the Province of Saskatchewan as a signatory. The Second Protocol of Amendment to the NWTP and a Protocol of Accession were signed in November, 2016 to incorporate Manitoba into the NWTP; however, the seamless business registration and reporting process in place under the NWTP still only applies currently to British Columbia, Alberta and Saskatchewan and will not apply to Manitoba until January 1, 2020.

Specific statutes set incorporation, organization and operational standards for certain highly regulated business undertakings such as insurance companies, banks, credit unions and trust companies.

When consulted by a foreign company wishing to conduct business in Canada through a Canadian subsidiary, a lawyer will compare the features of the CBCA and the provincial or territorial statute of the province or territory in which the head office of the subsidiary will be located in order

to determine the preferred corporate statute under which to incorporate and organize. Although the statutes are substantially similar, there are slight differences in the areas of public disclosure of financial statements and residency requirements for directors, which may affect the choice of incorporating jurisdictions.

Residency requirements vary across provinces and territories. There are no residency requirements for directors in British Columbia, Québec, New Brunswick, Prince Edward Island, Nova Scotia, Yukon, the Northwest Territories and Nunavut. However, in Ontario, Alberta, Saskatchewan, and Manitoba, 25% of the directors must be resident Canadians. In most jurisdictions with residency requirements, a “Canadian resident” is defined as a Canadian citizen residing in Canada, or a permanent resident. The CBCA requires that at least one quarter of the directors be resident Canadians, and where there are fewer than four directors, that at least one director must be a resident Canadian. However, in certain businesses, including film or video distribution, the CBCA requires that a majority of the directors be resident Canadians. This latter residency requirement is reduced to one-third for holding companies meeting specified financial criteria. Permanent residents may lose their status as resident Canadians for CBCA purposes unless they become citizens within one year of first eligibility.

There are other factors which may tip the scales in deciding whether or not the federal jurisdiction or the provincial jurisdiction should be utilized for incorporation. For example, certain financing incentives provided by one

level of government may dictate incorporation within that jurisdiction. There is also a perception that certain businesses which supply goods or services to a particular province should strongly identify with that province, making it advisable to incorporate within that jurisdiction.

Corporate names may have separate English and French versions. In such cases, the versions may be used interchangeably. If a corporation wishes to do business with the government of Québec, it is necessary to adopt a French version of its corporate name.

Federal and provincial corporate statutes provide shareholders with dissent and appraisal rights which may require a corporation to acquire a dissenting shareholder’s interest for its fair value if a corporation implements a fundamental change. Corporate legislation also contains statutory oppression remedies which give Courts broad rights to grant equitable remedies where shareholders or creditors have been subject to corporate activity which is unfairly prejudicial or unfairly disregards their respective interests. These remedies are in addition to any remedies flowing from fiduciary duties which have been compromised.

## 2. **Unanimous Shareholder Agreement**

The term Unanimous Shareholder Agreement (USA) is used to refer to a Shareholders’ Agreement amongst all of the shareholders of a corporation whereby some or all of the powers of the board of directors have been delegated to the shareholders. In some provincial corporate statutes, USAs are explicitly recognized, while in others they are not. In those

provinces that recognize USAs, they are used to restrict the scope and nature of the powers of directors to manage the business and affairs of the corporation which are stipulated by the governing statute. Further, any shareholder who is party to a USA may be specifically delegated all or some of the rights, powers and duties of directors and the directors are accordingly released from their duties and liabilities. In provinces where USAs are not explicitly recognized, the directors of a company subject to a USA may not necessarily be relieved from their obligations as directors. USAs are often prepared in jurisdictions that explicitly recognize them, even if a corporation has only one shareholder. Shareholders in closely held corporations will often want to customize their relationship to provide for an arrangement which is different from that contemplated in the provincial corporate statute, CBCA, or at common law.

USAs can regulate a specific topic or every detail of a corporation’s operation. The following are some subjects which are commonly covered in USAs:

- **Board of Directors:** Shareholders may wish to stipulate the size of the board of directors and often wish to indicate the number of directors a certain shareholder or shareholder group will be entitled to nominate.
- **Dividends:** Shareholders may wish to establish a dividend policy.
- **Share Transfers:** Shareholders may want to set up mechanisms to restrict share transfers (which may be subject to a right of first refusal, buy/sell or other liquidity arrangement) and the issuance of additional securities.



- **Dispute Resolution:** Shareholders may want to resolve their disputes by such means as arbitration, instead of by means of the relative voting power of different shareholders.
- **Financing Arrangements:** Shareholders may wish to stipulate a policy for financing the business which, for example, could stipulate when equity versus debt financing will be utilized.

### 3. Unlimited Liability Companies (ULC)

ULCs are of particular interest to U.S. companies with Canadian operations because of the favorable tax treatment they can receive. ULCs can elect for U.S. tax purposes to be treated as a “disregarded entity,” thereby “flowing through” the income of the ULC to the U.S. parent for taxation in the parent’s hands. This election does not affect the ULC’s tax treatment under Canadian tax laws.

While a ULC has a separate legal existence from its shareholders, the shareholders may be liable for the obligations of a ULC in certain limited circumstances. For example, if the ULC is wound up or liquidated, its shareholders are liable for the debts of the ULC if its assets are not sufficient to satisfy creditors. Past shareholders may also be liable in some circumstances. On a day-to-day basis, however, shareholders of a ULC are not responsible for the obligations incurred by it.

Until recently, Nova Scotia was the only Canadian jurisdiction that contemplated three types of companies:

- Those limited by shares (the familiar corporate structure where shareholders hold shares in the company);
- Those limited by guarantee (where a shareholder guarantees a specified amount of the company’s liabilities); and
- Unlimited liability companies (ULCs).

ULCs are no longer unique to Nova Scotia. Alberta’s and British Columbia’s legislations now include ULCs as well.<sup>1</sup> On 17 May 2005, through amendments to the *Business Corporations Act* (Alberta), Alberta’s legislation regarding ULCs came into effect. And, on 29 March 2007, British Columbia passed amendments to its *Business Corporations Act* (British Columbia) allowing for ULCs.

Each Canadian jurisdiction allowing the registration of ULCs is different. These differences should be taken into account, particularly for U.S. companies with Canadian operations. For example, Nova Scotia’s legislation includes well-defined limits on liability of shareholders, particularly past shareholders. The liability provisions in Alberta’s legislation are broader than Nova Scotia’s and British Columbia’s. Furthermore, Alberta’s legislation contains residency requirements for directors, whereas Nova Scotia’s and British Columbia’s do not.

Conversely, Alberta’s ULC legislation is much different. Firstly, there is a residency requirement for directors: 25% of the directors must be Canadian residents. Secondly, the legislation allows an Alberta ULC to convert to a limited liability corporation and vice versa. Third, shareholder liability

is unlimited and is joint and several in nature while the company is in existence. This liability is broader than under the respective Nova Scotia and British Columbia legislation.

### 4. Branch of Foreign Corporation

Often, foreign investors wish to conduct their Canadian operations as a branch of a foreign corporation or U.S. subsidiary. Foreign corporations are generally entitled to conduct business in this manner in most areas of commercial activity, provided that extra-provincial licenses to conduct business are obtained in the provinces and territories where the business is carried on. Incorporation often makes it easier for small- and medium-sized businesses to deal with Canadian suppliers and customers. If independent financing for the Canadian operation is required, local financing is much easier to obtain through the use of a Canadian-owned subsidiary. The failure to create a separate corporate entity will expose the foreign corporation to all liabilities incurred in the Canadian operations.

The tax treatment for branch operations is discussed elsewhere in this book. Income tax must be paid in Canada on Canadian branch profits. The ability to claim a full foreign tax credit at the parent corporation level must be considered to ensure that double taxation is avoided. Accordingly, the taxation of the foreign corporation and the projected income or losses which will be incurred by Canadian operations are important (and usually determinative) factors to be considered.

<sup>1</sup> At the time of writing, Prince Edward Island’s current Companies Act does not recognize ULCs. However, the new Business Corporations Act (which will replace the Companies Act, has received Royal Assent and is to come into force at a date to be fixed) does recognize ULCs.

## 5. General Partnerships

A partnership is a relationship that exists between two or more people (individuals, corporations, partnerships or other entities) who conduct a business in common with a view to earning profit. In a general partnership, it can generally be said that:

- In relation to third parties to the partnership, each partner is liable for all of the debts and liabilities of the partnership;
- Net income will be determined at a partnership level and such net income will be allocated to the partners;
- A partner may not be entitled to be a creditor of the partnership (although a party related to the partner is entitled to be a creditor);
- Unless otherwise specified by a partnership agreement, all partners must contribute equally to the capital of the partnership and are entitled to share equally in the profits of the partnership; likewise, all losses would be shared equally; and
- In relation to third parties to the partnership, the liability of a partner in connection with partnership liabilities extends to the full extent of that partner's personal assets.

Partnerships are governed by provincial statutes. Written partnership agreements can override many of the provisions of various partnership acts, and it is advisable to enter into a partnership agreement in order to avoid certain arbitrary provisions of these statutes. As stated above, in the absence of a written agreement to the contrary, partners may be equally

liable for partnership obligations, notwithstanding their unequal capital contributions or profit-sharing arrangements.

Under Canadian tax law, partnerships do not pay income taxes. Although net income is calculated at the partnership level, the net income is allocated to the partners, who are obligated to pay tax. A foreign partner allocated income from a Canadian partnership would, therefore, be obligated to pay Canadian income tax on the foreign partner's share of partnership income.

## 6. Limited Partnerships

A limited partnership restricts the exposure of passive individual partners from the liabilities of the partnership. Limited partnerships are creatures of provincial statutes. These statutes contain subtle differences with respect to the exposure of individuals to liability in excess of the capital invested in the partnership by such individuals. These differences are dependent on the province in which a limited partnership is organized.

A limited partnership consists of one or more general partners (who are exposed to unlimited liability) and one or more limited partners. A limited partner may become liable as a general partner if the limited partner takes part in the control of the business. In other words, in some circumstances, the limited partner will have unlimited liability as a result of its participation in the control of the business. In some provinces, the extent to which a limited partner is exposed to liability is limited to the result of the acts such limited partner performs in the management and operation of the business of the limited partnership. Manitoba's

legislation provides further protection for limited partners. In Manitoba, a limited partner that performs in the management and operation of the limited partnership is only liable for the debts of the partnership if the limited partner deals with a third party on behalf of the limited partnership and the third party does not know that s/he is a limited partner. Further, such liability extends only to liabilities incurred by the partnership to that third party between the time that the limited partner first so dealt with the third party and the time when the third party first acquires actual knowledge that s/he was dealing with a limited partner. This condition limits the circumstances in which a limited partner can lose his/her limited liability protection.

A limited partnership does not come into existence until it is registered under the laws of the province in which it is established. Typically, registration requires filing forms which provide specific information about the identity of the general partner. These forms may or may not require the identities of the limited partners. There is no requirement that the limited partnership agreement itself be filed in an office where it may be scrutinized by the public.

Limited partnerships are useful vehicles where there is a desire to flow through income and expenses and yet limit the liability of the individual participants in a particular venture. However, in order to achieve this limited liability the investment of the limited partner/investor must be passive in nature.



## 7. Limited Liability Partnerships

Some provinces including British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick and Nova Scotia, Yukon and the Northwest Territories have amended their partnership legislation to recognize a new type of legal entity known as a “limited liability partnership.”

General partnership law imposes unlimited personal liability on partners for all of the partnership’s debts and liabilities. Generally, under the amended provisions of the provincial and territorial partnership legislation, all of the partners in a limited liability partnership remain personally liable for their own actions, and for the actions of those they directly supervise or control. The amended legislation provides, however, that a partner will not be liable for liabilities of the limited liability partnership resulting from any negligent act by another partner or employee of the limited liability partnership not under the partner’s direct supervision or control. Generally, this limitation of liability does not protect a partner if the partner knew of the negligence at the time it was committed and failed to take reasonable steps to prevent its commission.

Limited liability partnerships are only available to “eligible professions,” the meaning of which varies across provinces and territories. There is usually a requirement on partners in a limited liability partnership to maintain a minimum prescribed amount of liability insurance.

Provinces and territories that recognize limited liability partnerships

will usually recognize extra-provincial limited liability partnerships and require certain filings be made with respect to a limited liability partnership.

## 8. Co-Tenancies and Joint Ventures

Real estate investments are often held in the names of co-tenancies or joint ventures. A co-tenancy is not a tax-paying entity, nor is it a relationship such as a partnership which is treated like an entity for the purposes of calculating net income. Accordingly, there is some flexibility available in the preparation of financial statements for co-tenancies. Each co-tenant or joint venturer may determine the amount of depreciation expense which will be utilized by it in the calculation of income for tax purposes.

In the case of joint ventures, agreements are virtually always negotiated prior to the undertaking of joint venture activities. Since a joint venture is not recognized as a distinct and separate entity, it cannot sue or be sued. The Joint Venture Agreement will delineate the respective rights and liabilities of the joint venturers, including their right to bind other parties.

The use of a co-tenancy or joint venture assumes that the parties are not in a partnership relationship. Accordingly, where a joint venture structure is contemplated, care must be taken to analyze whether or not the joint venture structure will survive the scrutiny of a third party who may seek to impose full liability on each co-tenant as if it was a partner in a general partnership. Notwithstanding language contained in the typical joint venture which

confirms that the parties are joint venturers and not partners, if the threshold partnership test of carrying on business in common with a view to a profit is met, there is a risk that the co-tenancy will be deemed to be a partnership and the individual co-tenants liable as partners in a general partnership.

## 9. Agency and Distribution Arrangements

In some cases, the decision to expand into Canada may be realized without actually having the foreign business entity conduct business in Canada. Entering into a distribution contract or agency agreement in Canada does not, in and of itself, constitute carrying on business in Canada. Accordingly, it is often appropriate for a foreign entity to consider the use of a Canadian agent or distributor to expand its business operations into Canada.

In each case, the relationship should be governed by contract to avoid ambiguity and to ensure that necessary controls and methods of recourse are clearly established. Generally speaking, if an agency relationship exists, the agent will have the right to bind its principal to contractual commitments. A distributor does not have such rights and is generally considered to be an independent contractor.

The ownership and protection of intellectual property rights and exclusivity rights are often given insufficient emphasis when establishing an initial distributor or agency relationship with a Canadian entity. This can create significant problems when the relationship between the parties changes. In addition, termination

rights must be considered. In the absence of a written contract, a Canadian agent or distributor will be entitled to reasonable notice before the termination of its contract. If insufficient notice of termination is given, a Court may award damages in lieu of notice.

## 10. Franchise Arrangements

Franchising is easily recognizable and widespread in Canada, particularly for restaurants, fast food outlets, hotels, real estate companies, travel agencies, convenience stores, printing stores, tutoring, home care, housecleaning, moving, tax preparation outlets, cash advance outlets, muffler and automotive service shops and a host of other retail businesses. Many of those businesses are easily recognizable because the concepts originated in the United States; Canada being the natural jurisdiction (and first choice) for international expansion outside of the United States given proximity, language, cultural similarities, legal similarities, a large and wealthy middle-class. In some ways, it is easier to franchise in Canada than in parts of the United States. Indeed, many U.S.-based franchisors will expand across the border to Toronto or Vancouver before they venture to other parts of the United States. And, franchisors from Europe and Australia will sometimes expand to Canada first before the jump into the United States.

American franchisors are subject to either the Federal Trade Commission Rule on franchising requiring disclosure of material facts to prospective franchisees by way of a Franchise Disclosure Document, or, the regulatory regime in those U.S. states which have

legislation specifically regulating franchising. In such states, franchisors are subject to regulatory review by state authorities, something that every franchise or the United States is aware of.

For franchisors expanding into Canada, either from the United States, Europe or Australia/New Zealand, the regulatory regime in Canada is quite different than in the United States, and compliance is arguably easier and less expensive.

### a. At the Federal Level

Canada, like the United States, is a federal country where the Federal Government has certain exclusive legislative powers under the Constitution and the respective provincial governments have other exclusive legislative powers. In terms of franchising, there is no direct involvement or regulation of franchised businesses at the federal level analogous to the Federal Trade Commission (FTC) rule in the United States.

Nonetheless, U.S.-based franchisors should be cognizant of at least four important federal statutes that have some bearing on franchising in Canada.

1. *The Competition Act*. This statute is analogous to U.S. antitrust legislation. It deals with issues such as abuse of dominant position in the market; retail price maintenance; deceptive advertising and marketing practices; pyramid schemes; exclusive dealing, tied selling and refusal to deal.
2. *The Investment Canada Act*. Expansion into Canada by a U.S.-based franchisor may involve the need for compliance with the *Investment Canada Act*. As the establishment of a franchise in Canada by a U.S.

entity is often accomplished through direct expansion by the U.S. franchisor, or through the creation of a Canadian subsidiary to franchise in Canada, the *Investment Canada Act* will not normally have applicability. On the other hand, if the expansion into Canada by a franchisor is through the acquisition of an existing business (for example, the acquisition an existing chain of Canadian retail franchises), then that investment will either be the subject of a notification or, if the investment is very significant, a review. Accordingly, one should always discuss the planned method of expansion into Canada with legal counsel to assess whether the *Investment Canada Act* is an issue.

3. *The Trademarks Act*. Even though an American-based franchisor may have registered its trademarks under the *Lanham Act* and regularly used and licensed those trademarks in the United States to its U.S.-based franchisees, trademark registration in the United States will not constitute trademark registration in Canada, although obtaining registration in the United States, (or filing an application in the United States) may give a U.S. franchisor some priority in terms of filing dates. U.S.-based franchisors should instruct their Canadian lawyers to perform trademark searches in Canada to assess whether the trademark which the U.S. franchisor wants to use in Canada is even available, because a third party in Canada may have used and registered a similar or identical mark for the same goods and services.

4. *The Income Tax Act*. This is the equivalent of the U.S. Tax Code and the *Income Tax Act* applies to all individuals and businesses in Canada, foreign and domestic. From the perspective of franchising, however, U.S.-based franchisors should be familiar with the obligation that Canadian franchisees have to pay approximately 15% of royalties to the Canada Revenue Agency if those royalties are payable to a non-Canadian. If steps are not taken to either create a Canadian subsidiary to receive the royalties, or language is provided into the Franchise Agreement to take advantage of provisions of the Canada-U.S. Tax Treaty (that effectively allows the Canadian franchisee to pay the withholdings tax and deduct it from royalties owing, and provide the American franchisor with the ability to claim that payment with the IRS to affect a “wash”) this will have a negative effect on the franchisee’s bottom line.

U.S.-based franchisors should also be aware that some provinces have a provincial sales tax. Federal Goods and Services Tax (GST) must be paid on the sale of virtually all goods and services in Canada, and the regime allows for payees to obtain an input tax credit on GST payments. In some provinces, provincial sales tax and federal GST have been combined to create the Harmonized Sales Tax (HST), which must be paid on the sale of virtually all goods and services in provinces which levy HST. In such provinces, payees may obtain an input tax credit on HST payments.

For further discussion of these issues please see Part E “Foreign Investment and Merger”, Part G “Intellectual

Property Protection”, Part A(6) “Language Requirements” and Part D “Taxes and Duties”, in this Guide.

Other than the above, the primary forum for the regulation of franchising in Canada will be at the provincial level.

### *b. Provincial Regulation of Franchising*

British Columbia, Ontario, Alberta, Manitoba, Prince Edward Island and New Brunswick (the Disclosure Provinces) have franchise legislation that specifically regulates franchising in each of those provinces. At the time of writing, neither Saskatchewan, Québec, Nova Scotia, Newfoundland nor any of the territories have legislation that specifically regulates franchising. However, because most U.S.-based franchisors expand into Canada by way of either Toronto or Vancouver, they will have to comply with the franchise legislation applicable in Ontario or British Columbia, at a minimum. U.S.-based franchisors who take their first steps into the Canadian market through Saskatchewan or Nova Scotia will not have to comply with franchise-specific legislation unless they also intend on franchising in the Disclosure Provinces. If so, they must comply with the respective franchise acts of those provinces which they are selling franchises in.

The preparation and delivery of a Franchise Disclosure Document (FDD) to prospects interested in acquiring franchises will not be unusual for U.S.-based franchisors. What is different in Canada is that, unlike jurisdictions such as California, Washington and approximately 14 other U.S. states, no provincial

government regulatory agency reviews or vets a franchisor’s FDD. Unless litigated, disclosure is as between franchisor and prospective franchisee. Canadian disclosure documents are not on the public record, and are usually only available from the franchisor or its sales agents.

In the Disclosure Provinces, an FDD is required to be provided to a prospective franchisee at least 14 days before signing any franchise agreement or paying any consideration. In some provinces, such as British Columbia and Alberta, a franchisor is entitled to take a refundable deposit prior to delivery of the FDD to the prospect. The franchisor can also enter into confidentiality covenants with the prospect prior to the delivery of the FDD.

Deposits are not permitted in Ontario. In Alberta and British Columbia, a deposit must be fully refundable until the FDD has been delivered and the expiry of the 14-day cooling off period. The refundable deposit cannot be more than 20% of the amount of the initial franchise fee charged by the franchisor. Deposit agreements and confidentiality agreements are permitted in Alberta and British Columbia, but not in Ontario, where no agreement relating to the franchise can be executed prior to delivery of the FDD and the expiry of the 14-day cooling-off period.

A misrepresentation or failure to disclose a material fact in an FDD can impose liability against the franchisor corporation. It can also impose personal liability against the directors, officers or shareholders of the franchisor who have certified the truth and accuracy of the FDD.

In all Disclosure Provinces, such as British Columbia, the franchisee has a right to rescind the franchise agreement and obtain a refund of all monies paid to the franchisor and others (together with its losses) in circumstances where there has been a failure to disclose. There is much jurisprudence in Canada that amounts to a “failure to disclose”. For example, even if an FDD has been delivered to a prospective franchisee, if the FDD is not certified in accordance with the statutory requirements, or it contains no financial statements, or Notice to Reader financial statements (instead of audited or reviewed statements), or if not all the agreements that the franchisee is required to execute are contained within the FDD, this may amount to a total failure to disclose and give the franchisee the right to rescind the franchise agreement within two years.

In all Disclosure Provinces, the FDD must disclose all material facts relating to the franchised business and the franchisor’s history, together with issues such as ownership of the franchise; directors and officers and their five-year employment history; whether the franchisor or its directors and officers have ever been bankrupt; administrative actions or penalties against the franchisor; litigation against the franchisor; the use of the advertising fund; all costs to be incurred by the franchisee in establishing the franchised business, not only including the initial franchise fee, royalty and the advertising fund, but also costs that the franchisee would pay to third parties (such as rent for premises, insurance, etc.).

It is important for U.S.-based franchisors to appreciate that the Disclosure

Provinces do not have consistent legislation respecting franchising. Each *Franchise Act* differs; particularly in terms of the 24 or 25 material items that require specific disclosure, and which items are normally prescribed in regulations. Accordingly, if an FDD has been prepared and disclosure has been made pursuant to British Columbia law, this will not satisfy the laws of Ontario. Likewise, a disclosure document prepared under Ontario’s *Arthur Wishart Act* will not comply with the laws of Alberta or British Columbia. British Columbia and Alberta will permit “wraparound” disclosure documents. Ontario does not.

Unlike jurisdictions in the United States where the franchisor is only required to disclose a finite set of facts, each Canadian Disclosure Province has a “catchall” provision that requires disclosure of any other material fact known (or subsequently known) to the franchisor that might affect a franchisee’s decision to acquire the franchise or the price to be paid for the rights. Consequently, U.S. franchisors must be cognizant of additional facts respecting the franchise opportunity that a franchisee might believe is material, even though the franchisor would not. Many Canadian franchise lawyers recommend “over disclosure” to deal with a possible future argument about materiality of a matter.

Disclosure is also ongoing, meaning that if there is a material fact or material change to the franchisor, the franchise system, or the required items of disclosure prescribed by the regulations, this may necessitate the delivery of a new FDD to a prospective franchisee at the time of the material change, or delivery of a Statement of

Material Change (SMC) to the prospective franchisee updating the material facts since the time that the prospective franchisee received the original FDD. It’s a good practice to use an SMC in circumstances where the FDD is making general disclosure, but the SMC is making specific disclosure for a specific transaction or in respect to a specific location that might not have been known at the time the original FDD was delivered.

FDDs must contain either audited or reviewed financial statements. Notice to Reader financial statements will amount to a failure to disclose, giving the franchisee the remedy of rescission and allowing the franchisee to be put back in the position it would have been in if it had not acquired the franchise.

Failure to properly certify an FDD or an SMC will also render the disclosure void, entitling the franchisee to claim rescission.

With respect to forum and jurisdiction of disputes, each of the Disclosure Provinces provides that governing law and forum for all disputes will be within that province, ostensibly preventing a franchisor from requiring the franchisee to take action against that franchisor in, say, Washington state, under Washington state law.

### c. Other Issues

Although Canada and the United States have much in common, there are little things that are different, and Canadian franchise counsel may suggest that U.S. franchise and related agreements be “Canadianized”.

For example, the spelling of certain words such as color and center are different in Canada (colour and centre).



1. In Canada, terms such as “temporary restraining order” or “TRO” are not used. This is normally called an interim or interlocutory injunction.
2. Franchise agreements that use the word “felony” create a problem in Canadian courts because there is no such thing in Canada as a felony. In Canada, the normal term for a serious criminal offense under the Criminal Code would be “indictable offense”.
3. Notice provisions in franchise agreements should not refer to “certified mail,” because there is no such thing as certified mail in Canada. The comparable term would be “registered mail”.
4. The term “attorney” is rarely used in Canada or in Canadian franchise agreements. Lawyers are barristers and solicitors, and the normal term to use would be “lawyers”.
5. U.S.-based franchisors should be cognizant that the Canadian franchisees will be paid in Canadian dollars by their Canadian customers. The Canadian and U.S. dollars fluctuate in terms of value, and if the Canadian dollar is low, money amounts expressed in U.S. dollars may unfairly be prejudiced against Canadian franchisees and be unrealistic. If payments are to be made to the franchisor in U.S. dollars, provisions will have to be included in the franchise that deal with the actual mechanics of currency conversion and exchange.
6. Also with respect to currency, if a U.S.-based franchisor is requiring the Canadian franchisee to acquire all assets and equipment from its U.S.-based supplier, the difference between Canadian and U.S. currency may also put the Canadian franchisee at a severe disadvantage, particularly when the Canadian franchisee might be able to buy equivalent products and equipment from a Canadian supplier at a reduced cost. Likewise, if the U.S.-based franchisors require purchase of inventory from the United States, particularly food products, there may be the same issue with respect to currency, whether the product is actually importable into Canada, or whether the importation of the product is somehow restricted for health or other reasons. This should be addressed with Canadian lawyers.
7. There should be an assessment as to whether the business arrangement is in fact a franchise, so a lawyer should be consulted to assess whether the business arrangement actually requires the preparation of a Franchise Disclosure Document given the possibility that the legislation does not apply to that particular business structure. On the other hand, there may be business structures and distribution arrangements that one might not normally expect are traditional franchises (requiring compliance with the various franchise disclosure statutes in Canada) but are, by virtue of the definition of franchise particularly in Ontario. So it’s important to assess at the outset, “Is this a franchise?”
8. U.S.-based franchisors must also consider packaging and labeling laws in Canada, particularly when they are requiring their Canadian-based franchisees to sell the franchisor’s prepackaged products in Canada. Generally, all products for sale in Canada must have bilingual packaging (English and French). Volume and weight must be expressed on all labels using the metric system.
9. Many U.S.-based franchisors will express interest in terms of “the highest rate permitted by law”. This is not an enforceable expression of interest. Interest should be expressed as an annual rate; a rate above 60% will be deemed criminal.
10. U.S.-based franchisors should be cognizant that Canadian privacy laws may well be more stringent than U.S.-based privacy laws. Canada’s federal privacy law applies to all organizations which collect, use or disclose personal information in the course of a commercial activity. In Alberta and British Columbia, the provincial legislation applies, and it is similar to the federal legislation.
11. The concept of good faith and fair dealing is enshrined within franchise legislation in Canada, but is also a part of Canadian common law.
12. U.S.-based franchisors should also be aware of the Alberta *Guarantees Acknowledgment Act*, which requires that all personal guarantees must be acknowledged before a lawyer and a certificate executed before the lawyer swearing that they are the person who signed the guarantee. As virtually all franchise and ancillary agreements contain personal guarantees, U.S.-based franchisors should be cognizant of this statute which applies only in the province of Alberta.

## 10. Online Searches

Corporate Registry information is available online; however, the information available through online services varies across provinces and territories. The services available may include Corporation Profile Reports, Certificates of Status, Corporations Business Names Lists, Business Names Reports, Partnership Business Names Reports, Partnership Business Names Lists, online incorporation of corporations and various governmental filings, etc. In some provinces, online services are only available to authorized service providers and additional information is available for subscribers. The following table outlines how to obtain online Corporate Registry information.

### *Website Help and Inquiries*

#### ALBERTA

+1.877.427.4088 +1.780.427.7013

<http://www.servicealberta.ca/businesses.cfm>

#### BRITISH COLUMBIA

+1.877.526.1526 +1.250.387.7848

<http://www.bcregistryservices.gov.bc.ca/bcreg/corppg/index.page?>

#### CANADA

+1.866.333.5556

[www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/home](http://www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/home)

#### MANITOBA

+1.888.246.8353 +1.204.945.2500

<http://www.companiesoffice.gov.mb.ca>

#### NEW BRUNSWICK

+1-506-453-2703 +1.506.684.7901

<https://www.pxw1.snb.ca/snb7001/e/2000/2500e.asp>

#### NEWFOUNDLAND & LABRADOR

+1.709.729.3317

<http://www.gs.gov.nl.ca/registries/companies.html>

#### NORTHWEST TERRITORIES

+1.867.920.8987

[www.justice.gov.nt.ca/CorporateRegistry/index.shtml](http://www.justice.gov.nt.ca/CorporateRegistry/index.shtml)

#### NOVA SCOTIA

+1.800.670.4357 +1.902.424.5200

[https://accesstobusiness.snsmr.gov.ns.ca/a2b\\_web/portal/businesslogin.jsf](https://accesstobusiness.snsmr.gov.ns.ca/a2b_web/portal/businesslogin.jsf)

#### NUNAVUT

+1.867.975.6590

[http://nunavutlegalregistries.ca/index\\_en.shtml](http://nunavutlegalregistries.ca/index_en.shtml)

#### ONTARIO

+1.800.268.7095 +1.888.745.8888

[http://www.ontario.ca/en/business/STEL02\\_163367](http://www.ontario.ca/en/business/STEL02_163367)

#### PRINCE EDWARD ISLAND

+1.902.368.4550 +1.902.368.4577

<http://www.gov.pe.ca/corporations>

#### QUÉBEC

+1.877.644.4545 +1.888.644.4545

<http://www.registreentreprises.gouv.qc.ca/en/default.aspx>

#### SASKATCHEWAN

+1.866.275.4721

<https://www.isc.ca/CorporateRegistry/Pages/default.aspx>

#### YUKON TERRITORY

+1.867.667.5314 +1.800.661

<http://www.community.gov.yk.ca/corp>



The following table summarizes residency requirements for directors of corporations in Canada.

<b>PROVINCE</b>	<b>LIMITED LIABILITY</b>	<b>UNLIMITED LIABILITY</b>
Alberta	At least 25% of directors must be resident Canadians.	At least 25% of directors must be resident Canadians.
British Columbia	No residency requirement.	No residency requirement.
Canada (Federal)	At least 25% of directors must be resident Canadians. If a corporation's board is comprised of three or fewer directors, at least one must be a resident Canadian.	N/A
Manitoba	At least 25% of directors must be resident Canadians. If a corporation's board is comprised of three or fewer directors, at least one must be a resident Canadian.	N/A
New Brunswick	No residency requirement.	N/A
Newfoundland & Labrador	At least 25% of directors must be resident Canadians.	N/A
NW Territories	No residency requirement.	N/A
Nova Scotia	No residency requirement.	No residency requirement.
Nunavut	No residency requirement.	N/A
Ontario	At least 25% of directors must be resident Canadians. If a corporation's board is comprised of three or fewer directors, at least one must be a resident Canadian.	N/A
Prince Edward Island	No residency requirement.	N/A
Québec	No residency requirement.	N/A
Saskatchewan	At least 25% of directors must be resident Canadians. If a corporation's board is comprised of three or fewer directors, at least one must be a resident Canadian.	N/A
Yukon	No residency requirement.	N/A

# C. Securities Regulation

The principal stated purpose of Canadian securities legislation is to preserve the integrity of capital markets and to protect the investing public. In Canada, there is not yet federal legislation relating to the marketing and sale of securities. Instead, each province and territory has its own legislation which regulates the marketing and sale of securities in that province or territory, and the provincial securities regulators have formed the Canadian Securities Administration to consider and adopt national policy statements, called National Instruments, to harmonize securities law, regulation and policies across the country.

## 1. Securities Markets

Securities markets in Canada are similar to those in the United States, although significantly smaller in size and volume. Recently, public markets have been restructured in an effort to ensure a strong exchange system for Canadian capital markets participants.

In addition, very significant amounts of capital are raised in what is referred to as the “exempt market.” This market exists because certain trades in classes of securities and trades to certain types of purchasers have been exempted from the detailed filing and prospectus requirements of the securities legislation. Securities issued in this manner may only be resold without a prospectus if a further statutory exemption is available or an exemption ruling is obtained. This is sometimes referred to as the “closed system.”

## 2. Securities Legislation in Canada

Generally, the basic functions served by the various provincial securities

laws and regulations (collectively, the Securities Laws) are the following:

- Registration and regulation of persons and institutions trading in securities;
- Regulation of securities distributed and traded in each province;
- Provision for continuous and timely disclosure of relevant information to the investing public;
- Regulation of takeover bids; and
- Provision of the necessary investigative, preventative and punitive mechanisms to enforce the Securities Laws and combat fraud.

The provisions of the Securities Laws are supplemented by Rules, Companion Policies and Policy Statements, some of which are issued by the various Canadian securities commissions but most of which are National Instruments, as mentioned above.

## 3. Raising Capital

There are basically two ways to raise capital in Canada:

- By filing a prospectus under one or more of the Securities Laws (where the investors are located); or
- By raising money without a prospectus, which is possible if an exemption is available.

### *Exemptions to the Prospectus Requirements*

In an attempt to harmonize the prospectus exempt distribution regime in Canada and increase efficiency for issues participating in the Canadian capital markets, the Canadian Securities Administrators have adopted National Instrument 45-106 (NI 45-106). The NI 45-106 exemptions fall into four categories:

- Capital-raising exemptions where the focus is typically upon the sophistication or deemed sophistication of the purchaser or the nature of the issuer and the relationship of the purchaser to the issuer and/or its officers and directors;
- Transaction exemptions where, subject to certain conditions, the issuance of securities in connection with certain transactions is allowed, on an exempt basis;
- Employee, executive officer, director and consultant exemptions, which are the set of exemptions allowing for the issuance of shares to such parties, again under certain conditions; and
- Miscellaneous exemptions which can differ from province to province but may often provide a solution to an issuer wishing to complete a distribution of securities on an exempt basis.

In all circumstances, the exemption specifies the criteria which must be met and adhered to.

Finally, reliance on certain of the exemptions will give rise to certain reporting and fee payment obligations.

It should be understood that a very significant portion of the capital raised in Canada is raised in circumstances where exemptions under the Securities Laws are available.

It is also worth noting that several of the provincial regulators are considering implementing crowd-funding exemptions, similar to that contemplated by the U.S. Jumpstart Our Business Startups (JOBS) Act, which would permit entrepreneurs to raise funds and issue securities publicly to a broad group of investors via an internet portal.

#### 4. Disclosure Requirements

When a corporation (or other type of issuer) accesses the securities market in Canada in a manner that requires it to file a prospectus, it becomes a reporting issuer in every jurisdiction where it files that prospectus. If a corporation makes a takeover bid and is required to file a takeover bid circular, it also becomes a reporting issuer. An issuer can also become a reporting issuer in a provincial jurisdiction by being listed or posted for trading on a stock exchange in that jurisdiction. Reporting issuers must comply with the continuous disclosure requirements of the Securities Laws. There are two types of continuous disclosure requirements:

- Regular disclosure at predictable fixed intervals (annual financial statements, interim financial statements and proxy solicitation materials); and
- Irregular or special disclosure which is generally triggered by a material event or change in the reporting issuer's affairs.

Continuous disclosure filing requirements can be further categorized as follows:

##### *a. Financial Disclosure*

Financial disclosure requires the filing of annual financial statements and quarterly financial statements to the standard established by the Securities Laws. The Securities Laws require that public disclosure be made when changes occur in the business or affairs of the reporting issuer that would likely have a significant effect on the market price or value of the issuer's securities. This information is

usually released to the public by means of a press release issued to the news media and filed with the appropriate Securities Commissions. In addition, a formal material change report must be filed as soon as practicable and, in any event, within 10 days after the date on which the material change occurs.

##### *b. Insider Trading Rules*

Insider trading rules supplement the timely disclosure of material change regulations. These rules are designed to protect the "equal opportunity for investment" concept and are principally directed at the period before the dissemination of information. Trading upon and discussing material information must be restricted so that people who have access to information by virtue of their relationship to the issuer do not take advantage of that fact to the disadvantage of other investors. Persons who are categorized as "insiders" under the Securities Laws must file an initial insider report when they acquire securities of the reporting issuer. Thereafter the insiders must file a monthly report of any change in their direct or indirect beneficial ownership of, or control or direction over, securities of that reporting issuer.

##### *c. Proxy Solicitation*

Whenever notice is given of a meeting to holders of voting securities of a reporting issuer, the Securities Laws and corporate laws require that proxies be solicited and that an information circular complying with the requirements of the Securities Laws be sent to the holders relating to the matters to be dealt with at the meeting.

##### *d. Stock Exchange Continuous Disclosure Requirement*

In addition to the disclosure requirements under provincial laws and National Instruments, issuers listing on a stock exchange in Canada will also have to adhere to the disclosure obligations and other rules of such stock exchanges. While there is substantial overlap in terms of the requirements, there are differences that one should be aware of.

##### *e. Variation of Reporting Requirements*

Under certain circumstances, a reporting issuer may apply to the applicable Securities Commissions for relief from or variation of the reporting requirements of the Securities Laws. In certain other circumstances, automatic relief is provided.

#### 5. Takeover Bids

The takeover bid rules are designed to ensure that all shareholders of a target corporation have an equal opportunity under the bid and sufficient up-to-date relevant information to allow them to make a reasoned decision on the bid. Generally, a takeover bid is an offer to acquire securities that will constitute at least 20% of the outstanding securities of that class when combined with the securities of the same class held by the offeror. The Securities Laws set out procedural requirements for the offering and provide for the delivery of a takeover bid circular disclosing all material information relating to the bid.

# D. Taxes and Duties

## I. Sales and Transfer Taxes

### a. Goods and Services Tax

Canada has a 5% value-added tax imposed on goods and services called the Goods and Services Tax (GST). The GST is applied to each transaction in the production and distribution chain, including most services and the importation of most goods and services into Canada. It is charged on the “value of the consideration,” meaning, in general terms, the purchase price, except that in the case of imported goods, GST is based on the duty paid value (which includes customs duty). Goods exported from Canada are not subject to GST. There are limited exemptions from GST such as most financial services (including, for this purpose, insurance premiums, loan interest and share purchase transactions), specified goods (including most grocery items) and others.

All persons, including corporations, partnerships and sole proprietorships who are engaged in a commercial activity in Canada having worldwide sales of goods and services subject to GST greater than \$30,000 (CND) per year, must register to collect GST. The concept of “commercial activity” is quite broad and includes not only carrying on a business in Canada but also single ventures and the sale of real estate. Businesses which register for GST are entitled to input tax credits equal to the full amount of the GST paid by them on all business purchases. The input tax credit system effectively reduces the tax (on a net basis) on each business entity to the

value added by such entity. Unregistered persons are not required to collect GST on their sales but are also not entitled to recover GST paid on their purchases as input tax credits.

Nonresidents who conduct business in Canada or who are deemed to carry on business in Canada by virtue of, among others, soliciting orders in Canada or offering for sale certain goods such as books or periodicals for delivery in Canada are required to register for and collect GST. Certain nonresidents who are not carrying on business in Canada may voluntarily register to collect and remit GST. Registration would be desirable if such a supplier wishes to obtain input tax credits for GST paid to Canadian suppliers. A nonresident without a permanent establishment may be required to post security in connection with its obligation to collect and remit GST.

### b. Provincial Sales Tax

With the exception of the province of Alberta, each province charges a sales tax on tangible personal property and certain services. Sales taxes in the Canadian provinces generally range between 5% and 10%.

Most provinces provide exemptions from sales taxes for certain goods, such as basic groceries. As well, exemptions for certain purchases of production machinery are contained in most provinces’ legislation. However, there is variation from province to province in the services which are subject to taxation. For example, British Columbia and Québec extend sales tax to lawyers’ accounts.

Five provinces, namely Nova Scotia, New Brunswick, Newfoundland, Ontario and Prince Edward Island, have harmonized their provincial sales tax with GST to implement a Harmonized Sales Tax (HST) system. The HST applies to all goods and services that are otherwise subject to GST and is administered under the *Excise Tax Act*. It is applied at the single rate on taxable supplies for goods and services made or deemed to be made in the participating provinces, replacing the former dual systems of provincial retail sales tax and GST.

Supplies made in the nonparticipating provinces will remain subject to GST and the provincial retail sales tax of the particular province. For example, British Columbia, once a participating province in the HST system, recently reverted to a provincial sales tax system. Thus, supplies made in British Columbia are subject to the current provincial sales tax of 7% and the GST of 5%.

Finally, the Province of Québec administers its provincial tax together with the GST. The rate of the Québec sales taxes is currently 9.975%.

### c. Municipal Tax

As outlined in Part A of this Guide, “Legal Framework of Canada”, municipalities are created as a result of provincial legislation and have been granted taxation authority with respect to real property. These municipal or local taxes are used to fund municipal governments and services. The tax rates are set by the municipal units and these rates may vary depending upon the use of the property in question.

#### *d. Land Transfer Tax*

A land transfer tax is payable on the acquisition of real property in each province; rates vary between 0.02% and 2% based on the consideration paid for the real property. Generally the rate increases incrementally as the amount paid for the property increases. In addition, other provincial and municipal fees may also apply.

## **2. Income and Capital Taxes**

### *a. Federal Income Tax*

Canada imposes federal income tax on nonresidents who conduct business in Canada or sell real property located in Canada. In general terms, this is restricted to income derived from Canadian business activities and Canadian investments.

In addition, Canada imposes a federal nonresident 25% withholding tax on certain Canadian source payments such as dividends, rent, royalties, management fees and interest paid to nonresidents. In these circumstances, subject to limited statutory exemptions, the Canadian payer is required to withhold tax from the gross amount of the dividend, interest, etc. and remit this to the Receiver General for Canada as tax on behalf of the nonresident recipient. However, where the nonresident carries on business in Canada through a permanent establishment in Canada, in certain cases a waiver from such nonresident withholding tax may be available upon application to the

Canadian federal tax authority. Also, a foreign tax credit may be available in the nonresident's own jurisdiction in respect of the Canadian non-resident withholding tax.

Canada has entered into bilateral tax treaties with many countries. The Canada-U.S. Income Tax Convention (1980) as amended by various Protocols (the Convention) is an example of a tax treaty which contains certain relieving provisions. For example, in the absence of a permanent establishment in Canada (as defined in the Convention), a U.S. person (not limited to an individual) who is subject to tax in the United States and who carries on business in Canada will not be subject to Canadian federal income tax on business income earned in Canada. A permanent establishment is defined as a fixed place of business through which the business of the nonresident is carried on and includes, for example, an office or factory. It should be noted that the definition of "permanent establishment" in the Convention may differ from the definition of the same term as applicable for provincial tax purposes. The Convention also provides for a reduction in withholding tax rates on certain types of Canadian source income distributed to U.S. persons as described below.

A U.S. corporation may conduct business in Canada either by incorporating a Canadian subsidiary corporation or by means of a Canadian branch operation.

### *b. Canadian Subsidiary Corporation*

A corporation incorporated in Canada (whether federally or provincially) will be considered to be a resident of Canada for income tax purposes and therefore will be subject to Canadian income tax on all of its worldwide income under Part I of the Income Tax Act (Canada) (the Act).

Canadian corporate tax rates include federal tax and provincial tax. Depending on the province where the corporation carries on business through a permanent establishment, the combined tax rate effective 15 January 2013 ranges from 11% to 27% on active business income not exceeding \$500,000 earned by a Canadian-controlled private corporation (CCPC), from 25% to 31% for active business income exceeding \$500,000, from 25% to 31% for active business income earned by other corporations, and from 25% to 31% for investment income earned by other corporations (interests, rents, taxable capital gains, etc.). The following table sets out the combined federal and provincial income tax rates for income earned by a CCPC effective 15 January 2013.



**Table: Combined Federal and Provincial Tax Rates for Income Earned by a Canadian-Controlled Private Corporation (CCPC)**

	Small Business Income up to \$400,000	Active Business Income \$400,000 to \$500,000	General Active Business Income	Investment Income
Alberta	14.0	14.0	25.0	44.7
British Columbia	13.5	13.5	25.0	45.7
Manitoba	11.0	23.0	27.0	46.7
New Brunswick	15.5	15.5	25.0	46.7
Newfoundland and Labrador	15.0	15.0	29.0	48.7
Northwest Territories	15.0	15.0	26.5	46.2
Nova Scotia	14.5	27.0	31.0	50.7
Nunavut	15.0	15.0	27.0	46.7
Ontario	13.5 <sup>†</sup>	15.5	26.5	46.2
Prince Edward Island	12.0	12.0	31.0	50.7
Québec	19.0	19.0	26.9	46.6
Saskatchewan	13.0	13.0	27.0	46.7
Yukon	15.0	15.0	30.0	49.7

<sup>†</sup> In Ontario the small business deduction is on income up to \$500,000, and will change to 12.5% in 2019

(Note: Certain credits against tax or reduced rates may be available, e.g., for manufacturing and processing activities.)

Assuming that the Canadian subsidiary repatriates profits to its foreign parent, nonresident withholding tax may apply at a rate of 25%, as described above. This withholding is generally reduced by the various tax treaties. For example, according to the Convention, the reduced rates of withholding tax on interest, dividends and royalties are as follows:

- Dividends paid to U.S. parent corporation: 5% or 15%. The 5% withholding tax rate applies when the beneficial owner is a company that owns 10% or more of the voting stock of the company paying the dividends.
- Interest paid to U.S. parent corporation: 0% or 15%. The 0% withholding tax rate applies to all

interest except “participating debt interest” which is subject to withholding tax at a rate of 15%.

- Royalties paid to U.S. parent corporation: 0% - 10%. The 0% withholding rate applies on certain types of royalties such as copyright royalties and payments for the use of computer software.

### c. Canadian Branch Operation

If a nonresident corporation conducts business in Canada through a permanent establishment and does not incorporate a Canadian subsidiary, tax under Part I of the Act will also be applicable at the rates described above in respect of income from Canadian business operations.

In addition, a so-called branch tax is imposed on the after-tax profits of the Canadian branch operations which are not, in general terms, reinvested in Canada. The branch tax is intended to be roughly equivalent to the withholding tax which would have been payable on dividends paid by a Canadian subsidiary to its foreign parent. The rate of Canadian branch tax is 25%. This rate has been reduced by the Convention to 5% for branches of U.S. corporations. In addition, the Convention provides for a one-time exemption for the first \$500,000 (CND) of Canadian net profits. The \$500,000 exemption must be shared among associated corporations if the associated corporations conduct the same or similar businesses in Canada.

A U.S. foreign tax credit should be available in respect of Canadian income taxes paid for the Canadian branch operation, subject to the rules in the Internal Revenue Code.



#### d. Choosing Between a Canadian Subsidiary and Canadian Branch Operation

There are a number of considerations relevant to this issue. Non-income-tax considerations such as regulatory compliance or the desirability of segregating Canadian assets and liabilities from U.S. assets and liabilities are relevant. Tax considerations include the following:

- The desirability of utilizing any Canadian start-up losses against U.S. income;
- If a Canadian branch structure is utilized, a Canadian income tax return must still be filed and a certain amount of disclosure about the U.S. parent will accordingly be necessary;
- If a Canadian branch structure is utilized, the ability to subsequently incorporate the branch on a tax-free basis must be considered both from a Canadian and U.S. tax perspective; and
- If a Canadian branch structure is utilized, one will typically pay the higher of the two tax rates of the two jurisdictions.

#### e. Capital Tax

In Canada, provinces and territories do not impose a capital tax on corporations except for financial institutions.

Before 2006, Canada imposed a “large corporations tax.” This was essentially a federal capital tax at the rate of 0.20% on capital used in Canada by a corporation in excess of \$50 million (CND). This \$50 million threshold (technically a capital deduction) had

to be shared among a related group of companies. This capital tax has been eliminated.

### 3. Customs and Excise Duties

#### a. Customs Duties

All goods entering Canada must go through customs inspection at the point of entry, at which time they are valued and duty, if any, is levied. In 1988, Canada adopted a classification system known as the Harmonized System. This system provides for classification of goods by their essential or intrinsic character, not according to their use.

Documentation accompanying goods must show origin, nature of the goods, their intended use and their value and/or price. The primary basis for appraisal of goods imported into Canada is the transaction value of the goods. The transaction value is the price paid or payable for the goods by the importer of the goods, subject to adjustments for elements such as royalties, shipping fees and transportation. Where the price paid or payable for the goods cannot be ascertained, the *Customs Act* provides for other methods of valuation to be used.

The valuation for goods imported into Canada is governed by the *Customs Act* and its associated regulations. The *Customs Act* dictates that where the vendor and purchaser do not deal at arm’s length, it must be shown that the relationship with the foreign importer did not influence the price paid or payable for the goods, or the importer of the goods must demonstrate that the transaction value of the goods satisfies several criteria set out in the *Customs Act*. If the

transaction value is not reliable, the following valuation methods are considered:

- Transaction value of identical goods;
- Transaction value of similar goods;
- Deductive value; and
- Computed value.

If the valuation is still not satisfactory in the circumstances, the residual basis of appraisal provides for the application of one of the above methods in a flexible manner. The most appropriate method will be the method that can be most closely applied using information available in Canada.

The amount of customs duty is determined by reference to the customs tariff that sets out a specific list describing the class of goods and setting out the corresponding rate of duty. The country of origin of a good is the second criterion in the determination of the appropriate duty rate. The country of origin can be generally defined as the place where a specific good is grown, extracted, produced or manufactured. Canada applies varying duty rates (preferential and non-preferential) to goods depending on the basis of their origin.

Duties on goods meeting the rules of origin under the North American Free Trade Agreement (NAFTA) and being so certified are permitted to enter Canada under the preferential duty rate accorded to American- and Mexican-origin goods. Effective January 1998, all goods meeting the criteria for origination in the United States are entitled to enter Canada duty-free. Tariffs on virtually all originating goods traded between Canada and Mexico were eliminated

in 2008, with the exception of Canadian agricultural goods in the dairy, poultry, egg and sugar sectors (which are exempt from tariff elimination).

In order to benefit under the application of NAFTA, goods must meet criteria establishing “rules of origin.” These complex rules dictate which goods are eligible to benefit under NAFTA. Goods that originate solely within a free trade area, goods with a 50% or 60% “regional value content” of North American content and direct assembly cost, or significant parts of which are determined to have originated in North America, are adjudged to be “originating” and are therefore able to benefit from the preferential duty treatment under NAFTA. In some cases, goods will be classified as having originated in the country of a signatory to NAFTA and benefit under NAFTA even if some parts that comprise that good were imported from outside of that country’s borders.

### b. Excise Duties

Under the *Excise Act*, alcohol, beer, malt liquor, tobacco and related products are subject to excise duties. These duties are not applicable to imported goods that are not further manufactured or processed in Canada. However, imported goods of such categories are subject to a special duty under the customs tariff that is equal to the excise duty.

### c. Anti-Dumping Duties

Pursuant to the *Special Import Measures Act* (SIMA), there are special anti-dumping duties for imported goods sold in Canada at prices that are below the prices in the home market.

In addition, where goods sold in Canada are subsidized by the exporting country, a countervailing duty may be imposed. These anti-dumping and countervailing duties may be imposed as additional charges, over and above the normal customs tariffs. SIMA is designed to provide Canadian producers with relief from unfair import competition.

In order for an anti-dumping duty to be levied, two conditions must be met:

- The President of the Canada Border Services Agency appointed under subsection 7(1) of the *Canada Border Services Agency Act* (the President) must have found the imported goods to have been dumped; and
- The dumping of the imported goods must have been found by the Canadian International Trade Tribunal (the Tribunal) to have caused, be causing or be likely to cause material injury to production in Canada of like goods.

Accordingly, if there are no “like goods” produced in Canada, anti-dumping duties cannot be levied.

Dumping occurs when the normal value of the imported goods exceeds the export price. The normal value is generally the price at which the exporter sells similar goods in its domestic market under competitive conditions at a profit to arm’s-length purchasers comparable to the importer. Where there are no comparable purchasers (i.e., purchasers who are at the same or substantially the same

trade level, and who purchase the same or substantially the same quantities, as the importer), the normal value may be derived by adding the goods’ cost of production, an amount for administrative, selling and other costs, and an amount for profit. It may also be derived by reference to the prices at which the exporter sells the goods to importers in third countries.

Generally, the export price means the lesser of the exporter’s sale price of the goods and the price at which the importer has purchased or agreed to purchase the goods, after deducting:

- All costs, charges and expenses incurred in preparing the export of the goods to Canada;
- Import duties and taxes imposed by Canadian law; and
- Every other cost, charge and expense associated with the export of these goods.

If the normal value exceeds the export price, the imported goods will be found to have been dumped.

Criteria utilized in determining whether or not there has been material injury to production in Canada of like goods include the following:

- Price suppression and/or erosion of sales by Canadian producers of like goods;
- Loss of market share by Canadian producers of like goods;
- Reduced employment of persons in Canadian production facilities;

- Reduced utilization of Canadian production capacity of like goods; and
- Inventory build-ups.

Generally, an anti-dumping duty can be commenced by filing a written complaint with the President.

If the President is of the view that there is evidence that imported goods are being dumped, and there is a reasonable indication that such dumping has caused or is threatening to cause injury to production in Canada of like goods, the President may then commence an investigation. Notice of the investigation must be given by the President to the Secretary of the Tribunal, the exporter, the importer, the government of the country of export, the complainant and any other prescribed persons. If a preliminary determination of dumping is made, the President must provide an estimated “margin of dumping” for the imported goods to which the preliminary determination applies. The margin of dumping is the amount by which the normal value of the imported goods into Canada exceeds the export price for such goods. The importer of the impugned goods under the preliminary determination is the party liable for payment of such dumping duties. Failing that, the subsequent purchaser of those goods in Canada is liable for this penalty.

A final determination is thereafter made by the President within 90 days after making the preliminary decision. At the time of receipt of notice from the President of a preliminary determination, the Tribunal is required to commence its inquiry and hold a

public hearing to determine whether or not the dumping is causing, or will likely cause in the future, material injury to production in Canada of like goods.

#### *d. Countervailing Duties*

In order for a countervailing duty to be imposed, SIMA requires that two conditions must exist:

- The President must make a finding that the imported goods have been subsidized; and
- The Tribunal must find that the subsidized goods have caused, are causing, or are likely to cause material injury to production in Canada of like goods.

The definition of subsidy includes any financial or other commercial benefit to people engaged in the production, manufacture, growth, distribution, export or import of the goods in issue as a result of a scheme or program provided by or implemented by the country of export.

If subsidization and material injury have been found, the imported goods will be subject to countervailing duties in the amount of the subsidy.

# E. Foreign Investment and Merger

## I. Investment Canada Act

Non-Canadians who acquire control of an existing Canadian business or who wish to establish a new unrelated Canadian business are subject to the federal *Investment Canada Act* (ICA). In either case the non-Canadian must submit either a notification or an application for review. A notification must be filed each and every time a non-Canadian commences a new business activity in Canada and each time a non-Canadian acquires control of an existing Canadian business where the establishment or acquisition of control is not a reviewable transaction.

Only in certain circumstances does the ICA seek to review or restrict new investments by non-Canadians. In general terms, the transactions which are subject to review under the ICA are larger transactions, transactions involving businesses within a prescribed type of business activity that, in the opinion of the Governor in Council, is related to Canada's cultural heritage or national identity, and transactions where the Minister responsible has reasonable grounds to believe that an investment by a non-Canadian could be injurious to national security. Generally, for all other transactions only the notification need be filed.

The ICA applies where a non-Canadian establishes a new Canadian business, or acquires control of an existing Canadian business. The definitions in the ICA provide that natural persons will be "non-Canadians" unless they are Canadian citizens or permanent residents. Under the ICA, a permanent resident is defined as a person within the meaning of subsection 2(1) of the *Immigration and Refugee Protec-*

*tion Act* who has been ordinarily resident in Canada for not more than one year after the time at which they first became eligible to apply for Canadian citizenship. For corporations and other legal entities, the distinction between Canadian and non-Canadian is based on direct or indirect control, and the ICA sets out rules for determining what will constitute control in different circumstances. "Canadian business" is broadly defined to include any business that:

- Has a place of business in Canada;
- Has assets in Canada used in carrying on the business; and
- Employs one or more employees or independent contractors in Canada in connection with the business.

The ICA also contains detailed definitions and rules as to what will constitute an acquisition of control for various kinds of transactions such as asset transactions, share transactions and transactions involving the acquisition of voting interests in entities other than corporations.

There are a number of specific exemptions from the application of the ICA, which include certain securities transactions and venture capital deals, acquisitions of control in connection with realization on security, certain financing transactions, and certain direct and indirect acquisitions of control by insurance companies.

Although the potential scope of the ICA is broad, its impact in the vast majority of transactions is relatively minor. Specifically, most transactions will require only a notification under Part III of the ICA, and will not be subject to review under Part IV. Where an investment is subject to notification under Part III of the ICA,

the investor must give notice of the transaction to the Investment Review Division of Industry Canada. The notification may be made before or within 30 days after closing and involves filing information concerning the investor and the investment. The information required for filing is straightforward and suggested forms for filing are available on Investment Canada's website. There are no filing fees.

Businesses that conduct activities involving Canada's cultural heritage or national identity are considered cultural businesses and are subject to different filing requirements. Such businesses are:

- a) The publication, distribution or sale of books, magazines, periodicals or newspapers in print or machine-readable form, other than the sole activity of printing or typesetting of books, magazines, periodicals or newspapers;
- b) The production, distribution, sale or exhibition of film or video recordings;
- c) The production, sale or exhibition of audio or video music recordings;
- d) The publication, distribution or sale of music in print or machine-readable form; or
- e) Radio communication in which the transmissions are intended for direct reception by the general public, any radio, television and cable television broadcasting undertakings and any satellite programming and broadcast network services.

For clarification, the investor should contact the Investment Review Division of Industry Canada. If the investment includes both a non-cultural business and a cultural business,



the investor should contact both the Investment Review Division and the Department of Canadian Heritage—Cultural Sector Investment Review to obtain more information regarding filing requirements.

Where a transaction is reviewable under the ICA, the investor is required to file an extensive pre-closing filing called an Application for Review, together with various supporting documents. The purpose of the review is to determine whether the proposed transaction should be allowed because it will be of “net benefit” to Canada. The Minister of Industry (Minister) is entitled to a period of up to 75 days after filing to make that determination, and in transactions that give rise to substantive issues under the ICA, that review period may be, and often is, extended by agreement between the applicant and the Minister.

A transaction will automatically be subject to review under Part IV of the ICA if the applicable transaction size threshold is exceeded. With certain exceptions that are referred to below, the threshold applicable to direct acquisitions of control where the investor is a WTO member and is not a state-owned enterprise is an amount of \$1 billion (CND) in 2018. This amount is increased to \$1.5 billion (CND) for trade agreement investors that are not state-owned enterprises.<sup>1</sup> These amounts will be indexed to nominal GDP growth starting January 1, 2019. The threshold for an investor that is a WTO member and a state-owned enterprise is an indexed amount of \$398 million.

A lower threshold of \$5 million (CND) applies to direct acquisitions in each of the following circumstances:

- Where the investor is not a WTO member; or
- Where the business in question falls within the definition of a “cultural business” as previously described.

Notwithstanding the circumstances above, any investment which is usually subject only to notification, including the establishment of a new Canadian business, and which falls within a specific business activity that in the opinion of the Governor in Council is related to Canada’s cultural heritage or national identity and listed in Schedule IV of the Regulations Respecting Investment in Canada, may be reviewed if an Order-in-Council directing a review is made and a notice is sent to the investor within 21 days following the receipt of a certified complete notification.

Where a review is required under Part IV, the ICA prohibits the investor from closing the transaction until the Minister’s approval is obtained. An applicant/investor may request special permission to close earlier on the grounds that a delay would result in undue hardship to the investor or jeopardize the operations of the business.

Similarly, under Part IV.1 of the ICA, any investment which would normally be only to notification, including the establishment of a new Canadian business, may be ordered reviewable where the Minister, in consultation with the Minister of Public Safety and Emergency Preparedness, has reasonable grounds to believe that such investment by a non-Canadian could be injurious to national security.

Where a review is required under Part IV.1 and the investment has not yet been implemented, the ICA prohibits the investor from closing the

transaction until otherwise allowed under the ICA.

Investment Reviews under the ICA often proceed in tandem with reviews under Canada’s *Competition Act*. One of the factors in the net benefit determination under the ICA is the effect that the proposed transaction will have on competition. For that reason, the reviewing agencies under the ICA will typically seek input from the Competition Bureau, and will not normally approve an application for review until the transaction has been approved under the *Competition Act*.

## 2. Premerger Notification and Review

The rules respecting merger or antitrust review and prenotification in Canada are contained in Parts VIII and IX of the *Competition Act*. The responsible government agency is the Competition Bureau, and filings are made through its office in Hull, Québec. Please note that the thresholds and fee amounts established under the *Competition Act* are subject to change.

The *Competition Act* applies to any merger or proposed merger that is likely to result in a substantial lessening or prevention of competition. However, for mergers that exceed certain size thresholds, the Commissioner of Competition must be notified prior to completion. Failure to notify is a criminal offense.

The factors which determine whether a notification filing is required in respect of a proposed merger transaction are: the value of the assets in Canada and the annual gross revenues from sales in, from or into Canada of the parties to the transaction, and of the target corporation itself. More specifically, for a merger transaction

which takes the form of the acquisition of voting shares of the corporation carrying on the target business (or of its parent corporation), two monetary tests or thresholds are applicable, and they may be summarized as follows:

- The parties to the transaction (including their respective affiliates) together have assets in Canada with an aggregate value exceeding \$400 million (CND) or annual gross revenues from sales in, from or into Canada exceeding \$400 million (CND); and
- The corporation, the shares of which are being acquired (and corporations controlled by it), has assets in Canada with an aggregate value exceeding \$92 million (CND) or annual gross revenues from sales in or from Canada exceeding \$92 million (CND).

Both monetary tests or thresholds are subject to annual adjustment.

The first of the above tests is often referred to as the “party size threshold,” and the second as the “transaction size threshold.” For the purposes of the party size threshold, in a share purchase transaction, the parties are considered to be the purchaser of the shares and the corporation whose shares are being purchased.

For a merger transaction which involves an acquisition of assets, the same two tests apply, except that the transaction size threshold is applied to the value of the assets being acquired and the annual gross revenues from sales in or from Canada generated from those assets.

A merger notification filing is required where both the party size threshold and the transaction size threshold are exceeded. Where a notification filing is required, the parties to the transaction are obligated to make the filing. The current filing fee for merger prenotification is \$72,000 (CND).

The initial waiting period during which parties may not implement a notifiable merger is 30 days after notification by parties (subject to early termination of the waiting period by the Bureau). If more information is needed, the Commissioner can issue a Supplementary Information Request any time during the initial waiting period. A Supplementary Information Request triggers a second 30-day waiting period, which commences when all information required to be provided in the Supplementary Information Request has been received.

The merger review process is initiated by an application to the Competition Tribunal for a remedial order on the grounds that the proposed transaction prevents or lessens, or is likely to prevent or lessen, competition substantially. The Commissioner of Competition may commence such an application before, or within one year after, substantial completion of the merger transaction.

If the parties to a proposed merger transaction desire certainty before closing, they may apply to the Competition Bureau for an Advance Ruling Certificate (an ARC). The fee for an ARC application is the same as the fee for a notification filing, and the supporting information that the Bureau will require in the first instance is substantially the same as well. If the

Bureau issues an ARC in respect of a proposed merger transaction, it is estopped from applying for merger review in respect of that transaction as long as the transaction was fully and accurately described in the ARC application and is completed within one year after the issuance of the ARC. If the Bureau declines to issue an ARC, or if none is applied for and a notification filing is made under Part IX of the *Competition Act*, the Bureau may give some measure of comfort to the parties by issuing a nonbinding “no action letter” stating that in its view, grounds do not exist at the time of the letter to initiate merger review proceedings before the Competition Tribunal.

### 3. Anti-Dumping

In order to discourage the importation of goods at prices below the price at which such goods would be sold in the exporter’s home market, Canada has anti-dumping legislation which imposes duties to prevent unfair competition with domestic Canadian goods. Similar duties may be payable when imported goods are subsidized in their country of manufacture. For a more detailed discussion, see Part D “Taxes and Duties” Section 3 “Customs and Excise Taxes”.

<sup>1</sup> Investors originating from countries that are party to the following trade agreements are treated as trade agreement investors: Canada-European Union Comprehensive Economic and Trade Agreement Implementation Act, North American Free Trade Agreement, Canada-Chile Free Trade Agreement Implementation Act, Canada-Peru Free Trade Agreement Implementation Act, Canada-Colombia Free Trade Agreement Implementation Act, Canada-Panama Economic Growth and Prosperity Act, Canada-Honduras Economic Growth and Prosperity Act and the Canada-Korea Economic Growth and Prosperity Act.

# F. Environmental Law

Over the last decade, there has been increasing awareness and concern at local, national and international levels in relation to the effects that human activities have on the environment. In response, Canadian governments at the federal, provincial/territorial and municipal levels have enacted environmental legislation which has impacted industry doing business in Canada. In order to undertake any business venture in Canada, businesses need to be aware of mandatory requirements, limitations, prohibitions and penalties contained in relevant environmental legislation.

In Canada, the federal and provincial/territorial governments share jurisdiction over the environment. The most extensive environmental legislation is found at the provincial level and varies among provinces. The Federal Government primarily regulates fisheries, toxic substances, species at risk, trans-boundary issues such as the protection of migratory birds, and projects within federal jurisdiction, such as those occurring on federally owned lands. Municipalities can also regulate matters affecting the environment within municipal boundaries such as the use of pesticides or wastewater management. It is frequently the case that a project will have to meet regulatory requirements of more than one regulator or jurisdiction, and a particular environmental violation may trigger enforcement action from multiple regulators.

Generally, the enforcement provisions of environmental legislation operate under a general prohibition regime, prohibiting any release of substances into the natural environment that may cause an adverse effect, without the appropriate authorization. The parties

that are deemed to be responsible for such substance releases are quite broad and can capture directors, employers, employees, contractors, consultants and even former owners and occupiers of land. However, liability for most environmental offences can be avoided if one can show due diligence, generally meaning that reasonable measures had been taken to prevent the violation (e.g., to avoid the release of a harmful substance) and to minimize the effects any such release. These measures would include such steps as implementing, operating and reviewing a reasonable corporate environmental management system. The requirements of a successful due diligence defence will always be context-specific and will always require reasonable activity prior to the environmental violation occurring.

To achieve compliance with environmental legislation, regulatory bodies have been given authority to use a wide variety of enforcement tools, including search warrants, stop orders, control orders and remediation orders. Penalties, including fines, administrative monetary penalties or imprisonment may also be imposed where the legislation has been violated.

Authorization such as approvals, permits and licenses are required from a regulatory body to allow an activity which would otherwise be prohibited. These authorizations include specified parameters for operating, monitoring and reporting to the regulators. Typically, such authorizations require periodic renewal. Often, authorizations for a single project will be needed from more than one regulator. Failure to comply with such an authorization may

be an offence subject to enforcement.

In an effort to enforce compliance and reduce the environmental impact from a substance release, most environmental legislation contains a requirement to immediately report a substance release to the relevant authorities. Legislation also provides requirements with respect to decommissioning and clean-up of industrial sites including provisions for waste disposal and transport.

Environmental law in Canada, as in the United States, is in a continuous state of growth and evolution. In Alberta, for example, significant changes were made to the regulatory system governing energy-related projects. The changes were made in an attempt to streamline the regulatory process, while still providing adequate protection of the environment.

At the federal level, significant changes have recently been proposed for several key pieces of environmental legislation, including the replacement of the federal environmental statute governing environmental assessments for projects falling under or partly under federal jurisdiction, and the replacement of the regulatory body for energy projects under federal jurisdiction. The Federal Government has purported that the changes are intended to improve certainty and timeliness of the regulatory process, while improving environmental protection by imposing larger penalties for violators.

Businesses are advised to seek counsel with experience in the area in order to reduce the risks associated with noncompliance with current and proposed environmental legislation.

# G. Intellectual Property Protection

Effectively protecting a business's intellectual property rights has become an increasingly important element of safeguarding the success of many businesses nowadays. The following is a general overview of the four key areas of intellectual property protection: trademark, copyright, patent and industrial design.

## 1. Trademarks

The *Trade-marks Act* defines a trademark as a mark that is used for the purpose of distinguishing wares or services manufactured, sold, leased, hired or performed by the owner of a trademark from similar wares or services of others.

A person can obtain registration in Canada of their foreign-registered trademark, if the trademark has been used or made known in Canada, has been duly registered in its country of origin (which country must be a member of the Paris Convention, which covers most industrialized countries), or is actually used in Canada after the allowance of the application but before registration of the trademark.

Registration provides the owner with the right of exclusive use of the trademark throughout Canada for 15 years in respect of the wares and services for which it was registered, provided there is continuous use of the trademark. Registration may be renewed indefinitely for further periods of 15 years.

Owners of unregistered trademarks also have rights at common law via the tort of "passing off." However, such rights only extend to the geographic locations in which the unregistered trademark is used or made known in Canada. As it is far easier to establish the essential elements of a claim for trademark infringement (available only to owners of registered marks) than it is to make a common law "passing off" claim, registration in Canada of a trademark provides the best possible protection for this type of intellectual property.

As in other countries, a trademark will not be registrable if it is clearly descriptive or deceptively misdescriptive of the character, quality or the place of origin of the related wares or services, or of the conditions of or the persons employed in the production of such wares or services. A trademark will also not be registrable if it can be confused with an existing registered trademark.

It is often appropriate for a foreign corporation to register a trademark even when it is not carrying on business in Canada. If a foreign corporation grants rights to use or sell a product bearing a trademark, it will be prudent to have the trademark registered in Canada as the property of the foreign owner.

License distribution agreements then clarify the right of the owner to enforce its trademark exclusivity when the distribution arrangement is terminated.

There is, as yet, no amendment to the *Trade-marks Act* concerning the issues surrounding internet domain names, but there have now been several Canadian cases decided on that issue. The general confusion rules appear to be adequate to protect trademark owners from others trying to benefit from a trademark's value.

Trade-mark owners often indicate the registration of a trademark through symbols such as ® (registered), ™ (trademark) or MC (marque de commerce). The *Trade-marks Act* does not require the use of these symbols, but their use is recommended. In fact, the ™ or MC symbols may be used with unregistered trademarks.

## 2. Copyright

A copyright gives the creator of every original literary (including computer software databases), dramatic, musical and artistic (including choreographic) work the exclusive right to produce or reproduce in any material form, perform, deliver in public or publish, a work or any substantial part of the work or authorize the doing of any of the above.

Copyright arises upon the creation and fixation into a tangible form of a particular work and does not depend upon registration. Generally a copyright in Canada lasts for the life of the author, the remainder of the calendar year in which the author dies, and for 50 years following the end of that calendar year. Some exceptions may apply with regards to the following works:

- Anonymous and pseudonymous works;



- Posthumous works;
- Cases of joint authorship;
- Photographs;
- Cinematographic works;
- Where copyright belongs to Her Majesty;
- Sound recordings; and
- Communication signals.

Copyright marking is not mandatory in Canada but is strongly recommended. A copyright may also be registered with the Copyright Office in Canada. A Certificate of Registration is evidence that a work is protected by copyright and that the registrant is its owner. In the event of a legal dispute, the registrant does not have to prove ownership; the onus is on the opponent to disprove the registrant's ownership.

In Europe and in the United States, a copyright has a term of 70 years. In a report filed with the Canadian Parliament a number of years ago, the amendment of the term of a copyright to 70 years was proposed along with several other amendments, but there is currently no amendment pending to the *Copyright Act* that deals with extending the term of copyright ownership in Canada.

A copyright owner can bring an action for infringement against any person who, without the consent of the owner, copies the whole or a substantial part of a copyrighted work, or sells, leases, distributes, exhibits by way of trade or imports for sale or hire into Canada any work that to their knowledge infringes copyright or would infringe copyright if it had been made in Canada. There also exist

statutory penalties under the *Copyright Act* for knowingly infringing a copyright. Copyright infringement can, though rarely, lead to a prison term of up to two years.

If it can be shown that an infringer was not aware or did not have reasonable grounds for suspecting the subsistence of the copyright, the owner can only be awarded an injunction. Alternatively, if it can be shown that the infringer had knowledge of the copyright, a copyright owner may be entitled to an injunction, damages, an order for the detention of imported infringing copies, an accounting for profits, recovery of infringing copies and/or costs. Although registration is not a prerequisite to copyright protection, it is deemed to give a potential infringer reasonable grounds for suspecting that copyright subsists in the material. A certificate of registration of copyright is evidence that the copyright subsists and that the person registered is the owner of the copyright.

Canada is a member of the Berne Convention and the Universal Copyright Convention. Copyright protection is extended to nationals of countries that are members of these Conventions or works first published in countries that are members of these Conventions.

Since amendments to the *Copyright Act* in the 1990s, a levy has been administered on the sale of blank recordable media (tapes, CDs, etc.) and the collection of performer's performance royalties, commonly referred to as "neighboring rights."

An amendment to the *Copyright Act* dealing with resolving the rising confusion surrounding the retransmission or rebroadcast of television signals over the internet was passed and proclaimed in force in the spring of 2003. Further, more substantial amendments to the *Copyright Act* have been made and were proclaimed in force in November, 2012. These amendments bring Canada in line with its obligations under world Intellectual Property Organization treaties, modernize Canadian copyright law for the digital and online age, and broaden the legal defence of "fair dealing" for uses of copyright-protected works that would otherwise constitute an infringement of those rights. For example, uses of such works that are incidental and not motivated by financial gain may constitute fair dealing, thereby protecting such users from liability.

Most substantially, these changes to the *Copyright Act* address issues such as internet service providers' (ISPs) liability for the copyright infringements of their users, digital rights management (DRM), and technological protection measures (TPMs). These amendments also contain what is known as a "notice and notice" mechanism by which an ISP must, in order to avoid liability for facilitating infringement, cooperate with a copyright owner by (a) providing notice of online copyright infringement to the ISP's user, and (b) storing information about the user in order to facilitate later prosecution by the copyright owner.

### 3. Patents

Under the *Patent Act*, an inventor or assignee of the inventor who is first to file an application in respect of (not first to invent) an invention will be entitled, subject to certain qualifications, to the grant of a patent.

An invention is defined as any new and useful art, process, machine, manufacture or composition of matter or any new and useful improvement thereof. Any scientific principle and abstract theorem is not patentable under the *Patent Act*. “Pure” computer software, mammals and inventions requiring the use of professional skills are not patentable.

Therefore, to be patentable, the invention must be new, useful and not have been obvious to a person skilled in the art or science to which the invention relates.

Public disclosure of the invention by a third party not having obtained the invention from the inventor in Canada or elsewhere bars the grant of a patent. Such disclosure by the inventor/patentee is subject to a one-year grace period before the first patent application has been filed in Canada or elsewhere. This is different from many other countries where public disclosure is completely forbidden.

A patent gives the patentee the exclusive right to make, construct, use and sell the invention for a period of 20 years (nonrenewable) from the date of filing the application. As Canada is a member of the Paris Convention for the Protection of Industrial Property, the deemed filing date of the patent application in Canada can be the earliest filing date

in a member country of such Convention, as long as the patent application in Canada is made within a year of the earliest filing date in a member country.

Patent marking is not required in Canada.

A patent infringement action may be brought before the Federal Court anywhere in Canada or before the Superior Court of the province in which the infringement occurred. A person who infringes a patent is liable to the patentee and to all persons claiming under the patentee for all damages suffered by the plaintiffs after the grant of the patent. The plaintiffs are also entitled to reasonable compensation for any infringement damages suffered after the application for the patent became open to public inspection and before the grant of the patent as if the patent had been granted the day the application became open to public inspection.

### 4. Industrial Design

Under the *Industrial Design Act*, an industrial design means features of shape, configuration, pattern or ornament and any combination of those features that, in a finished article, appeal to and are judged solely by the eye. It does not protect any utilitarian function.

The proprietor of a design, whether the first proprietor of the design or a subsequent proprietor, may apply to register the design. Registration gives the proprietor the exclusive right to make, offer for sale, or sell an article in respect of which the design has been applied.

No protection provided by the

*Industrial Design Act* can extend to features applied to a useful article that are dictated solely by a utilitarian function of the article or any method or principle of manufacture or construction.

An action for infringement of the exclusive right in a design shall be brought by the proprietor of the registered design. The remedies for infringement include an injunction, the recovery of damages or profits, punitive damages and the disposal of any infringing article or kit.

# H. E-Commerce

Canada has a vibrant internet community. Because of the great expansion of the internet in Canadian homes and businesses, Canada and its provinces have, in recent years, regulated internet activity and electronic commerce.

## 1. Regulation of Internet Activities and Electronic Commerce

All of Canada's provincial and territorial governments have enacted legislation intended to govern electronic commerce. These provincial statutes are strongly inspired by the *Uniform Electronic Commerce Act* (the *Uniform Act*) which was adopted in 1999 by the Uniform Law Conference of Canada. The *Uniform Act* takes its source from the United Nations Model Law on Electronic Commerce and was adopted to serve as a guide for the provinces to enact their own electronic commerce legislation. Only Québec's *Act to Establish a Legal Framework for Information Technology* was not modeled on the *Uniform Act*.

Generally, the purpose of these statutes is to recognize the validity of an electronic document, the validity of electronic signatures as long as they correspond to the definition of "signature" under certain provincial legislation, the functional equivalence of electronic documents to written documents, the validity of contracts in electronic form, and to set out the conditions under which an electronic contract will be valid. Under the *Uniform Act*, wills and their codicils, trusts created by wills or by codicils to wills, and powers of attorney documents that create or transfer interests in land are not recognized.

The Canadian Radio-Television and Telecommunications Commission (the

CRTC) has also been given a mandate to regulate the internet. The CRTC has confirmed that, for the time being, it will not impose its regulatory controls on the provision of content on the internet. This is significant because television and radio stations in Canada are subject to strict content quotas. For example, no less than 35% of radio content must be "Canadian," as defined by the CRTC. Accordingly, a Canadian-based website that provides content is not as constrained as would be its television and radio counterparts.

## 2. Applicable Law and Jurisdiction in Electronic Transactions

As internet activity and electronic commerce are borderless, parties from different countries or from different provinces may be involved in electronic transactions. It is strongly recommended that the parties choose the applicable law and jurisdiction under which their transaction will be governed, construed and enforced in order to avoid a conflict over which law will apply in the event of a dispute. The validity and enforcement of these types of agreements is fact specific and is currently a developing area of Canadian law. Internet transactions also raise unique tax issues which may need to be considered in the context of online commerce.

## 3. Consumer Protection in Online Transactions

Despite the fact that several federal and provincial statutes regulate consumer protection, the Canadian Office of Consumer Affairs works on different initiatives to protect the consumer on the internet. These initiatives have resulted in, among

other things, the May 2001 Internet Sales Contract Harmonization Template (the Template) and the January 2004 Canadian Code of Practice for Consumer Protection in Electronic Commerce (the Code).

### a. Internet Sales Contract Harmonization Template

The Template was approved on 25 May 2001 by federal, provincial and territorial ministers to harmonize consumer protection in electronic commerce throughout Canada. This template covers contract formation, cancellation rights, credit card chargebacks, and information provision, and is destined to act as a guideline for provincial consumer protection legislation regarding online transactions. British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec and Nova Scotia have enacted legislation consistent with the Template. Other provinces have consumer protection laws that may apply to online transactions.

### b. The Canadian Code of Practice for Consumer Protection in Electronic Commerce

On 16 January 2004, the Code was endorsed by federal, provincial and territorial ministers responsible for consumer affairs. This Code establishes a group of principles directed to any enterprise owning a transactional website. The Code represents good practice benchmarks for merchants engaging in e-commerce, but does not have the force of law. The principal guidelines a vendor should follow include:

#### i. Information Provision

The Code suggests that transactional website owners divulge sufficient

information to the consumer. This way, the consumer can make an informed choice about whether they will complete a transaction. A merchant owning a transactional website should identify the merchant to the consumer and provide the consumer with information about the policies, the merchandise and services for sale, and the terms and conditions of sale. The type of information which should be provided to the consumer is specified in the Code.

#### ii. Contract Formation and Fulfillment

The merchant should take reasonable measures to ensure that the consumer's agreement to a contract is fully informed and intentional. Information such as purchase price, conditions, details of order and payment conditions should be presented and approved separately. The cancellation of the transaction should be possible at any step during the process of approving the transaction. A vendor should not be able to require payment if the transaction is not approved by the consumer, if the product does not correspond to the description the merchant has given or if the delivery of the product is not made within the promised time.

#### iii. Security Payment and Personal Information

Vendors should maintain effective controls to protect the integrity and confidentiality of payments provided by consumers. In this manner, vendors are encouraged to disclose to consumers the level of security used on their websites.

#### iv. Redress

Any problems related to any transaction should be resolved through fair, timely and effective means, all of

which should be provided by vendors. Complaint-handling processes relating to a transactional problem should be free and be capable of resolution within 45 days of acknowledgment.

#### 4. Border Controls and Duties

While the internet may be borderless, border controls and customs duties are imposed on all goods shipped into Canada notwithstanding the fact they are purchased online.

#### 5. Defamation

Under Canadian common law and Québec civil law, defamation such as slander and libel is a tort. A website which displays any content in Canada must do so mindful of the fact that any information which is found to be slanderous or libelous could result in actions being brought against the website owner and publisher for its display in Canada. While Canada, under the Charter of Rights and Freedoms, recognizes the right to free expression, it is not as broad as that protected by the Bill of Rights in the United States and does not provide the same protection in the context of a defamation action. The usual remedies for defamation include damages as well as injunctive remedies such as the immediate removal of the content from the offending website.

Ontario has enacted "anti-strategic lawsuit against public participation" (Anti-SLAPP) laws. These laws have existed for some time in many American jurisdictions and are consistent with that country's approach to freedom of speech protection. Anti-SLAPP laws provide a defendant to a lawsuit (usually an action for defamation) the ability to have the lawsuit dismissed, on the basis that the plaintiff is unduly attempting to stifle expression. If the

court finds that the lawsuit arises from an expression made by the defendant that relates to a matter of public interest, it may dismiss the lawsuit and award damages against the plaintiff.

#### 6. Competition on the Internet

The expansion of online advertising and electronic commerce on the internet has raised concerns as to whether an online consumer could be misled by representations or deceptive marketing practices on the internet.

For this reason, the Competition Bureau published in 2003 (updated in August 2009) an information bulletin entitled "Application of the *Competition Act* to Representation on the Internet." This information bulletin confirms that the *Competition Act* applies equally to false or misleading representations regardless of the medium used. To evaluate if a representation is false or misleading in a material aspect under the *Competition Act*, the Competition Bureau will take into account the general impression left by the representation and its literal meaning.

Disclaimers are often used to alter the general impression left by a representation. The Competition Bureau will evaluate the following factors in order to determine if an online disclaimer is sufficient to alter the impression of the consumer:

- Location of the disclaimer on the website;
- Hyperlinks to disclaimers;
- Use of attention-grabbing tools;
- Prominence of the disclaimer;
- Accessibility of disclaimer by all potential users; and
- Repetition of the disclaimer.



The Competition Bureau has provided additional guidance applicable to online marketing in “The Deceptive Marketing Practices Digest, Volume I”, dated 10 June 2015. This publication examines and comments upon issues related to online advertising, disclaimers and online reviews.

Individuals or companies making representations online from within Canada to Canadian consumers have an obligation to comply with the *Competition Act*. Concerns have been raised as to whether representations made from elsewhere to Canadian consumers would engage the liability of foreign companies or strangers.

## 7. Copyright

Canada is a signatory of the Berne Convention and accordingly, copyright laws in Canada have similar thresholds to those in most western countries. Under Canadian copyright laws, only the owner of a copyright work is entitled to reproduce, broadcast or telecommunicate to the public that work or to authorize others to do the same.

Any party who engages in any of these or similar acts without the express permission of the copyright owner may be held liable for copyright infringement. Canadian copyright law has been applied to the unlicensed use of copyright works on the internet.

The express permission of the copyright owner must be sought if one wishes to reproduce that work on the internet. Note, however, that the *Copyright Modernization Act of 2012* has broadened some of the defences to copyright infringement which may be available in any given circumstance. While Canadian copyright law is intended to be media neutral, courts are continuing to

interpret and apply these provisions to issues which are unique to the dissemination of information over the internet.

## 8. Cybersquatting and Misappropriation of Trademarks

Canadian disputes over the right to domain names have been successfully tried before the Internet Corporation for Assigned Names and Numbers (ICANN) domain name dispute tribunal under the Uniform Domain-Name Dispute-Resolution Policy (UDRP) rules for .com top-level domains (TLD), and under CIRA’s (Canadian Internet Registration Authority) Dispute Resolution Policy (CDRP) rules for the .ca TLD. The decisions in these Canadian cases, as elsewhere around the world, have not always been against the interest of the cybersquatter.

## 9. Privacy

Canada has enacted generally applicable privacy laws that govern most private sector activities. Each province and the Federal Government also have privacy and freedom of information legislation that govern government institutions. While we will not go into detail about those public sector laws, they can impact business when providing goods and services directly to the public sector, or to third parties which have public sector clients. For example, the public sector privacy laws of British Columbia and Nova Scotia limit the ability to which personal information held by public sector bodies may be sent outside Canada.

## 10. Federal Legislation

Federal privacy legislation, the *Personal Information Protection and Electronic*

*Documents Act* (PIPEDA) governs privacy generally. At its core, the legislation codifies the following 10 principles which must be adhered to by any entity that deals with personal information.

- The company must be accountable;
- The purpose of the data collection must be identified;
- There must be consent for collection, use and disclosure;
- The information collected must be relevant to the purpose stated;
- The information cannot be used for purposes other than those for which it was collected;
- The information must be kept accurately;
- The information must be protected;
- The data collection policies of the organization must be open to the public;
- An individual must be allowed access to any information collected about them by an organization; and
- An individual may challenge an organization with respect to their compliance with the legislation.

Some provinces have enacted their own privacy legislation that supplants PIPEDA, including British Columbia, Alberta and Québec. While the provincial legislation is not the same as PIPEDA, the general philosophy is similar.

While PIPEDA and its provincial equivalents govern privacy in general, some provinces, including Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia and Newfoundland and Labrador have enacted separate privacy legislation that covers the health sector.

These laws can impact business when providing goods and services to the health sector.

As of 1 November 2018, PIPEDA will require businesses to provide notification of privacy breaches that create a “real risk of significant harm” to the affected individual. Notification will also need to be made to the Office of the Privacy Commissioner of Canada. The province of Alberta has previously enacted mandatory breach notification laws which apply to private sector businesses. These laws apply to privacy breaches that involve personal information; the privacy laws of Ontario, New Brunswick, Newfoundland and Labrador and Nova Scotia that apply to health information also contain mandatory breach notification requirements.

Privacy Commissioners publish many of their decisions regarding privacy breaches, as well as guidelines on topics such as behavioral advertising and surveillance camera use.

## 1.1. Children and Privacy

Canadian privacy legislation does not deal with children separately. Privacy Commissioners have, however, made it clear that they expect children to be dealt with more carefully regarding use and informed consent. The Office of the Privacy Commissioner of Canada has also indicated its view that minors should, following the attaining of the age of majority, have the right to have their personal information erased, upon their request.

## 1.2. Cyberbullying

The Criminal Code of Canada now recognizes the nonconsensual distribution of intimate images as a criminal offence. Any person who knowingly

publishes or distributes online an intimate image of a person, without that person’s consent, can be charged with a criminal offence. An “intimate image” is defined as a visual recording (as opposed to written materials or audio recordings, for example) of a person who is nude or engaged in explicit sexual activity. At both the time of the recording and when the image is distributed, the subject of the image must have had a reasonable expectation of privacy.

The provinces of Manitoba, Alberta, Saskatchewan and Nova Scotia have all either passed or proposed civil laws which apply to the nonconsensual distribution of intimate images. These laws generally provide the subject of the image the right to bring a lawsuit for damages against the person who is responsible for distributing the image.

## 1.3. Unsolicited Email / Anti-Spam

Privacy legislation currently governs marketing emails addressed to consumers. If a consumer does not desire to receive such emails, the business must respect that wish.

Effective 1 July 2014, Canada introduced “An Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act”, commonly known as Canada’s anti-spam legislation (CASL).

CASL is much different than anti-spam legislation in other countries. Compliance with, for example, the United States’ anti-spam legislation, will not be sufficient to comply with CASL.

CASL defines spam very broadly. For example, one email sent to one person can be considered spam. It includes a complex detailed series of provisions regarding exceptions and consent mechanisms. It applies to many types of electronic communications, not just email.

The three key requirements of CASL are that a “commercial electronic message” must:

- be sent with the recipient’s consent (which may be express or implied);
- contain prescribed information which identifies the sender; and
- contain an unsubscribe mechanism.

There are a variety of exceptions to either the requirement to obtain consent, or CASL itself, which may apply, depending on the content of the electronic message and/or the context in which it is sent.

CASL also contains provisions which apply to the installation of computer programs. These provisions relate largely to consent, so that the users of computer programs understand when software will be updated, or if it will transmit information to the software provider or to any other third party.

Potential fines for noncompliance are significant, including for directors and officers.

The CRTC’s website contains guidelines, bulletins, enforcement decisions and other materials which provide information regarding compliance with CASL.

# I. Marketing and Labeling Legislation

In Canada, the federal *Competition Act* prohibits certain marketing activities, which include:

- Resale price maintenance;
- Predatory pricing;
- Price discrimination; and
- Deceptive marketing, including telemarketing.

## 1. Resale Price Maintenance

Under the *Competition Act*, suppliers are prohibited from directly or indirectly attempting to influence upward, or discourage the reduction of, the price at which anyone else supplies, offers to supply or advertises a product within Canada. To contravene the *Competition Act* this behavior must have had, or is likely to have, an adverse effect on competition. This rule does not apply where the person attempting to influence the conduct of another person and that other person are:

- Affiliated corporations;
- Director, agent, officer or employee of either the same or affiliated corporation, partnership or sole proprietorship; and/or
- Principal and agent.

This exception also applies to franchising relationships.

In addition, suppliers are prohibited from refusing to supply a purchaser because of a purchaser's low pricing policy. It is lawful in packaging to have "suggested retail prices"; however, requiring any business in the supply chain to maintain a minimum resale price is unlawful.

## 2. Predatory Pricing

Predatory pricing involves the practice of selling goods and services at a price lower than the acquisition cost for the purpose of eliminating or disciplining a competitor. To be unlawful, this practice must be likely to have the effect of, or intended to have the effect of, substantially lessening competition in a market or eliminating a competitor in a market. Where specific competitors are targeted, or prices are set below cost, extreme caution should be exercised.

## 3. Price Discrimination

The *Competition Act* prohibits selling a like quality and quantity of articles to purchasers who are competitors of each other at different prices, or offering volume rebates or other advantages to one purchaser where such rebate or advantage is not made available to its competitors at the time the goods are sold and where such conduct amounts to a "practice." This practice must have had, is having, or is likely to have the effect of preventing or lessening competition substantially in a market. Selling products in one area of Canada at prices lower than those exacted elsewhere in Canada may also be unlawful if it tends to substantially lessen competition or eliminates a competitor in that part of Canada.

## 4. Misleading Advertising and Deceptive Marketing Practices

The *Competition Act* makes it unlawful to make a representation to the public, for the purpose of promoting a product or business interest, which is false or misleading in any material respect. To determine whether a representation is false or misleading, the Courts consider the "general impression" it conveys, as well as its literal meaning. Representations may be deemed to be made by an importer of goods into Canada where the supplier is outside Canada.

Penalties for such representations are governed by a "two track" system, whereby the Commissioner of Competition may choose to pursue criminal or civil remedies against directors or their corporations. Over the last 10 years, the Canadian courts have been imposing higher fines and sometimes jail sentences for false or misleading representations.

Reviewable conduct includes representations made in the form of statements, warranties or guarantees regarding a product that are not based on adequate or proper testing, or making a false or misleading representation regarding the price at which goods will ordinarily be sold. Reviewable trade practices attract administrative remedies.

## 5. Deceptive Telemarketing

The *Competition Act* also mandates that anyone engaged in telemarketing must provide full, reasonable and timely disclosure of, among other requirements, the nature of the product or business being promoted, the purpose of the communication, the price of the product, any restrictions that may be imposed with respect to delivery of the product, as well as a prohibition against deceptive telemarketing practices.

- Deceptive telemarketing is a criminal offense. Deceptive practices include:
- Requiring payment in advance as a condition for receiving a prize that has been, or supposedly has been, won in a contest or game;
- Failing to provide adequate and fair disclosure of the number and value of “prizes”;
- Offering a “gift” as an inducement to buy another product, without fairly disclosing the value of the gift; and
- Offering a product at a grossly inflated price and requiring payment in advance.

## 6. Packaging and Labeling Laws

The information in this section concentrates on consumer products. In the event industrial products are exported into Canada, there may be specific rules regarding a particular product.

The *Consumer Packaging and Labeling Act* (CPLA) is designed to protect consumers from misrepresentation in packaging. Retailers, manufacturers, processors and producers of a “product” are required to comply with the CPLA. “Product” is defined in the CPLA as any article that is or may be the subject of trade and commerce. It includes both food and non-food items.

The CPLA requires all prepackaged products to have affixed a label declaring the product identity, the net quantity of the product in the form prescribed by the CPLA and its regulations, and the dealer’s name and principal place of business. Generally, information is required to be in both English and French, and must express the quantity of the product in metric units. The product must conform to any other claims made which may, for example, relate to its type, quality, performance, function, origin or method of manufacture.

Certain products are required by the CPLA to be packaged in standardized containers. These include peanut butter, wine, glucose syrup, refined sugar syrup and facial tissue. This requirement is intended to prevent consumers from being misled or confused by an undue proliferation of container shapes and sizes.

Contravention of the CPLA can, in the most extreme cases, lead to a fine of up to \$250,000 (CND) or up to two years imprisonment.

### a. Hazardous Products Act

The *Hazardous Products Act* (HPA) regulates the advertising, labeling, sale and importation into Canada of hazardous products. Schedule I to the HPA lists products which may not be imported or sold in Canada. Examples of such prohibited products are lead pigments in paint and asbestos in textiles.

The HPA also lists certain restricted and controlled products which may be imported or sold in Canada only if they comply with specified safety standards. Children’s toys, furniture and certain flammable textile products are examples of products within the restricted category. Controlled products include products which are toxic, flammable and corrosive. Pursuant to the HPA, importation of controlled products may be prohibited unless the supplier or importer provides a material safety data sheet on the product and labels the product as specified in the regulations. This data sheet must contain details on ingredients, risks, injury prevention and treatment procedures. In certain cases, confidential ingredient information may be exempted from disclosure to competitors or the public.



### *b. Textile Labeling Act*

The *Textile Labeling Act* (TLA) is designed to provide consumers with information concerning the fibers contained in fabrics, clothing and other articles made from fabrics and yarns. The TLA requires a disclosure statement contained in a label indicating the name of the textile fibre (as such name is prescribed in the *Textile Labeling Regulations*), the percentage of that textile fibre contained in the product by weight, the name and address of the person/buyer for whom the article was imported and labeled, and the country of origin of imported articles.

In certain cases, consumer textile articles may be imported to Canada without a disclosure label, provided that a sample of the article and certain specified information regarding the article are delivered to a Federal Government inspector at the port of entry on or before the importation. However, before the imported article may be sold in Canada, the dealer must apply a disclosure label, notify the federal inspector that this has been done, and provide the inspector with a reasonable opportunity to inspect the article.

Regulations pursuant to the TLA exempt a number of articles from labeling requirements. As well, certain other sales are exempt where articles are made in compliance with specifications supplied by the buyer and the articles are not intended for resale.

### *c. Food and Drugs Act*

The *Food and Drugs Act* (FDA) regulates the advertising, importation and sale of certain foods, cosmetics, drugs and medical devices. The FDA contains stringent standards for the preparation of food and drugs. There are also regulations regarding the labeling, advertising and packaging of foods, drugs, cosmetics and medical devices.

Advertising with respect to certain products listed in a schedule to the FDA is prohibited. These prohibitions relate to advertising of certain foods, drugs, cosmetics and medical devices for illnesses such as alcoholism, cancer and heart disease. The definition of food contained in the FDA is broad enough to include chewing gum and ingredients that may be mixed with food for any purpose.

In certain cases, a food may become a drug for the purposes of the FDA. This will occur if medicinal claims are being made in connection with it. Medicinal claims must be substantiated through scientific study and a pre-approval process through the Health Protection Branch of the Department of Health and Welfare.

# J. Investment Incentives

Generally, Canadian companies are expected to be self-supporting, but for companies involved in export development, there are several types of investment incentive programs which are designed to assist investment in new Canadian business initiatives. In fact, Canada is one of the top-ranked countries in the world for investment opportunities. Various levels of government have direct and indirect assistance programs which can involve capital grants or loans or may involve job training supplements. Alternatively, a tax credit system has been established which may effectively permit acceleration of deductibility for capital expenses which might otherwise only be amortized over an extended period.

## 1. Program Requirements

Eligibility for most direct incentive programs is often limited to companies incorporated under federal or provincial laws. Capital grants are generally available only for manufacturing or processing projects. Various provinces have targeted industry segments such as tourism projects for eligibility for an indirect capital grant which gives a rebate to shareholders taking minority positions. Labour-sponsored venture funds provide a new source of venture capital in some provinces by providing individual investors with tax credits to encourage investment. Some municipalities provide incentives for locating a new enterprise within their boundaries. These are negotiated on an individual basis.

Often government assistance is available only where it is demonstrated that traditional private-sector financing cannot be obtained. Accordingly, unless a project is industry-specific or designed to be implemented in a geographical area designated as eligible for assistance, an applicant for assistance often walks the fine line of asserting a project's viability while demonstrating that no financial institution will provide the necessary funds.

## 2. Export Financing and Marketing

Export Development Canada (EDC) is a federal crown corporation which has programs to encourage domestic producers of goods and services to expand beyond Canadian borders. Most EDC programs relate to guarantees of foreign receivables. However, there are several specialized credit products, which include the financing of foreign receivables. EDC operations are not intended to be grant programs. Accordingly, EDC charges interest and fees similar to other financial institutions. However, many local banks do not like to margin or provide credit for foreign receivables and the EDC's programs are quite worthwhile.

There are many export financing options available through EDC. For example, under the Export Guarantee Program, banks are encouraged to grant pre-shipment loans to Canadian exporters to enable growth of Canadian exporting companies. The Canadian Direct Investment Abroad Program is designed to help companies expand by assisting them in investing in strategic global markets.

As well, through EDC's Bank Guarantee Program, EDC supports banks that finance the sale of Canadian exports. Under another incentive program, the federal Global Opportunities for Associations (GOA), formerly known as the federal Program for Export Market Development-Associations (PEMD-A), export-feasibility studies, trade fair sponsorship and other like services are made available on a subsidized basis to Canadian businesses wishing to expand to markets beyond Canada. Under the Export Express Credit Program, exporting companies can receive a \$50,000 (CND) unsecured loan to promote their companies in foreign markets.

## 3. The Scientific Research and Experimental Development (SR&ED) Program

The federal tax incentive SR&ED program gives tax breaks to Canadian corporations that engage in research and development projects aimed at developing new, improved or technologically advanced products or processes. The program is the primary method by which the Federal Government supplies funding for research and development initiatives.

SR&ED tax credits can be applied to a wide range of expenses such as wages, materials, machinery, equipment, overhead and SR&ED contracts.

# K. Employment Law

## 1. The Employment Relationship

There are many different types of relationships which businesses can have with the people and corporations who perform services for the business, including but not limited to employment relationships, independent contractor relationships, dependent contractor relationships and partnerships. Different legal rules apply depending upon the type of relationship(s).

While there is no single conclusive legal test for determining whether a relationship is an employment relationship or not, Courts often consider the level of control the purported employer has over the worker's activities, the degree to which the worker provides his own equipment, whether the worker has the power to hire and fire fellow workers or helpers, the degree of financial risk and opportunity for profit of the worker, and the degree of responsibility for investment and management held by the worker.

Businesses deciding to operate within Canada should determine the degree to which the various services required to be performed for the business should be performed by employees, and the degree to which these services should be performed by contractors, partners or via other types of legal relationships. Those wishing to conduct business in Canada should be aware of the basic employment and labour law regimes in Canada and be cognizant of the potential legal obligations which employment relationships are subject to.

## 2. Applicability of Laws

Both the Federal Government (Parliament) and the provincial and territorial governments (their Legislatures; for this purpose, provinces and territories are referred to as provinces) of Canada have the power to pass laws. The laws passed by the Federal Government are generally binding Canada-wide, whereas laws enacted by a provincial government will usually only be binding within the province which enacted the law.

The laws relating to labour relations, terms of employment and human rights which have been enacted by the Federal Government, will generally only apply where the ongoing dominant character of work performed by an employee relates to:

- A work, business or undertaking whose essential operational nature falls within a federal head of power in the Canadian Constitution; or
- A work, business or undertaking whose essential operational nature is integral to a federal undertaking.

The Federal Government has passed several laws which are generally binding on all employers operating within Canada. These federal laws include laws relating to employment insurance, Canada Pension and income tax.

Both the Federal Government and provincial governments have enacted laws governing labour relations, the terms of employment and human rights. Some employers will be obliged to follow the laws enacted by the

Federal Government, and other employers will be obliged to follow the laws enacted by the provincial government(s) in the province(s) in which the employer operates.

Employees whose ongoing dominant character of work does not fall within either of the above noted categories will be subject to the labour relations, employment and human rights laws enacted by the provincial government in the province in which the employment relationship is governed.

Types of businesses which are subject to federal jurisdiction include, but are not limited to: transport businesses which physically operate or facilitate carriage across interprovincial boundaries; stevedoring work which is integral to extra-provincial transport by ship; work integral to the establishment and operation of a telecommunications network; enterprises which operate inter-provincial pipelines; postal services; the armed forces; banks; federal crown corporations; airlines; railways; marine shipping; longshoring; grain elevators; television; telephone; radio and cablevision.

## 3. Minimum Standards of Employment

The Federal Government and all provincial governments have passed laws establishing minimum standards of employment for employees. Employment relationships will be governed by these minimum standards and various financial penalties and remedial orders can be made against employers who fail to provide these minimum standards to employees. Accordingly, Canada cannot be considered a jurisdiction in which

there is “employment at will,” as the minimum standards mandate what employees are minimally entitled to. As discussed below, the minimum standards laws only establish minimum requirements and do not restrict an employee’s right to sue for breach of contract, wrongful dismissal or other damages arising from the termination of their employment (depending on the wording of the written employment agreement, if any).

The minimum standards vary from province to province and on whether the employee falls under federal jurisdiction. However, the following is a list of some issues regulated by the various minimum employment standards laws:

- Minimum wages;
- Method of payment of wages;
- Hours of work;
- Overtime;
- Statutory holidays;
- Vacation with pay; and
- Pregnancy/parental leave designed to allow time to care for the child after childbirth.

#### 4. Terminating Employment

Under the above-noted minimum employment standards laws, employers must provide employees who are terminated without cause either advance notice of termination or pay in lieu of providing such notice. The notice period to be given to an employee who is terminated without cause is based upon the length of service of the employee to the employer. Notice requirements under

these minimum standards laws generally range from no notice for employees employed less than three months to eight or more weeks for employees employed longer than 10 years.

The above notice obligations are mandatory statutory minimums. In the absence of a written contract providing an alternative period of notice of termination which meets or exceeds these mandatory minimum notice obligations, courts generally require that an employer provide an employee employed pursuant to an indefinite term contract with “reasonable” advance notice of termination, or pay in lieu of such amount, where the employee is terminated without “just cause.” What constitutes “just cause” and “reasonable notice” is established through litigation on a case-by-case basis. Courts consider various factors in determining what constitutes reasonable notice, including the employee’s age at termination, length of service to the employer, the employee’s position at termination, remuneration, how the employee came to be employed, and the employee’s chance of finding replacement employment.

Reasonable notice established by Canadian courts often exceeds the obligations of American employers to their employees. While there are some employment law lawyers who subscribe to a “rule of thumb” approach that assesses reasonable notice in the range of one to two months of notice for every year of service an employee has to the employer, courts assess reasonable

notice entitlements based on a variety of factors and the rule of thumb is not necessarily a dependable measurement. It should also be noted that, while 24 months has in the past been accepted by some courts as the maximum period of reasonable notice, there is a prospect of particular employees being awarded compensation based on even longer periods.

There is no hard and fast method as to what constitutes just cause for termination. Each case is unique and is determined on the basis of its particular facts. The grounds for termination for cause in Canada are reserved for the most serious misconduct. When determining whether there is just cause, courts will assess whether the employee’s misconduct caused a breakdown in the employment relationship (i.e., the breach of an essential term of the employment contract, or the breach of the employer’s inherent faith in the employee). If the answer is yes, there will be just cause; however, if the answer is no, the employer will be required to give either the notice of termination set out in a written contract, or reasonable notice of termination or payment in lieu of notice.

In addition to the obligation to provide prior notice of termination, an employer owes its employee(s) a duty to act in good faith in the manner in which employment is terminated. While this duty does not oblige an employer to have a valid reason for termination, employers are required to be candid, reasonable, honest and forthright with their



employees, and refrain from unfair, untruthful, misleading or unduly insensitive conduct when terminating employment. An employee may be entitled to financial compensation for mental distress resulting from an employer's failure to act in good faith in the manner of termination.

## 5. Employment Contracts

In order to avoid the uncertainties that arise in litigation, it is recommended that all employers have written employment contracts with all employees. Such contracts should specifically and clearly address issues that arise upon the termination of employment, including termination pay as well as covenants for noncompetition and non-solicitation. An employer must, though, ensure that the entering into of the employment contract takes place before hiring and constitutes the offer of employment. Under certain circumstances, a contract can be amended or entered into after employment commences but it is important to get advice on how this can be achieved.

An important component of a written employment contract is the clause(s) governing how much advance notice of termination an employer must provide the employee. As noted, Canadian courts frequently impose an obligation on employers to provide employees with "reasonable" advance notice of termination. However, Canadian courts will not impose this "reasonable notice" obligation on employers where:

- An alternate notice period is provided for in a binding written employment contract;
- The alternate notice period is clearly worded; and
- The alternate notice period meets or exceeds the applicable minimum standards laws.

## 6. Successor Employers

According to some provincial statutes, where a business is acquired and continued in substantially the same manner and the purchaser hires the vendor's employees, the purchaser may have obligations toward the vendor's employees. For example, the purchaser may inherit the vendor's obligations under an existing collective agreement with a certified bargaining agent (i.e., union). Tenure with the predecessor corporation will be considered for various purposes including determining vacation leave and termination pay required by the minimum standards laws and may be considered in determining the amount of reasonable notice which must be given on termination of employment. A detailed understanding of the nature and relationship of the employees to a business being sold is required so that the ongoing obligations can be quantified and factored into the negotiations on the purchase.

## 7. Human Rights

Canadian workplaces are regulated by either provincial or federal human rights laws which prohibit discrimination and harassment on the basis of a number of grounds, including but not limited to race, colour, religion, sex,

sexual orientation, age, disability and family status. These prohibited grounds of discrimination vary depending upon whether federal or provincial laws apply.

Discrimination must be considered at all stages of the employment relationship, including decisions to hire and dismiss employees, and in dealing with employees who have indicated that they need special accommodation or leave as a result of one or more of the prohibited grounds of discrimination. For instance, human rights law may require an employer to provide certain workplace accommodations to employees due to their religion, sex, disability and/or family status.

Claims of discrimination often arise in situations where an employee develops a long-term physical or mental disability and seeks special accommodations from their employer. An employer may be required to accommodate the employee, and if the employer does not, the employee can file a complaint of discrimination against the employer. A valid complaint of discrimination can result in an award of damages, financial penalties and other orders against an employer.

It is recommended that all employers have a written anti-harassment/anti-discrimination policy setting out procedures and possible penalties.

## 8. Labour Relations

The Canadian Charter of Rights and Freedoms protects the right of employees to associate together to achieve collective goals. Accordingly, both the federal and provincial governments have enacted various

labour relations laws which allow for most types of employees (excluding managerial employees) to form or join a union and engage in collective bargaining with the employer.

Under most of these regimes, a union must apply to a government tribunal for an order certifying the union as the exclusive bargaining agent for a group of employees. Where certification occurs of a group of employees, all employees within this group give up their right to individually bargain the terms of their employment with their employer, in favour of collective bargaining by the union.

There are various considerations the government tribunal is required to consider before certifying the union as the exclusive bargaining agent for a group of employees, including but not limited to whether a majority of employees of the group of employees which the union seeks to be certified for, are in favour of union certification.

These labour relations laws create various statutory offences for “unfair labour practices” by employers, unions and/or employees, which offences include interference with the formation of a union. As such, employers must be careful of their words and actions during union organizing drives.

Where a union has been certified as the exclusive bargaining agent for a group of employees, both the union

and the employer are obliged to bargain in good faith with one another. If the collective bargaining fails to achieve a mutually acceptable collective agreement, conciliation and mediation can be imposed upon both the union and the employer. In certain circumstances, the content of a collective agreement can be imposed upon both the union and employer if neither conciliation nor mediation has resulted in a mutually acceptable collective agreement.

## 9. Other Employer Obligations

Some of the other obligations employers also have are:

### a. Employment Insurance

Employers must contribute to a federal employment insurance fund which assists employees who are laid off, terminated, become ill or take a pregnancy/parental leave. Employees also must contribute to the fund by way of deductions from their pay which are remitted by the employer to the fund on the employees’ behalf.

### b. Canada Pension

Employers and employees contribute to a federal pension fund that employees can draw on upon retirement or disability. The employees’ contributions are deducted from the employees’ pay.

### c. Workers’ Compensation

In most employment relationships, employers are required to have workers’ compensation insurance. These insurance plans are governed by either federal or provincial statutes, depending on the nature of the employers’ businesses.

### d. Privacy

Under federal and many but not all provincial statutes, employers have an obligation to ensure personal information about their employees is obtained, retained, disclosed and destroyed according to strict guidelines. Breaches can lead to various financial penalties. It is important for employers to ensure their privacy policies are up-to-date and that their privacy practices are in accordance with the applicable legislative requirements.

### e. Occupational Health and Safety

Under federal and provincial statutes, there are obligations on the part of employers and employees with respect to safe work environments and workers’ compensation programs.

# L. Immigration Restrictions

This section provides a general overview of immigration solutions for foreigners entering Canada as business visitors or temporary workers, including basic information about the visa application and work permit application process in Canada. The application of immigration rules varies based on several factual and personal factors. Therefore, eligibility for temporary status or permanent residence must be evaluated on a case-by-case basis.

## 1. Business Visitors (Temporary Residents)

The admissibility of a foreigner to enter Canada as a tourist or business visitor is governed by the *Immigration and Refugee Protection Act* and its Regulations.

Any foreigner wishing to enter Canada must be admissible and must be in possession of a valid travel document (generally a passport). Possible grounds of inadmissibility are the commission of or conviction for a criminal offense, the involvement in criminal activity, human rights violations or organized crime, national security or public health concerns, or financial reasons.

Generally, business visitors must maintain their principal residence abroad, they must be able to sustain their financial needs for the entire duration of their temporary stay, and they must intend to leave Canada at the end of their authorized stay.

Citizens of certain countries and territories are required to obtain a temporary resident visa from the Canadian Embassy or Consulate with jurisdiction over their place of residence before they can enter Canada. Citizens of the United States and citizens of most Western European countries do not need a temporary resident visa. However, those citizens often require an Electronic Travel Authorization (ETA). ETAs can be easily obtained online for a low fee.

Only US citizens are not required to obtain a visa or ETA to travel to Canada. They must however have a valid passport or Nexus card. US green card holders require an ETA to travel to Canada, as well as their valid green card as well as a passport or Nexus card.

Business visitors are generally admitted for an initial maximum period of six months, which can be extended depending on the specific activities to be performed by the foreigner, provided that the general criteria for business visitors are still met.

### Admissible Activities

As a general rule, business visitors may not engage in productive employment or receive compensation in Canada, nor can they undertake activities for which compensation is accrued in Canada, unless specifically authorized by law or regulations.

Generally, business visitors are allowed to perform the following activities that do not constitute work:

- Buying of goods, including familiarization with the goods to be purchased and attending training sessions as per the same;
- Performing market studies, selling of goods, and follow-up sales calls and meetings; and
- Attending business meetings, seminars, conferences or conventions.

In addition to these generally admissible activities, the North American Free Trade Agreement (NAFTA) provides for extended privileges. Indeed, citizens of the United States and Mexico may be allowed to perform some activities ranging from research and design to marketing, sales, distribution and after-sales services.

In limited circumstances, foreign visitors may be authorized to perform temporary activities that would constitute work. These activities are further explored below.

## 2. Temporary Workers

Every year, over 150,000 foreign workers enter Canada temporarily to help Canadian employers address skills shortages. The ability for foreign citizens to work in Canada is also governed by the *Immigration and Refugee Protection Act* and its regulations. As a general rule, work may not be performed by a foreign national who is not a citizen or a permanent resident of Canada unless specifically authorized by the Act and its regulations. However, the temporary entry of foreign nationals, for the purpose of engaging in an activity that constitutes work, may be facilitated under the Act

and its regulations, under NAFTA, the General Agreement on Trade in Services (GATS), the Canada Chile Free Trade Agreement (CCFTA) or other multilateral or bilateral agreements.

#### *a. Working Without a Work Permit*

In very limited circumstances, a foreign national may be authorized to perform a certain type of work without having to obtain a work permit. The general criteria are that there must be no intent to enter the Canadian labour market, the activity of the foreign worker must be international in scope, the worker's source of remuneration is outside Canada and the actual place of accrual of profits is located outside Canada.

Included in this category are persons providing after-sales services in relation to commercial or industrial equipment manufactured abroad (provided that the service contract has been negotiated as part of the original sales agreement or is an extension of the original agreement), persons performing services pursuant to warranty agreements in relation to the same, persons providing intra-company training or installation services, employees of foreign companies contracting Canadian companies and who are controlling or inspecting the work performed by the Canadian contractor. A separate category of authorized work in Canada without a work permit is certain foreign performing artists, athletes and coaches, news reporters, public speakers, convention organizers, religious workers and some students.

#### *b. Work Permits Requiring Employment and Social Development Canada (ESDC) Confirmation*

In other circumstances, a foreigner must normally become either a permanent resident or obtain a valid work permit to be entitled to work in Canada.

In itself, the fact that a person is paid by a foreign entity does not waive the obligation to obtain a work permit. Furthermore, if a foreign entity owns or controls a Canadian business, such ownership does not confer upon the owner the right to staff that Canadian business with citizens of its country of origin.

In order to obtain a work permit, a Canadian employer must first confirm its temporary job offer to the foreign worker. The general rule is that the issuance of such work permit must have either a neutral or positive effect on the local labour market, which must be confirmed by Employment and Social Development Canada (ESDC). The regulations provide ESDC with broad discretion, although it will take into consideration factors such as the availability of Canadian citizens or permanent residents willing and able to fill the position, whether or not the foreigner will transmit knowledge and know-how onto local workers, and whether the temporary presence of the foreign worker is likely to create additional job opportunities to the benefit of Canadians or permanent residents.

After the issuance of a favorable opinion by ESDC, the foreign worker may apply for a work permit to Immigration, Refugees and Citizenship Canada (IRCC). Additional steps may be required by provincial authorities prior to applying to IRCC. In addition, it is important to note that the regulations were modified to include a limit on the total period of stay. More precisely, unless exempted from such limitation, the total stay should not exceed four years.

Specific instructions are in place for workers in the film and entertainment, academics and agriculture industries. Several programs have also been developed to address special needs including the Seasonal Agricultural Workers Program, the Low-Skill Pilot Program, the Live-In-Caregiver Program and the provincial occupations under pressure lists.

#### *c. Work Permits Without ESDC Approval*

Aside from all work permits that require a positive opinion by ESDC, the *Immigration and Refugee Protection Act* and its regulations have incorporated facilitating dispositions for certain types of workers, based on the provisions and principles set forth by NAFTA, GATS, CCFTA or other international agreements. The most commonly used categories of work permits are described hereinafter. This is not an exhaustive list and many solutions may be contemplated by foreigners wishing to be authorized to work in Canada, whether temporarily or on a permanent basis.



### i. Intra-Company Transfers

The intra-company transfer category is ruled by the *Immigration and Refugee Protection Act* and it is complemented by the provisions of NAFTA and GATS. It was created to enable multinational corporations to temporarily benefit from the expertise and know-how of qualified employees for the purpose of improving the competitiveness of Canadian entities.

Intra-company transfers occur where foreign corporations send individuals to a Canadian parent, subsidiary, branch or affiliate. Intra-company transferees may apply for work permits without the issuance of a positive opinion by HRSDC if:

- They are seeking entry to work at a parent, subsidiary, branch or affiliate of a multinational company;
- Such multinational entity must do business on a permanent and continuous basis both in Canada and abroad;
- The role offered is in an executive, senior managerial or specialized knowledge capacity;
- They have been employed by the company outside Canada in a similar full-time position for one continuous year in the three years prior to applying for such benefit and they are employed by such foreign entity at the time of the application;
- They are coming to Canada for a temporary period; and
- They comply with all immigration requirements for temporary entry.

A work permit issued under this category or any other will have a definite term and may be extended.

### ii. Professionals under NAFTA

Under NAFTA, certain professionals may be authorized to perform temporary work in Canada either as a salaried employee or through a contract with an employer in a foreign country provided the employment is in a profession that qualifies and the worker possesses the educational and experience requirements to occupy this position. These professions and eligibility criteria are listed in Appendix 1603.D.1 to NAFTA. Professionals entering Canada pursuant to this provision could normally obtain a work permit valid for three years, which may be extended in three-year increments. There is no cap on extensions provided that the foreign worker is still in Canada temporarily. Such a work permit does not exempt the applicant from having all relevant Canadian qualifications, certifications and licenses which are required for practice in any particular Canadian jurisdiction.

NAFTA only applies to citizens of the United States or Mexico. It does not extend to green card holders.

### iii. Professionals Under CCFTA

Like professionals under NAFTA, the CCFTA similarly provides for the issuance of work permits to citizens of Chile who wish to perform temporary work in Canada, either as a salaried employee or through a contract with an employer in a foreign country, provided the offered employ-

ment is in a profession that qualifies and the worker possesses the educational and experience requirements to occupy this position. These professions and eligibility criteria are listed in Appendix K-03.IV.1 to CCFTA and are very similar to the NAFTA listing. However, educational requirements have been adapted to reflect the Chilean educational system. Professionals entering Canada pursuant to this provision would normally obtain a one-year work permit, which may be extended in one-year increments. There is no cap on extensions provided the foreign worker is still in Canada temporarily. Such a work permit does not exempt the applicant from having all relevant qualifications, certifications and licenses that may be required for practice in any particular Canadian jurisdiction.

### iv. Professionals under GATS

The General Agreement on Trade in Services (GATS) provisions provide for the issuance of temporary work permits for the benefit of certain professionals whose services are required in Canada for a maximum period of three months in any given 12-month period. The professions covered are very limited and both the activity sector and the foreign worker's country of citizenship must be covered by the agreement for this category of work permit to be applicable. Most nations are covered by GATS.

#### v. Significant Benefits to Canada

The law and regulations authorize certain applicants to apply for a work permit without ESDC's positive opinion where the benefits to Canada of the foreigner's temporary presence are obvious. These provisions apply only in very limited circumstances where the social, cultural or economic benefits to Canada of issuing a work permit are clear and of major importance, so that the burden to establish that there is no negative impact to the local labour market can be overcome.

#### vi. Spouses of Foreign Workers and of International Students

Spouses or common-law partners of temporary workers in Canada are generally authorized to accompany the principal applicant as long as they satisfy all admission requirements. The definition of spouse includes common-law partners of the opposite and same sex. Generally, common-law partners must demonstrate 12 months of cohabitation and other evidence of the relationship.

Spouses of skilled workers may qualify for the issuance of an open work permit without a positive opinion from ESDC if the following conditions are met:

- The principal foreign worker must be doing work which is at a level that falls within National Occupational Classification (NOC) Skill Levels 0, A or B (these skill levels include management and professional occupations, and technical or skilled tradespersons); and

- The principal foreign worker must generally hold a work permit that is valid for a period of at least six months.

Spouses or common-law partners of international students in Canada are generally authorized to accompany the principal applicant and to qualify for an open work permit as long as they satisfy all admission requirements.

### 3. Permanent Residents

All work permits are issued for temporary periods and they do not entitle foreigners to establish themselves permanently in Canada, nor to accede directly to the status of permanent resident. The Canadian government has not set a limited quota on the number of immigrants that may be admitted each year from any particular country or region of the world. However, it establishes objectives and guidelines that govern the criteria for the selection of immigrants as enacted in the laws and regulations. In addition to the federal programs, each province has the authority to implement provincial immigration programs (referred to as Provincial Nominee Programs) which are more suited to a province's particular needs in terms of human resources. Approximately 300,000 foreign nationals are granted Canadian permanent residence each year.

Generally, permanent residence may be granted to two principal classes of immigrants, the Economic Class and the Family Class.

#### a. The Economic Class

Annually, Canada approves for permanent residence approximately 150,000 workers in the Economic Class, which comprises skilled workers, the skilled workers under Provincial Nominee Programs, as well as business immigrants (entrepreneurs, investors or self-employed workers). Using a point system which differs based upon the specific category under which the prospective immigrant applies, each candidacy is assessed according to various factors that will indicate whether it is highly likely that the principal applicant and all their family members will successfully integrate into Canadian society.

Preference will be given to applicants who possess employment skills and experience compatible with occupations for which people are needed.

In some cases, the process will favor applicants with approved permanent job offers, or business immigrants who contribute to the economic, cultural, artistic or athletic life in Canada.

#### b. The Family Class

Generally, under the Family Class, Canadian citizens or permanent residents of 18 years or older may sponsor their spouse, common-law partner or conjugal partner, including same-sex spouses or partners, their child under the age of 22 (including an adopted child) their mother or father, grandmother or grandfather. The sponsorship of parents and grandparents is currently subject to an annual

lottery and strict minimum income requirements. Under limited circumstances, other relatives may be sponsored.

### *c. General Criteria*

In addition to qualifying under any Class, prospective immigrants are required to pass a medical examination and to undergo a criminal background check. With some exceptions, applicants must also possess sufficient funds to sustain their needs upon arrival, an amount that may vary depending on the specific Class of admission and the size of the family.

Possible grounds of inadmissibility are the commission of or conviction for a criminal offense, the involvement in criminal activity, human rights violations or organized crime, national security or public health concerns, or financial reasons.

### *d. Permanent Resident Card*

IRCC has issued every new permanent resident a Permanent Resident Card (PRC) as evidence of the immigrant's permanent resident status in Canada. The rationale behind the PRC includes better border security, improving the integrity of the immigration process, and providing PRC holders with secure proof of their permanent residence status when re-entering Canada on any commercial carriers (plane, train, boat and bus).

All permanent residents returning from international travel on commercial carriers must show their PRC to re-enter Canada. If they do not have a PRC they should apply for a travel document in order to be admissible for re-entry. Permanent residents driving into Canada in a personal, private vehicle can be allowed to enter Canada without their PRC if they have other proof of permanent residence.

In order to maintain the validity of their status, permanent residents must generally comply with the residency requirement. More precisely, they should accumulate two years of physical presence in Canada in every five-year period since the issuance of their PRC.

For additional information, consult Citizenship and Immigration Canada's website: <http://www.cic.gc.ca/> or speak to a qualified legal professional through the Meritas premier legal network.

# M. Directors' Liabilities

In Canada, there is a legal duty for every director and officer of a corporation to act honestly and in good faith with a view to the best interests of the corporation when exercising their duties, and to utilize the care, diligence and skill that a reasonably prudent person would exercise in similar circumstances. Directors and officers owe these duties to their corporations. In addition, Canadian courts have held that directors and officers also owe these duties to shareholders, employees, creditors, suppliers and consumers of their corporations, as well as to governments and the environment. Where a director or officer is found to have breached either duty, the director or officer may potentially be found to be personally liable to one or more of these parties.

It is possible for directors or officers to incur personal liability where they breach federal or provincial legislation. Directors or officers are most likely to incur personal liability specifically under federal or provincial legislation that deal with taxes, pensions, workplace or occupational health and safety, bankruptcy and insolvency, the environment, as well as corporate governance.

Under both provincial and federal corporate legislation, directors may incur personal liability for improperly authorizing: the declaration of dividends or payments to shareholders; the repurchase or redemption of shares; the issue or allotment of shares for consideration other than money (when the consideration is less than the fair market value of the shares); the payment of commissions; or the provision of an indemnity or financial assistance by the corporation. In addition, directors may be liable for acting in excess of their authority, or where a court of law finds that the director acted in such a way, or authorized such action, which is determined to be oppressive (meaning where such action unfairly disregarded the interests of a shareholder or creditor).

Directors may be jointly and severally liable for unpaid employee wages and vacation pay for up to six months which became payable while they were directors. Directors may also incur personal liability for severance pay and wrongful dismissal, and for breaches of workplace safety and protective legislation if they directed, authorized, acquiesced or otherwise participated in a breach of the applicable workplace health and safety legislation.

Under Canada's *Income Tax Act*, directors may be held personally liable for any amount which the corporation has failed to deduct, withhold or remit on behalf of the corporation's employees as required under that Act.

Directors may also be liable if the corporation fails to remit goods and services tax, employment insurance premiums and/or Canada pension plan premiums under the *Excise Tax Act* and the *Canada Pension Plan Act*.

Under the *Bankruptcy and Insolvency Act (BIA)* and the *Companies' Creditors Arrangements Act*, directors can be found to be personally liable for unpaid wages, unmade pension contributions, transfers of property below their value or to avoid creditors. The BIA also provides that a director or officer is guilty of a criminal offence where that person had directed, authorized, assented or acquiesced in the corporation's commission of an offence under the BIA.

Federal and provincial environmental protection legislation also imposes certain requirements which can result in the personal liability of directors and officers. Case law interpreting this legislation has indicated that positive steps must be undertaken by directors to seek out, monitor and resolve environmental issues in order to avoid statutory liability.



Directors and officers may incur personal liabilities under provincial securities legislation where their corporation breaches securities legislation or regulations, if a prospectus or various financial and other disclosure documents filed with securities regulators contain misrepresentations, or where they are found to have participated or acquiesced to insider trading. In certain circumstances, directors committing such offences may be subject to fines and/or imprisonment.

Directors may also incur personal liability under trade practices legislation which imposes penalties and personal liabilities on directors of corporations for breach of applicable unfair trade practices provisions, particularly under the *Competition Act*.

Shareholders can incur personal liability reserved for directors or officers even where they do not formally hold such a position in a corporation. Persons who were not formally elected and who did not formally consent to be a director of a corporation have been treated (incurring personal liability, as a result) by Canadian courts to have been *de facto* directors where they were highly involved in the governance or management of the corporation, held themselves out to be directors to third parties and/or where they did acts normally reserved for directors.

In some Canadian jurisdictions and under certain circumstances, it is possible for directors to minimize their personal liability where they rely on information in good faith, where they exercise due diligence in the conduct of their duties, where they disagree with a decision or action by the board of directors or the corporation and take steps to record their dissent with the decision or action shortly after it is authorized or taken, or where they vote against the decision or action at the time the issue is dealt with by the board of directors.

Note that the duties, obligations and potential personal liability of directors and officers will vary depending on the jurisdiction in Canada (i.e., in each of the provinces or federally), so some of the above may not apply in all Canadian jurisdictions exactly as outlined above.

# N. Bankruptcy and Insolvency

In Canada, an “insolvent person” (which includes a partnership, an unincorporated association and a corporation, among others) refers to an entity which is not bankrupt, resides, carries on business or has property in Canada and is unable to meet or has ceased paying its obligations as they become due. Additionally, its aggregate liabilities exceed one thousand (CND \$1,000.00) dollars or its aggregate property is not, at fair valuation, sufficient to enable payment of all its obligations.

In general, there are three options available to insolvent entities in Canada: restructuring, bankruptcy or receivership. The first two options – restructuring and bankruptcy – are generally used by debtors, whereas receivership is primarily used by creditors though it can be used by a debtor in limited circumstances.

## I. **Restructuring**

### a. *Using the CCAA*

A *Companies Creditors’ Arrangement Act* (CCAA) restructuring process is only available to insolvent companies having in excess of five million (\$5,000,000.00) dollars of debt. In a CCAA restructuring, a company is granted a court-ordered protection period called a “stay”, during which no party can take any action against the company. During this time period, customers cannot terminate contracts or commitments to purchase services and suppliers must continue to supply goods and services (provided they are paid going forward from the date of the stay) to the company.

However, conventional lenders and suppliers cannot be forced to grant any further credit to the company.

A court-appointed monitor (who must be a licensed insolvency trustee) is appointed, but the company remains in control of its own assets, management, personnel, employees and directors.

The initial stay of proceedings against the debtor company lasts for 30 days. A company will often apply for an extension, and will likely make subsequent applications to continue to extend the stay as long as it can be credibly argued that the process continues to have some purpose and if it can be shown that the company is continuing to proceed in good faith and is acting with due diligence. It usually takes between four and 18 months to complete a CCAA restructuring.

The stay of proceedings provides the company with breathing room from its creditors in order to enable it to produce a plan, called a “plan of arrangement,” under which funds or other assets will be made available to the creditors in lieu of paying the company’s debts in full. To succeed, a plan of arrangement must offer creditors more than they would receive then if the company filed for bankruptcy.

In order for a plan to be accepted by the creditors of a company, creditors holding two-thirds of the proven debt and a majority in number of the creditors with proven claims must vote in favour of the plan of arrangement.

Once the plan of arrangement is accepted by the creditors and approved by the court, the company comes out

of creditor protection and is freed from its pre-filing debts as set out in accordance with the accepted and approved plan of arrangement. The plan of arrangement may take a period of time to perform following its approval.

The main advantage of the CCAA process is that it is extremely flexible and tends to be very debtor-friendly such that the company is given a fair chance to restructure its obligations. Additionally, if the plan of arrangement is not accepted the company is not automatically bankrupt. The main disadvantages are longer restructuring periods and higher professional costs due to the court-driven nature of the process.

### b. *The BIA Proposal Process*

A *Bankruptcy and Insolvency Act* (BIA) restructuring is available to all insolvent persons (including companies), regardless of the quantum of indebtedness involved (though there must be in excess of one thousand (CND \$1,000.00) dollars of debt).

Unlike the CCAA process, a company may file a Notice of Intention to Make a Proposal (an NOI) and obtain an automatic stay without the requirement of a court attendance. A proposal trustee is appointed (akin to the CCAA monitor), and similar to a CCAA filing, the company remains in control of its assets and business operations.

A NOI filing provides the company time to file a proposal, the form of which is materially similar to the CCAA filing process. The voting requirements are the same as with

the CCAA and following acceptance of the proposal by the creditors and approval by the court, the company emerges from bankruptcy protection, and its pre-filing debts are discharged provided the terms of the proposal are performed.

The main advantages of the BIA proposal process are shorter restructuring periods and fewer court appearances, resulting in reduced professional costs.

The main disadvantage is its rigidity. A company is required to file a proposal within 30 days of filing its NOI. Extensions can be sought, but only up to an aggregate of five times for a maximum of six months, following which, if no proposal is filed, the process is deemed to have failed. For companies with complex operations and/or debt structures, it is often felt that six months is insufficient. Most importantly, and differing from the CCAA, if a BIA proposal is rejected by the creditors, or if no proposal is filed within the prescribed time period, the company is automatically deemed to be bankrupt. For these reasons, companies with sufficient debt tend to use the CCAA process for restructuring purposes.

## 2. Bankruptcy

A company can at any time, provided it is insolvent as defined in the *Bankruptcy and Insolvency Act*, make a general assignment for the benefit of its creditors and become bankrupt. In this circumstance, the company loses control of the operation of its business

and its assets automatically vest in the hands of the bankruptcy trustee, subject to the rights of the company's secured creditors.

The main advantage of a bankruptcy is that it allows for management to walk away from the company completely. This loss of control is also its main disadvantage.

Bankruptcy usually means the death of a company. While it is possible for a bankrupt company to attempt to restructure under the BIA, this is a very rare event. Accordingly, this is why there is a stronger stigma attached to filing for bankruptcy as opposed to filing for bankruptcy protection.

## 3. Receivership

Receivership is usually a remedy used by a creditor against a debtor company on behalf of one or more creditors. However, in certain limited circumstances, a company may appoint its own receiver with a view to arranging for the sale of its assets for the benefit of its creditors.

A receiver is a third-party appointed by either the court, or privately by a secured creditor, for the purpose of managing the business (usually for a short term period) and/or overseeing the liquidation and/or sale of the business. The broad underlying purpose of any receivership is to ensure the assets of the company are not dissipated, removed, transferred or sold at a low value during its operation and instead are used to realize the maximum value for the benefit of its creditors.

It is possible to have a receivership simultaneously with a CCAA or BIA restructuring and following a bankruptcy.

## 4. Summary

It should be noted that the CCAA and the BIA are two distinct statutes and neither is ancillary to the other. Each serves different purposes, even though the CCAA specifically adopts some definitions from the BIA. If a person or company is considering any form of financial restructuring, whether that be through the CCAA, the BIA or otherwise, contacting a professional to discuss the options available should always be considered as an initial step in any process.

# O. International Trade

[Current as of September 1, 2018]

## I. Introduction

Canada is party to several international agreements that affect international trade. Whether it is the signature of the General Agreement on Tariffs and Trade (GATT) in 1948 or the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958) in 1986 or its membership in the World Trade Organization (WTO), a person wanting to do business in Canada would be well advised to consider the treaties and agreements concluded between Canada and his or her home country to properly understand the nature, scope, opportunities and obligations that such agreements bring to a commercial relationship.

Some of the agreements that you should consider are the free trade agreements to which Canada is a party, the accession of Canada to the New York Convention, the application of the Vienna Convention of 1980, Canada's bilateral tax treaties and Foreign Investment Promotion and Protection Agreements (FIPAs), as well as privileges that Canada extends to fellow members of NATO and the WTO.

## 2. Free Trade Agreements

### a. *Canada-U.S. Free Trade Agreement/North American Free Trade Agreement (1994)*

The result of a very divisive political debate in Canada that culminated in the 1988 federal election, the Canada-U.S. Free Trade Agreement came into force in 1989 and was superseded by the North American Free Trade Agreement (NAFTA) in 1994 when a

broader free trade agreement was concluded among Canada, the United States and Mexico. This first free trade agreement was a departure from Canada's historic trade protectionist regime and became the blueprint for the country's future free trade agreements.

Negotiated under chapter XXIV of the GATT, NAFTA is a wide-ranging free trade agreement that, among other things:

- Established rules of origin for North American goods in order that they may enter each country to the agreement free of any tariff;
- Removed technical barriers to trade;
- Recognized that businesses of a country party to NAFTA would be subject to the same standards-related measures as those businesses of the country enacting the standards;
- Created a process for the mutual recognition of certification standards of goods manufactured in a country party to NAFTA;
- Lowered government procurement thresholds in order that businesses of NAFTA member states could bid to supply governments and institutions in all member states on an equal footing to the domestic bidders;
- Established rules for the temporary entry in each country of business persons; and
- Created a state-to-state trade dispute settlement mechanism.

NAFTA has resulted in a higher integration and interconnection of the North American market and,

according to the United States Census Bureau, in an increase in bilateral trade between Canada and the United States from \$174 billion (USD) in 1990 to \$617 billion (USD) in 2012. Even after adjusting for inflation, those figures represent growth of 102% over 22 years.

For more information on the North American Free Trade Agreement (NAFTA) see the detailed discussion under the NAFTA section, p. 66.

### b. *Canada and European Union Comprehensive Economic and Trade Agreement (2017)*

The Comprehensive Economic and Trade Agreement between Canada and the European Union (also known as CETA) has been provisionally in force since September 21, 2017. As such all the provisions of CETA except those governing the dispute settlement mechanism, the free trade in financial services and camcording are in force as of that date. The remaining provisions of CETA will be in force only upon full implementation which will occur when all Member States of the European Union will have ratified CETA, which could take several years. The subject of negotiations since May 2009, this agreement follows the agreement in principle reached on October 18, 2013.

CETA represents a prime opportunity for European businesses wishing to enter the Canadian market since 98% of existing customs tariffs between Canada and the European Union will be abolished immediately upon its taking effect. By contrast, under NAFTA, customs tariffs were progressively reduced over a seven-year



period. A European business seeking access to the Canadian market should therefore take advantage of the time between CETA's signing and its implementation to prepare the business' entry into the Canadian market. The immediate reduction of tariffs represents a significant advantage that other international competitors will not have.

It is important to note that CETA covers, among other things:

- Trade in goods;
- Rules of origin for goods;
- Trade in services;
- Trade in investments;
- Trade in financial services;
- Measures concerning the temporary entry into Canada;
- The recognition of professional qualifications;
- Dispute resolution;
- The reduction of both tariff and non-tariff barriers;
- Recognition of European geographical indications;
- The mutual acceptance of the results of conformity assessments;
- New measures to protect intellectual property; and
- Coordination between Canada and the European Union on sustainable development, labour and environmental issues.

This is the first time the European Union has signed a free trade agreement with a G7 country.

The Canada-European Union Free Trade Agreement will be different from those in place within the Euro-

pean Union since tax measures and structures will have to be planned and immigration issues addressed so that European citizens are allowed extended stays in Canada and the protection of intellectual property rights.

### c. Other Free Trade Agreements

It is important to note that Canada has also entered into free trade agreements with a number of other countries around the world. If your business manufactures or transforms goods in Canada that qualify as "made in Canada" under the rules of origin established under these free trade agreements, your business will benefit from the advantages that these agreements extend to Canadian businesses.

Aside from the above-mentioned agreements, Canada has entered in free trade agreement with the following countries:

- Israel (1997);
- Chile (1997);
- Costa Rica (2002);
- European Free Trade Association (2009);<sup>1</sup>
- Peru (2009);
- Colombia (2011);
- Jordan (2012);
- Panama (2013);
- Honduras (2014);
- South Korea (2015); and
- Ukraine (2017).

<sup>1</sup> Iceland, Liechtenstein, Norway and Switzerland

### d. Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958)

When a dispute arises in an international commercial relationship there is often reluctance by one of the parties to the dispute to submit itself to the jurisdiction of the courts of the other party. This is understandable, since few people would welcome the idea of being a litigant in a foreign country with unknown rules and procedures and perhaps even a foreign language.

The Convention on the Recognition and Enforcement of Foreign Arbitral Awards concluded in 1958 (also known as the New York Convention), to which Canada acceded in 1986, protects the status of arbitration clauses. When a dispute involves a contract containing an arbitration clause, the courts of a state that is a party to that agreement must decline jurisdiction and refer the matter to arbitration. In addition, the New York Convention created a simplified process for the execution of arbitral awards by limiting the grounds for judicial review.

A person doing business in Canada may want to consider the use of an arbitration clause in their commercial contracts in the event of a dispute, with the knowledge that any resulting arbitral award may be enforced and executed against the assets located in Canada of their counterparty.

### e. The United Nations Convention for the International Sale of Goods (1980)

All terms and conditions of the sale of goods by any foreign person selling goods to a person in Canada will

automatically be subject to the United Nations Convention for the International Sale of Goods, which was concluded in 1980 (also known as the Vienna Convention of 1980), if the seller's home country is also a signatory to the Vienna Convention.

The Vienna Convention provides for a series of implicit warranties concerning the goods sold, including fitness for purpose, which may be more stringent than the legal regime of your home country. It is therefore important to review the provisions of the Vienna Convention to determine whether it applies to your situation and, if so, whether you are comfortable with the implicit warranties that it creates.

It is important to note that parties can contract out of the application of the Vienna Convention, but that the exclusion must be explicit and be contained in your regular terms and conditions of sale. In the absence of an explicit exclusion, the Vienna Convention will apply to your transaction.

### 3. Tax Treaties

Canada has a tax treaty with 104 different countries, with 97 treaties already (although five are not yet implemented) and another seven currently in the process of being negotiated or renegotiated.

While complex in its breadth, a tax treaty will cover a variety of issues including, but not limited to, deemed tax residency in Canada of a foreign business; double taxation; the taxation of business profits; royalties; dividends and capital gains; as well as a range of other tax-related issues.

A person seeking to do business in Canada should consult the tax treaty between their home country and Canada, if any, in order to put in place the appropriate structures in order to comply with its requirements.

### 4. Foreign Investment Promotion and Investment Agreements

Canada has entered into 52 bilateral foreign investment promotion and investment agreements with various countries around the world. At time of publication, of those agreements, 38 have been signed (one of which is not yet implemented) and 14 are being negotiated (with the negotiations having concluded for five).

These foreign investment promotion and protection agreements grant foreign investors in Canada more transparent and predictable rules concerning political instability, weak legal institutions, uncertain regulatory regimes and the possibility of expropriation.

A person seeking to do business in Canada should consult the foreign investment promotion and investment agreement applicable to their home country, if any, to determine whether any rules and obligations contained therein could have an impact on their decision to invest in Canada.

### 5. International Organizations

#### a. North Atlantic Treaty Organization (NATO)

While NATO is primarily known as a military alliance, a lesser-known aspect of the treaty is that it grants businesses of member nations access to supplying the armed services of alliance

members with goods and services. **If your home country is a NATO member and you wish to supply the Canadian Armed Forces, you may want to consider the possibility of obtaining, from your home country, a NATO security clearance for your business.**

#### b. World Trade Organization (WTO)

Most countries, including Canada, are now members of the World Trade Organization (WTO). A person wanting to do business in Canada should confirm whether their home country is a member of the WTO, as that status is important in determining the review threshold under Canada's *Investment Act* when a foreign person seeks to acquire the assets or control of a Canadian business.

### 6. North American Free Trade Agreement (NAFTA)

#### a. Using the Canadian Free Trade Agreement in Your Business

Canada is a centre of global trade. In addition to the well-known North American Free Trade Agreement (NAFTA), Canada has entered into, negotiated or announced its intention to negotiate free trade agreements with numerous other countries and regions. Specifically, in addition to NAFTA, Canada has free trade agreements with 11 countries as of 2013: Chile, Colombia, Costa Rica, Iceland, Israel, Jordan, Liechtenstein, Norway, Panama, Peru and Switzerland. In 2012 Canada joined the Trans-Pacific Partnership free trade negotiations. Trade negotiations were completed with Honduras and were

well under way for the ambitious Comprehensive Economic and Trade Agreement with countries of the European Union. Finally, announcements and consultations were made with respect to other high profile countries like India, Japan, South Korea and Thailand.

Although this article focuses on NAFTA, many trade arrangements are structured on a NAFTA-based model. Thus, understanding the basics of NAFTA will permit readers to delve more deeply into the workings of other agreements as well.

On 1 January 1994, Canada, Mexico and the United States joined to form the world's largest free trade area. Today, NAFTA is credited by some with tripling trade within the North American region. The framework for NAFTA was in place prior to negotiations. Its predecessor—the 1989 Canada-U.S. Free Trade Agreement—brought together two natural business partners and free-market proponents. A special challenge for the NAFTA negotiators was arriving at a mutually advantageous agreement while addressing Mexico's developing economy, unique political and social conditions and infrastructure. The resulting document is a broad-ranging agreement reducing tariffs and other barriers to the movement of goods, easing the temporary movement of business people, securing foreign investment and ensuring the protection of intellectual property.

### **b. Trade in Goods**

At its core, the objectives of NAFTA include the elimination of barriers to trade—whether tariffs or technical barriers—and the facilitation of the

cross-border movement of goods and services within the Region (Article 102). In this pursuit, NAFTA provides duty-free access to countries in the North American region for goods that “originate” under the NAFTA Rules of Origin. Only goods that qualify under the NAFTA Rules of Origin can obtain NAFTA tariff preferences. The Rules of Origin are found in Annex 401 of the Agreement. In the United States, the Rules of Origin are included in Note 12 of the Harmonized Tariff Schedule. In Canada, the rules are found in the NAFTA Rules of Origin Regulations. Products originating in other countries merely being transshipped through or undergoing only minor operations in North America are not eligible for NAFTA benefits. The challenge in reaping the rewards of NAFTA lie in an often complicated rule-of-origin qualifying exercise, something most companies feel uncomfortable doing in-house. Yet, it has to be done.

Article 401 of NAFTA defines four main ways a good may be considered to be originating:

- Goods are wholly obtained or produced in the NAFTA region;
- Goods are produced in the NAFTA region wholly from originating materials;
- Goods meet the Annex 401-specific product origin rules; and
- Unassembled goods and goods classified with their parts which do not meet the Annex 401 rule of origin both contain the requisite regional value content (RVC).

NAFTA provides two additional means for which certain electronic, computer and agricultural goods

qualify as originating. For purposes of completing the required NAFTA Certificate of Origin, each means of obtaining originating status is assigned a “preference criterion” identified by the letters A through F. A brief explanation of each of the four main origin criteria follows.

#### **i. Preference Criterion A: Wholly Obtained or Produced**

Goods that are “wholly obtained or produced” entirely in one or more NAFTA countries are originating. For a good to qualify under this criterion, it must contain no non-North American parts or materials. Article 415 defines goods that are considered wholly obtained or produced as mineral goods, agricultural goods, wildlife and game which are extracted, harvested or raised in North America. For example, Preference Criterion A would cover coal mined in Alberta, longhorns born and farmed in Texas, and silver jewelry made in Toronto exclusively from silver mined in Mexico.

#### **ii. Preference Criterion B: Tariff Shift, Tariff Shift + RVC**

Goods made in part or wholly from non-originating materials may also qualify for NAFTA treatment as long as each non-NAFTA input undergoes the tariff classification change (i.e., transformation) specified in NAFTA Annex 401 and meets other applicable requirements. To determine the proper rule to apply, the correct tariff classification of the finished article must be determined. Rules usually differ from one six-digit subheading to another, although some rules are at the eight-digit level.

In this way, the Rules of Origin may dictate:

- That an individual product be originating only if non-originating materials used in its production meet a requisite change in tariff classification;
- That the product satisfy a Regional Value Content (RVC) requirement; or
- That the product satisfy both a change in tariff classification and an RVC requirement.

However, it is important to note that the RVC method may only be used when it is allowed under a product-specific rule.

#### *(1) Tariff Shift*

The tariff shift method compares the classification of non-originating inputs and the classification of the finished good. The extent of tariff classification change (“tariff shift” or transformation) indicates whether sufficient North American processing has taken place. This provision requires a change in tariff classification of all non-originating materials. Thus, to apply a tariff shift rule, the tariff classification of both the exported good and its non-North American parts must be determined.

#### *(2) RVC Calculations*

For goods subject to an RVC rule of origin, the Annex references two distinct formulas: the transaction value formula (TV) and the net cost (NC) formula. The transaction value method arrives at the RVC percentage of an article by subtracting the value of its non-originating material from the transaction value and dividing this sum by the transaction value. Transaction value generally means the price

actually paid or payable for a good, with certain adjustments. The TV method may be expressed in this formula:

RVC = Regional Value Content

TV = Transaction Value

VNM = Value of Non-Originating Materials

The NC method arrives at an RVC percentage by taking the net cost of a good minus the value of its non-originating material and dividing this sum by the net cost. The net cost is the total cost of producing the good less specified nonproduction costs including sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, and interest costs. The NC method may be expressed in this formula:

RVC = Regional Value Content

NC = Net Cost

VNM = Value of Non-Originating Materials

As the TV of the finished good includes profit and nonproduction costs, it is a broader basis for calculating content. Consequently, the RVC required under the TV method is higher than that required for the NC method. In most cases, the required level of RVC is 60% using the transaction value method and 50% using the net cost method. For certain automotive products, the net cost method is required and the RVC requirements are increased to 55% or 62.5%. Generally, one may choose which method to use, but there are some exceptions. Thus, it is imperative that the Rules of Origin be consulted each time a NAFTA origin determination is made.

### **iii. Preference Criterion C: Made Exclusively of Originating Material**

Preference Criterion C includes goods produced in the NAFTA region made wholly from originating materials. This criterion covers goods made of parts and materials that themselves meet NAFTA rules of origin, even though those parts and materials may contain some non-North American inputs. The distinction between this provision and Preference Criterion A is that under Preference Criterion C, foreign materials have been transformed in North America to such an extent that new, originating parts have been created.

### **iv. Preference Criterion D: No Tariff Shift Possible and Pass RVC**

Unassembled goods and goods classified with their parts which do not meet the Annex 401 Rules of Origin but contain sufficient RVC may qualify as originating under Preference Criterion D. These types of goods may obtain NAFTA tariff preference if they have 50% or 60% North American value content, depending on the method used.

### **v. Other Considerations**

The four main criteria set out in Chapter Four of NAFTA are the basic conditions that must be met to confer origin. However, a good that does not meet the criteria may, in some cases, qualify as originating by using one of these additional options:

#### *(1) Intermediate Materials*

For the purpose of calculating the RVC of final goods, using either method, Article 402 allows a producer to designate as an intermediate



material any self-produced, originating material used in the production of final goods. This provision covers all goods except certain automotive goods. The value of originating intermediate materials may help more vertically integrated producers meet the originating RVC requirements.

An intermediate material may contain non-originating submaterials but satisfy the rule of origin applicable to the intermediate material, which is usually a subassembly. After determining that an intermediate material satisfies the applicable rule of origin under Article 401, the total cost to produce that intermediate material is treated as an originating cost. In other words, the producer would not include the value of the non-originating materials used to produce the intermediate material as part of the value of non-originating materials when calculating the RVC of the final goods. The benefit of designating an intermediate material is that the producer may treat self-produced materials similarly to the way in which it would treat an originating material purchased from a supplier for purposes of determining the value of the non-originating materials of final goods. If the intermediate material must satisfy a minimum RVC to qualify as originating, the net cost method must be used to calculate that RVC.

#### (2) *Accumulation*

The accumulation provision allows the producer or exporter of goods to choose to include as part of the RVC any regional value added by suppliers of non-originating materials used to produce the final goods. In this way, accumulation allows the producer to

reduce the value of the non-originating materials used in the production of the good, by taking into account the NAFTA inputs incorporated into those non-originating materials.

#### (3) *De Minimus*

There may be situations where a low percentage of the value of non-originating materials does not undergo the required tariff change, thus disqualifying goods from originating under Preference Criterion B. NAFTA solves this problem through a de minimus provision, which allows goods to qualify as originating provided that the non-shifting materials are not more than a certain percentage (7% in most cases) of the transaction value of the goods adjusted to an FOB basis or, in some cases, of the total cost of the goods. In addition, where a failure of materials to undergo a required tariff shift triggers a requirement for an RVC, the calculation of that content is waived if the value of all non-originating materials used in the production of the goods is not more than the specified de minimus amount. However, this provision does not apply to certain food products and any non-originating material used in the production of many major appliances such as refrigerators, freezers and stoves.

#### (4) *Fungible Goods and Materials*

When a producer mixes originating and non-originating fungible goods, so that physical identification of originating goods apart from the non-originating goods is impossible, the producer may determine the origin of those goods based on any of the standard inventory accounting methods (e.g., FIFO, LIFO, averaging).

Article 415 of NAFTA treats fungible goods as goods that are interchangeable for commercial purposes and have essentially identical properties. The origin of commingled fungible originating and non-originating materials used in the production of goods may also be determined on the basis of an inventory accounting system.

#### vi. **Operations That Do Not Confer Origin and Transshipment**

Article 412 provides that goods shall not be considered originating if they are merely diluted with water or another substance that does not materially alter the characteristics of the goods. Thus, mere dilution, even if it results in a change in tariff classification, is not sufficient to confer origin. However, dilution coupled with another process may be sufficient to materially alter the characteristic of the goods and thereby confer origin.

Additionally, goods that qualify as originating will lose that status if they leave North America without remaining under the control of customs authorities or if they undergo any operation outside the NAFTA region, other than unloading, reloading or any other operation necessary to preserve them in good condition or to transport the goods to Canada, Mexico or the United States.

#### c. *Claim Formalities*

##### i. **Certificate of Origin**

Article 501 of NAFTA states that the parties shall require a Certificate of Origin be completed for the purpose of certifying that goods qualify as originating. The parties have established a uniform Certificate of Origin

to certify that goods imported into their territories qualify for preferential tariff treatment under NAFTA. Only importers who possess a valid certificate at the time of importation may claim preferential tariff treatment for goods meeting the rules of origin. A Certificate of Origin may either cover a single importation of goods or multiple importations of identical goods. Certificates of Origin that cover multiple shipments are called blanket certificates and may cover shipments of identical merchandise for up to a 12-month period.

The Certificate of Origin must be completed and signed by the exporter of the goods. Where the exporter is not the producer of the goods, it may complete the Certificate of Origin on the basis of either personal knowledge that the good originates, reasonable reliance on the producer's written representation that the good originates, or a completed and signed Certificate of Origin for the good voluntarily provided to the exporter by the producer. Those completing Certificates of Origin must notify all parties to whom a certificate was given of any change that could affect the certificate's accuracy or validity. Importers are required to promptly make corrected declarations and pay any duties owed if they determine that a certificate on which a declaration was based contained incorrect information.

### ii. Post-Entry Claims

Importers who did not have a Certificate of Origin at the time of entry may make a post-entry claim to receive refunds of duties they previously paid. The importer may solicit

the reimbursement of excess duties paid or may use such balance to offset future duty obligations. A request for a refund must be made within 12 months following the date of goods importation.

### iii. Recordkeeping

Canadian importers and exporters must maintain all relevant records pertaining to each entry claiming NAFTA preferential treatment for six years from the date of importation. In the United States, the record retention period is five years. This not only includes Certificates of Origin and typical customs and transportation documents, but also includes documentation supporting origin certifications (e.g., import records relating to inputs, bills of materials, analysis related to RVC calculations, inventory management accounting records, etc.). If a customs authority should require a NAFTA certifier to provide documentation pursuant to a verification request, the certifier should be able to retrieve the NAFTA supporting documentation in a reasonably quick time frame. There is an open question of law both in Canada and the United States concerning what degree of backup documentation is necessary for an importer to exercise "reasonable care" in relying on the exporter's assertion of origin. At least one court in the United States has held that the importer has a legal obligation to review and retain documents supporting the exporter's certificate of origin. But, this case involved an unusual set of facts involving companies that were previously related and where the U.S. company was involved in the Mexican supplier's certification process. For

more on this issue, see *United States v. Ford Motor Co.*, 516 F.Supp. 2d 770 (W.D.Tex. 2007). Since the importer making the NAFTA claim is ultimately responsible for proving that eligibility, it is good practice to conduct due diligence verifications with suppliers of key manufacturing inputs.

## d. Verification & Enforcement

### i. Verification

Under NAFTA Article 506, each party has the authority to verify that certifying exporters and producers comply with NAFTA requirements in the territory of another party. To this end, the customs authorities in Canada, the United States and Mexico have developed verification guidelines reflecting the Generally Accepted Auditing Standards.

The customs authorities of each party may use a variety of means to verify compliance, including the use of letters, more formal written questionnaires, and on-site audits. If the authorities are dissatisfied with information received through a questionnaire, it is likely that an on-site verification will follow. However, the reviewing customs authority must provide written notification of its intention to conduct the verification visit to the exporter or producer and to its home customs authority and embassy. Such visits will not take place until written consent from the exporter or producer is obtained. If the exporter or producer does not consent to the verification within 30 days of receiving the notification, or does not cooperate during the visit, NAFTA claims based on the exporter's certificates will likely be denied.

## ii. Penalties

The NAFTA countries may impose administrative, civil and even criminal penalties upon an exporter or producer for violations of laws and customs procedures relating to NAFTA. However, such enforcement actions are rare. Importers, on the other hand, may also be penalized for making a false or unsubstantiated claim for preferential treatment. Importers may avoid penalties if they promptly and voluntarily submit a corrected customs declaration and pay any duties owing upon learning of the incorrect information.

In Canada, customs penalties fall under a program known as Administrative Monetary Penalty System (AMPS). AMPS includes a list of specified “contraventions” of the customs laws. For example, the contravention for failing to furnish proof of origin upon request is C152. The penalty for this contravention is \$150 (CND) for the first offense, \$225 (CND) for the second offense, \$450 (CND) for the third and thereafter. AMPS penalties are generally capped at \$25,000 (CND) for a first-level contravention found during a customs audit but the penalty may exceed that amount for subsequent contravention levels.

## e. Other NAFTA Business Rules

### i. Professional Business Travel

Under NAFTA, business people are permitted temporary travel between the United States and Canada with few restrictions. NAFTA includes a list of professionals covered by the reduced regulation. That list, Appendix 1603.D.1, includes, among others,

accountants, engineers, lawyers, management consultants, physicians and astronomers.

### ii. Trade In Services

NAFTA Chapter 12 specifies that service providers from member countries are entitled to treatment no less favorable than service providers of the host country. Accordingly, U.S. service providers are entitled to set up shop in Canada with no additional restrictions than Canada applies to Canadians in similar situations. This obligation is reciprocal. However, local licensing requirements applied to professionals remain in place to the extent they apply equally to NAFTA partners. Thus, a lawyer licensed in Québec has no NAFTA-based right to practice law in California without completing the licensing steps mandated by California. Specific rules for telecommunications and financial services are set out in Chapters 13 and 14, respectively.

### iii. Investment Protection

Chapter 11 of NAFTA requires that parties treat foreign investment from another NAFTA country no less favorably than they treat a domestic investment. In addition, the investor must receive most-favored nation treatment and is entitled to the level of protections available under international law, including fair and equitable treatment. Investors who believe a governmental action violates this standard of treatment may institute an arbitration action against the state using either ICSID or UNCITRAL arbitration rules.

## iv. Cultural Industries

Although NAFTA has substantially opened trade in North America, a significant exception is in the cultural industries that include movies, television, music and publishing. Canada restricts U.S. access to these industries and regulates the amount of non-Canadian content broadcast and distributed in Canada. The intention of these rules, contained in NAFTA Article 2106, is to preserve the fragile and unique Canadian culture.

## v. Conclusion

As can be seen, reaping the benefits of a free-trade agreement requires a deep understanding of customs tariff fundamentals, cost structures, production and inventory controls, to name a few. But the savings can be significant and confer a crucial competitive advantage to those who master the rules.

NAFTA represents a fundamental change in the approach to free-trade agreements in both Canada and the United States. The comprehensive agreement had a direct impact on the movement of goods, services, people and capital in the North American territory. Further, NAFTA became a model by which countries negotiate trade agreements with other countries.

Businesses and individuals operating in Canada, the United States and Mexico should understand the potential impact NAFTA and other similar trade agreements have had on their businesses. Familiarity with these complex agreements can lead to important cost savings and business efficiencies.

# P. Aboriginal Law

Canadian law has long recognized the rights of aboriginal peoples, now commonly referred to as First Nations, as the first occupiers of the land. With the founding of Canada in 1867, constitutional powers were divided between the Federal Government and the governments of the provinces. The federal Parliament was given exclusive authority to legislate in relation to “Indians” and their lands. The definition of Indians is now recognized to include the Inuit who occupy primarily northern parts of the country and Métis who are generally of mixed aboriginal and non-aboriginal ancestry. *The Indian Act* has for many decades been the principal legislation defining the relationship between the Federal Government and aboriginal people.

Some aboriginal groups are parties to treaties that give them defined rights. Early treaties were entered into with aboriginal people in the eastern parts of the country and may not include surrender of rights to the land. Later treaties were signed as European settlement spread across the western prairies. Common features of these treaties include extinguishment of land rights and the creation of reserves. Vast portions of Canada where aboriginal people have claims to historic aboriginal rights are not covered by treaties.

In addition to treaty rights, since 1982 the Canadian Constitution has expressly protected aboriginal rights and aboriginal title. Aboriginal rights relate to practices, customs and cultural traditions and include such land uses as hunting, fishing and trapping. Aboriginal title is a type of aboriginal right that gives an aboriginal group a claim to particular lands. Canadian Courts have been active since 1982 in defining the extent of aboriginal rights, including interests in lands subject to resource development, and the responsibilities of governments and others to aboriginal people.

An important development has been the recognition of the duty to consult and accommodate aboriginal people whose rights may be affected by government action, such as approval of land use and resource development. The duty to consult continues to be developed in Canadian law. Court decisions have decided that the duty arises not just where an aboriginal group has an established right, such as a treaty granting hunting rights over land where a government proposes to grant logging permits, but also where a credible aboriginal right has been asserted, but not yet established in a formal legal way. This is significant in Canada because of the large number of outstanding aboriginal land claims that remain unresolved.

When a duty is recognized, it may be limited to an obligation to consult with the affected aboriginal people before a final decision is made or, depending on the strength of the claim to the aboriginal right and the seriousness of the interference with it, may lead to a duty to take steps to accommodate the aboriginal interests. At the far end of the scale, the consent of the aboriginal people may be required before a development may proceed.

While the duty rests primarily on government and not private entities, few development projects can proceed without government approvals at many levels, which engages the government’s duty to consult and if necessary accommodate the interests of affected aboriginal people before permits are issued. In practice, resource developers and other commercial enterprises engaged in activities that may impact aboriginal interests find that it is necessary to enter into various forms of agreements with the aboriginal groups who hold or claim those aboriginal interests. These often take the form of an Impact and Benefit Agreement, or IBA, which may include provisions for mandatory consultation on certain matters, payment of compensation and taking active measures to mitigate the impacts of the interference.



Increasingly, IBAs are requiring not only that the developer or proponent of a project offer training and employment opportunities for members of the First Nations affected by the project, but also to provide First Nation-owned businesses with a certain level of contracting opportunities associated with the project.

IBAs typically provide for compensation to the affected aboriginal groups for the use of their land or the impact on their interests, and will often impose employment, training and business opportunity requirements on the developer for the benefit of members of the impacted First Nation. Often, non-aboriginal companies will partner with either individual aboriginal people, or aboriginal entities to pursue contractual opportunities governed by an IBA. Because of the unique tax circumstances of aboriginal people, a limited partnership business structure is often used with the aboriginal person or company owning 50.95% of the limited partnership units, the non-aboriginal company 48.95%, and the general partner of the partnership 0.10%. As with any limited partnership, it is the general partner who is responsible for the day-to-day business operations, and who has exposure to unlimited liability. The negotiation of limited partnership agreements, and in some circumstances, the negotiation of a unanimous shareholders' agreement

for the company incorporated to be the general partner, can be complex.

It is important for companies doing business with aboriginal groups to have a basic understanding of the legal status of different aboriginal groups in Canada. A First Nation may, or may not, be recognized by Aboriginal Affairs and Northern Development Canada (AANDC), the Federal Government department responsible for aboriginal peoples. Even if recognized, a First Nation may not have a reserve or a recognized form of self-government.

For First Nations that have a reserve, all of the property on the reserve is owned by the Federal Government, which is responsible, in concert with the First Nation, for the management of the reserve property. The reserve lands are intended for the use and occupation of the First Nation members, and non-aboriginal groups cannot occupy property on a reserve without first obtaining an occupancy permit from AANDC. AANDC will not grant an occupancy permit unless the First Nation approves its issuance. All of the houses and buildings on a reserve are owned by AANDC and occupation of reserve housing is managed by the First Nation. As a result, aboriginal people living on a reserve do not own their homes, are not able to encumber their homes, and their homes are not subject to seizure by creditors.

# Q. Cannabis in Canada

[Current as of January 22, 2019]

Cannabis has been a controlled substance in Canada since 1923, when it was added to the list of controlled drugs (14 years before it became a controlled substance in the United States). What followed was nearly 80 years of cannabis prohibition in Canada.

In its decision in *R. v. Parker* in 2000, the Ontario Court of Appeal held that a failure to provide a viable medical cannabis exemption from the provisions of the Controlled Drugs and Substances Act (CDSA) violated the liberty and security of the person guaranteed by s.7 of the Canadian Charter of Rights and Freedoms, and was inconsistent with the principles of fundamental justice in that it forced individuals to choose between their liberty and their health. When leave to appeal to the Supreme Court of Canada was dismissed, the federal government enacted the Medical Marihuana Access Regulations (MMAR).

Under the MMAR, persons with a declaration from their physician relating to a prescribed list of symptoms were able to access cannabis for medical purposes by growing it themselves, having someone grow it for them or by purchasing from a government supply. The MMAR faced numerous court challenges and resulting tweaks over the following 12 years.

In 2013, the federal government 'privatized' medical cannabis by introducing the Marihuana for Medical Purposes Regulations (MMPR). The MMPR replaced the MMAR and provided that the only legal source of medical cannabis was from a federally licensed cannabis producer. The MMPR also faced a number of legal challenges and was ultimately struck down (again, under s.7 of the Charter) due to its failure to provide a personal production option to medical cannabis patients. As a result, the Access to Cannabis for Medical Purposes Regulations (ACMPR) replaced the MMPR on August 24, 2016. The ACMPR provided patients with the option of growing their own cannabis (either themselves or through a designated grower) or purchasing it from a licensed producer.

On October 17, 2018, Canada became the 2nd country in the world (after Uruguay), and the 1st G7 nation, to legalize non-medical cannabis. Bill C-45 (the Cannabis Act) was introduced on April 13, 2017. It was passed by the House of Commons on November 27, 2017 and received royal assent on June 21, 2018.

The Cannabis Act encompasses both medical and non-medical cannabis. New licensing categories have been created, which distinguish between various activities with cannabis (nursery, cultivation, processing, sale for medical purposes, analytical testing, research and manufacturing of cannabis (prescription) drugs). 'Micro' licence categories, with lower

regulatory burdens, are available to small-scale cultivators and processors.

The Cannabis Act carves out a scope of permissible activities with cannabis and creates corresponding offences for activities falling outside of this scope. It imposes significant penalties (up to 14 years imprisonment) for the most serious offences while also attempting to reduce the burden on law enforcement and the criminal justice system by creating ticketing options for less serious offences.

The permissible product types are currently limited to those containing dried cannabis, fresh cannabis, cannabis oil with a restricted concentration of THC, cannabis plants and seeds. However, the Act also mandates the introduction of cannabis edibles and concentrates by October 17, 2019. Draft regulations, to introduce three new product categories (edible cannabis, cannabis topicals and cannabis extracts), have been released, and are open for public comment until February 20, 2019.

There are currently 146 licensed cannabis producers in Canada, with just over half being located in Ontario. There are more than 600 licensed producer applications pending with Health Canada.

While the medical cannabis framework remains largely untouched and will remain within the purview of the federal government, jurisdiction for the distribution and sale of non-medical cannabis rests with the provinces and territories. Each

province and territory has enacted its own framework for the retail sale of cannabis (storefronts and online). There are a wide variety of approaches being taken across Canada on issues such as the minimum age to purchase and possess cannabis, who can sell (private vs. public stores), whether residents are permitted to grow up to four plants at home (as is provided in the Cannabis Act) and where cannabis can be consumed.

Goods and services tax applies to all cannabis purchases (medical and non-medical). The federal government has also imposed an excise duty on cannabis products (generally, equal to the greater of \$1/gram or 10% of the product price). The excise duty does not apply to cannabis products containing <0.3%THC or prescription drugs containing cannabis.

Very restrictive plain packaging and prescribed labelling applies to both medical and non-medical cannabis products. A universal cannabis symbol must be placed on every product containing cannabis, along with prescribed health warnings and product information. The Cannabis Act imposes significant restrictions on the ability to promote and advertise cannabis and in many respects restrict promotional activity to age-gated environments.

Promotion using people, animals, characters, testimonials or endorsements, or which is appealing to children or contains lifestyle depictions is strictly prohibited (similar to restrictions on the promotion of tobacco).

### **Import and Export of Cannabis**

The Cannabis Act permits licence holders to obtain permits to import and export cannabis for medical or scientific purposes only. No export or import of adult-use / recreational cannabis is permitted. This is presumably driven by international drug treaty obligations.

In 2016, Health Canada issued an information bulletin on the importing and exporting of marijuana by licensed producers. In that bulletin, Health Canada set out a very restrictive position, stating that Canada was not intended to become an exporter of cannabis in servicing global demand, nor was importation to be used as an alternative to domestic production. The very limited permissible circumstances set out were the importation of starting materials for new licensed producers and the exportation of unique strains for scientific study.

That being said, Health Canada's position on this issue is evolving. Canada's medical cannabis products are well-reputed around the world in light of its robust (federal) regulatory framework, which includes Good Production Practice (GPP) standards. Licensed producers and licensed dealers have reported the export of medical cannabis products (or deals to do so) to countries including Australia, Germany, Czech Republic, South Africa, Spain and Jamaica.

The degree to which Health Canada will permit the importation of medical cannabis products for sale to Canadian

patients remains uncertain. At the very least, such importation would require proof that the products had been cultivated and processed to standards at least as stringent as the GPP standards imposed upon Canadian licensed producers.

A separate import or export permit, as applicable, is required with respect to each shipment of cannabis crossing Canadian borders. The factors to be taking into account by Health Canada when assessing an import/export permit application include:

- 1) Canada's international treaty obligations;
- 2) Compliance with the Cannabis Act;
- 3) For export permits, whether the destination country has issued a corresponding import permit (in many countries, this will require proof of production to Good Manufacturing Practice (GMP) standards, which is a higher standard than GPP); and
- 4) Any risks to public safety and security including the risk of diversion.

Aside from exporting Canadian products, other opportunities for Canadian cannabis companies seeking to access the global market (and to eliminate the regulatory and logistical hurdles associated with exporting) include acquiring, partnering with or establishing cannabis companies within target countries.

# Conclusion

Canada has become a world leader in reducing global trade barriers. Free trade with the United States and Mexico and freer trade with other countries have lowered many of the barriers to entering into the Canadian market. Canada, with its rich resources and vibrant marketplace, presents many opportunities for foreign businesses and investors. The foreign investor is encouraged to explore the competitive advantages of Canada. Sensitivity to the cultural, administrative and legislative differences in Canada will assist an enterprise's entrance into the Canadian market.

Through the general information provided in this book, we have attempted to illustrate the highly multicultural society that is Canada and to provide an overview of some of the main issues faced by foreign businesses and investors in Canada. It is important for foreign businesses and investors wishing to invest in Canada or enter into trade with Canadian businesses to understand the laws and culture of this country and to seek the advice of counsel at the appropriate time.



# CANADA FIRMS CONTACT INFORMATION

## ALBERTA

### McLennan Ross LLP

1000 First Canadian Centre  
350 - 7th Avenue SW  
Calgary, AB T2P 3N9  
Jeffrey Weidman  
jweidman@mross.com  
Tel: +1 (403) 543-9120  
www.mross.com

### McLennan Ross LLP

600 McLennan Ross Building  
12220 Stony Plain Road  
Edmonton, AB T5N 3Y4  
Charles Russell  
crussell@mross.com  
Tel: +1 (780) 482-9200  
www.mross.com

## BRITISH COLUMBIA

### Boughton Law Corporation

PO Box 49290  
Suite 700 - 595 Burrard Street  
Three Bentall Centre  
Vancouver, BC V7X 1S8  
James Coady  
jcoady@boughtonlaw.com  
Tel: +1 (604) 687-6789  
www.boughtonlaw.com

## MANITOBA

### Pitblado LLP

2500 - 360 Main St  
Winnipeg, MB R3C 4H6  
Todd Andres  
andres@pitblado.com  
Tel: +1 (204) 956-0560  
www.pitblado.com

## NEW BRUNSWICK

### Lawson Creamer

133 Prince William St., Suite 801  
Saint John, NB E2L 2B5  
Gary Lawson  
glawson@lawsoncreamer.com  
Tel: +1 (506) 633-3737  
www.lawsoncreamer.com

## NEWFOUNDLAND AND LABRADOR

### Benson Buffet PLC, Inc.

Atlantic Place, Suite 900  
215 Water Street  
St. John's, NL A1C 6C9  
Gary Peddle  
gfpeddle@bensonbuffett.com  
Tel: +1 (709) 579-2081  
www.bensonbuffett.com

## NORTHWEST TERRITORIES AND NUNAVUT

### McLennan Ross LLP

301 Nunasi Building  
5109-48th Street  
Yellowknife, NT X1A 1N5  
Ed Gullberg  
egullberg@mross.com  
Tel: +1 (867) 766-7677  
www.mross.com

## NOVA SCOTIA

### Patterson Law

2100-1801 Hollis Street  
Halifax, NS B3J 3N4  
Michael Kennedy  
mkennedy@pattersonlaw.ca  
Tel: +1 (902) 405-8000  
www.pattersonlaw.ca

## ONTARIO

### Brazeau Seller Law

700-100 Queen Street  
Ottawa, ON K1P 1J9  
Fred Seller  
fseller@brazeauseller.com  
Tel: +1 (613) 237-4000  
www.brazeauseller.com

### Minden Gross LLP

145 King Street West, Suite 2200  
Toronto, ON M5H 4G2  
Kenneth Kallish  
kkallish@mindengross.com  
Tel: +1 (416) 362-3711  
www.mindengross.com

## PRINCE EDWARD ISLAND

### Key Murray Law

119 Queen Street, Suite 202  
PO Box 875  
Charlottetown, PE CIA 7L9  
Lynn Murray  
lynn.murray@keymurraylaw.com  
Tel: +1 (902) 894-7051  
www.keymurraylaw.com

### Key Murray Law

494 Granville Street, PO Box 1570  
Summerside, PE CIN 4K4  
Derek Key  
derek.key@keymurraylaw.com  
Tel: +1 (902) 436-4851  
www.keymurraylaw.com

## QUÉBEC

### BCF LLP

1100 René-Lévesque Blvd. West  
25th Floor  
Montréal, QC H3B 5C9  
André Ryan  
ar@bcf.ca  
Tel: +1 (514) 397-8500  
www.bcf.ca

### BCF LLP

2828 Laurier Blvd., T1  
Suite 1200  
Québec City, QC G1V 0B9  
Jules Turcotte  
jules.turcotte@bcf.ca  
Tel: +1 (418) 266-4500  
www.bcf.ca

## SASKATCHEWAN

### Robertson Stromberg LLP

105 - 21st Street East  
Suite 600  
Saskatoon, SK S7K 0B3  
Christopher Donald  
c.donald@rslaw.com  
Tel: +1 (306) 652-7575  
www.rslaw.com



**CANADA**

# ALBERTA

## **FIRM PROFILE:**

### **McLENNAN ROSS LLP**

*Calgary & Edmonton*

McLennan Ross LLP is a full service law firm committed to serving the legal needs of Albertans and Northerners. Founded over a century ago, McLennan Ross has grown today to more than 100 lawyers and an extensive support staff, with offices in Edmonton, Calgary and Yellowknife.

Our firm has the largest and most experienced management-side Labour & Employment practice group in Alberta and the North, one of the West's premier Litigation groups, a widely credited Environmental and Energy team, and a solid team of Corporate Commercial Securities professionals. McLennan Ross has a reputation for service excellence in all practices serving our business clients.

Over the years, McLennan Ross and its legal professionals have been involved in numerous landmark cases, at all levels of the Canadian judicial system including the Supreme Court of Canada. The outcomes of these cases have often had a profound effect on the legal framework in which many businesses operate today.

## **CONTACT:**

*Calgary:*

**JEFFREY WEIDMAN**  
jweidman@mross.com  
403-543-9120

*Edmonton:*

**CHARLES RUSSELL**  
crussell@mross.com  
+1 780-482-9200

[www.mross.com](http://www.mross.com)



**Population:** 4,067,175

**Capital:** Edmonton

**Geographic Area:** 661,484 km<sup>2</sup>

**GDP:** \$314.944 billion

**Major Centres:**

- Calgary (1,239,220)
- Edmonton (932,546)
- Red Deer (100,418)
- Lethbridge (92,729)

**Major Industries:**

- Largest producer of conventional crude oil, synthetic crude, natural gas and gas products in Canada
- the world's second largest exporter of natural gas and the world's fourth largest producer
- Agriculture
- Beef
- Canola and Wheat

Named after Princess Louise Caroline Alberta, the province of Alberta is one of three Canadian provinces to border only a single U.S. state and is one of only two landlocked provinces. With over eight post-secondary institutions including the University of Alberta and University of Calgary, Alberta attracts students from all over the world who contribute to the province's multicultural background with many remaining in the province upon graduation.

Known for the oil and gas sector, Alberta's key industries also include petrochemicals, renewable energy, data centres, cleantech, agri-foods and tourism. The province is the largest producer of conventional crude, synthetic crude, natural gas and gas products in Canada. Alberta is globally known as the second-largest exporter of natural gas and the fourth-largest producer of gas; two of the largest producers of petrochemicals (polyethylene and vinyl) are located in Red Deer and Edmonton. In the agricultural realm, Alberta has over 3 million head of cattle, and Alberta Beef has a healthy market globally. Alberta raises buffalo (bison) for the consumer market, and sheep for wool and mutton. Wheat and canola are the primary crops and Alberta is the leading beekeeping province in Canada. The province's forestry industry employs over 15,000 individuals and harvested timber is used for pulpwood, hardwood, engineered wood and bioproducts.

Alberta has the highest labour productivity in Canada, competitive corporate tax rates, the highest post-secondary completion in Canada, and more than \$180 billion worth of ongoing major capital projects including oil and gas, infrastructure, pipelines, industrial, and institutional projects. The province is also very well connected to the world with 46 nonstop international destinations, the most extensive public infra-

structure in Canada, and exports to 187 countries. Alberta has the highest economic freedom in North America, the most high-growth companies in Canada and 383 major corporate headquarters located in the province.

Tourism within the province includes not only the major metropolitan cities of Edmonton and Calgary, but also many other locations including the Alberta badlands where dinosaurs once roamed, and the many National Parks such as Banff, Elk Island, Jasper, Waterton Lakes and Wood Buffalo.

A province of persistence, Albertans have supported one another through major flooding in Calgary (2013) and a wildfire in Fort McMurray (2016) causing the largest evacuation of residents in the province's history. The willingness to help one another, rebuild, and provide a positive outlook during such harrowing situations is why the province and its residents are Alberta Strong.

Find more information about doing business in Alberta at:

Government of Alberta:  
[www.alberta.ca](http://www.alberta.ca)

Business & Economic Development:  
[www.economicdashboard.alberta.ca](http://www.economicdashboard.alberta.ca)

Invest in Alberta:  
[www.investalberta.ca](http://www.investalberta.ca)

Tourism:  
[www.travelalberta.com](http://www.travelalberta.com)





# BRITISH COLUMBIA

## **FIRM PROFILE: BOUGHTON LAW**

Boughton Law is a Vancouver-based, corporate commercial law firm. Organizations of all sizes and structures as well as individuals rely on us for their business, dispute resolution, personal and public sector-related legal matters.

Reflective of our West Coast roots, we strive to make the complex simple. Here, you'll find lawyers who know their practice areas down to the last dotted *i*, yet look at every legal issue with an open mind. We do business with a collegial attitude, working hard to grow our client relationships. What does that mean for you? Expect to be treated with respect while receiving diligent legal advice and being charged fairly for our services.

### **CONTACT:**

**JAMES COADY**  
jcoady@boughtonlaw.com

**GEORGE CADMAN**  
gehqc@boughtonlaw.com

+1 604-687-6789  
www.boughtonlaw.com





**Population:** 4,648,055

**Capital:** Victoria

**Geographic Area:** 944,735 km<sup>2</sup>

**GDP:** \$263.706 billion (2016)

**Major Centres:**

- Vancouver (2,463,431)
- Victoria (383,360)
- Kelowna (194,882)
- Abbotsford (180,518)
- Nanaimo (155,698)
- Chilliwack (101,512)

**Major Industries:**

- **Service industries:** finance, insurance, real estate and corporate management (highest percentage of service industry jobs in Western Canada, comprising 72%).
- Energy
- Mining
- Forestry
- Agriculture
- Fishing
- Film Production

Gateway to the Pacific, British Columbia is the westernmost province in Canada, the third-largest province by population and fourth-largest by share of Canadian GDP. Strategically located on Canada's Pacific coast, British Columbia is a major commercial hub for Asia-Pacific and North American economic activity. Businesses using British Columbia's ports take advantage of the shortest sea route from Asia to North America,

which seamlessly connects to all major U.S. economic centres by secure, reliable road, rail and air networks.

British Columbia has one of North America's most competitive tax climates for businesses. The combined federal and provincial tax rate is the lowest in Canada, and one of the lowest corporate income tax rates among G7 nations. Trade agreements such as NAFTA, CETA, CPTPP and the Canada Korea Free Trade Agreement reduce or eliminate barriers to accessing the North American market.

A highly educated and diverse workforce is a hallmark of the province. 80% of the British Columbian workforce is employed in service industries, including a quarter in professional, educational and business support services. More than 70% have completed post-secondary education, and well over a quarter possess a university degree.

Multilingualism is high – as a first language, 360,000 British Columbia workers speak one of the Chinese dialects, another 194,000 speak Punjabi, and 51,000 speak Korean. Approximately 64,000 temporary and foreign worker and international mobility permits are granted each year in British Columbia.

British Columbia has world-leading universities, colleges and technology institutes. More than 350 private institutions bring diversity to the post-secondary system in B.C. and expand the range of training available. Every year B.C. welcomes over 130,000 international students. The number of international students studying in the private sector in B.C. increased 36% from 49,834 in 2010 to 67,965 in 2015.

British Columbia's forestry sector has a leading market share in the United States, China, Japan and South Korea. Making up 32% of the province's total exports in 2017, the industry is fully integrated from harvest through processing and export, encouraging ongoing expansion of public infrastructure in remote and rural areas. The province is a recognized world leader in sustainable forest management, balancing economic development with leading-edge environmental practices.

Home to a growing \$26.3 billion technology sector, Vancouver sits a mere 230 km from Seattle, home to some of America's largest tech employers including Amazon, Microsoft, Facebook and Google. Access to Washington State, Oregon and California provides considerable opportunities for investment and economic activity.

With a climate that encourages outdoor recreation and tourism, British Columbia is known as an outstanding visitor destination. The province's spectacular natural environment and welcoming, cosmopolitan cities provide memorable experiences and quality tourism products, as well as investment opportunities in tourism products and services.

**Additional Resources:**

Trade and Invest British Columbia:  
<https://www.britishcolumbia.ca/>

Tourism:  
<https://www.destinationbc.ca/>



CANADA

# MANITOBA

## **FIRM PROFILE:** **PITBLADO LAW**

Pitblado Law is a leading full service law firm, home to some of Winnipeg and Manitoba's best lawyers. Our mission is to deliver excellence in creative solutions for clients through business knowledge, superior advocacy, innovative and strategic approach, and fresh insight.

For over 130 years, Pitblado Law has proudly served our clients through leadership in law and unparalleled trust in the most complex transactions. We blend traditions of success with current market knowledge to provide exceptional counsel and practical solutions all resulting in peace of mind for our clients.

With over 60 lawyers and a total team size of 130, Pitblado Law is well positioned to navigate sensitive matters and collaborate with key stakeholders such as governments, private sector businesses, and the community at large.

### **CONTACT:**

**TODD ANDRES**  
andres@pitblado.com

**PAUL HESSE**  
hesse@pitblado.com

+1 204-956-0560  
www.pitblado.com





**Population:** 1,278,365

**Capital:** Winnipeg

**Geographic Area:** 647,797 km<sup>2</sup>

**GDP:** \$65.882 billion

**Major Centres:**

- **Winnipeg (778,489)**
- **Brandon (48,859)**

**Major Industries:**

- **Agriculture**
- **Forestry**
- **Manufacturing**
- **Mining**
- **Transportation**

Manitoba is located in the heart of North America and is a land of economic and cultural diversity, a place where natural resources are plentiful and the people have created a rich and vibrant society.

Manitoba is a province of inland seas and waves of grain, advanced research and enchanting historic sites. It is home to innovators in business, science and the arts. Whether by fibre-optic cable, air, rail, road or sea, Manitoba is connected to markets around the world. With low costs for land and power and some of the most affordable housing in Canada, Manitoba is a place where a dollar goes far.

Manitoba has great strength in its wealth of hydroelectric power, diverse manufacturing base, rich mineral resources and fertile soil. The most distinctive characteristic of Manitoba's \$65 billion economy is its high degree of diversification. The largest industry – manufacturing – accounts for about 10% of the province's GDP, and the province's primary industries – mining, agriculture and forestry – together account for about 8.4%. Manitoba has a thriving service sector, with head offices for Canada's largest insurance company, largest mutual fund distributor, and largest integrated media company. Canada's only agricultural commodity exchange is located in Winnipeg, making the city the centre of Canada's grain trade. The province is also a major North American transportation hub.

Manitoba's competitive operating costs and taxes have made Manitoba one of the least expensive provinces in Canada to do business. Among representative North American cities, both small and large manufacturers in Brandon and Winnipeg rank at or near the best on start-up costs, net income, overall taxes and return on investment.

Close to 62% of Manitoba's population lives within the capital city of Winnipeg, which dominates the provincial economy in a way few other Canadian cities do.

Winnipeg has always been economically strong and diverse and has nurtured a robust workforce that is skilled, talented and productive. Winnipeg's flourishing industry sectors, geographic and time zone advantages, and transportation assets—coupled with CentrePort Canada, the nation's only trimodal inland port to offer foreign trade zone advantages—make the city an exceptional draw for business.

Winnipeg has the largest aerospace centre in Western Canada; it is home to advanced manufacturing market leaders and boasts one of the biggest hubs for bus manufacturing in North America. Agribusiness has long nourished Winnipeg's growth, due to its world-class agricultural infrastructure; and initiatives in life sciences make Winnipeg a remarkable centre of discovery, housing the only Level 4 bio-containment lab in the country and about 40 additional R&D institutions.

For more information about doing business in Manitoba, please visit:

<http://www.investinmanitoba.ca/about.html>

Business Immigration:

<http://www.immigratemanitoba.ca>

Economic Development Winnipeg: [www.economicdevelopmentwinnipeg.com](http://www.economicdevelopmentwinnipeg.com)

YES! Winnipeg: [www.yeswinnipeg.com](http://www.yeswinnipeg.com)  
Tourism: <https://www.travelmanitoba.com>



# NEW BRUNSWICK

## **FIRM PROFILE:** **LAWSON CREAMER**

Lawson Creamer was founded in 1978. Since then, the firm has continued its tradition of providing first quality legal services to businesses and other clients, always with a view of providing such services at a fair cost.

Lawson Creamer punches above its weight class. We represent businesses ranging from large multinational firms to budding entrepreneurs; from companies throughout New Brunswick whose business is here at home, to those doing business nationally and internationally.

Lawson Creamer provides a broad range of services addressing the legal needs of business. Our clients have included manufacturers, mining companies, service companies, investment and real estate companies, as well as financial institutions and insurers. We help businesses, and are proud to do so. We are also proud members of our community, and our firm, as well as staff, associates and partners, are extensively involved in community work.

### **CONTACT:**

**GARY LAWSON**

[glawson@lawsoncreamer.com](mailto:glawson@lawsoncreamer.com)

**ROBERT CREAMER**

[rcreamer@lawsoncreamer.com](mailto:rcreamer@lawsoncreamer.com)

+1 506-633-3737

[www.lawsoncreamer.com](http://www.lawsoncreamer.com)





**Population: 747,101**

**Capital: Fredericton**

**Geographic Area: 72,908km<sup>2</sup>**

**GDP: \$34.224 billion**

**Major Centres:**

- **Moncton (144,810)**
- **Saint John (126,262)**
- **Fredericton (58,220)**

**Major Industries:**

- **Construction**
- **Manufacturing**
- **Agriculture and Aquaculture**
- **Food Production/Processing**
- **Forestry**
- **Oil and Gas**

Located strategically and bordering the U.S. State of Maine, New Brunswick is one of Canada's four founding provinces and is the only officially bilingual province in Canada with both English and French having equal status.

Higher learning in the province is supported by New Brunswick's four major universities including the only French language university outside of Québec.

New Brunswick's geographic location has resulted in a highly developed trade relationship with one of the largest markets in the world – the Northeastern Coast of the United States and particularly the New England states.

The economic strength of New Brunswick is diverse and include: lumber, pulp, paper and forestry operations; blueberry and maple syrup production; salmon, lobster and crab fisheries; the largest petroleum refinery in Canada; Canada's only liquefied natural gas import terminal; the most advanced fibre-optic network in North America; two deep-water ice-free ports; and

the largest military land forces training base within NATO.

New Brunswick's economy is supported by a varied and redundant electric grid which derives generation from hydro, nuclear, oil, coal and wind. Currently, pioneering tidal technology is being tested in New Brunswick's Bay of Fundy which has the highest tides in the world.

Tourism is becoming increasingly important. New Brunswick attractions include: North America's longest stretch of protected and undeveloped coast line, the Fundy Trail Parkway, The World Famous Reversing Falls and Magnetic Hill, and numerous breweries and micro-breweries, including Moosehead, Canada's oldest independent brewery.

For additional information about doing business in New Brunswick, please visit:

Opportunities New Brunswick ([www.onbcanada.ca](http://www.onbcanada.ca)).

For tourism, please see:

Tourism New Brunswick ([www.tourismnewbrunswick.ca](http://www.tourismnewbrunswick.ca)).



## NEWFOUNDLAND AND LABRADOR

### **FIRM PROFILE:**

### **BENSON BUFFETT PLC, INC.**

Benson Buffett PLC Inc. is one of the largest independent law firms in the Province of Newfoundland and Labrador. While the firm is primarily known as a full-service business and civil litigation firm, our lawyers have experience and expertise in all areas of law.

### **CONTACT:**

#### **GARY PEDDLE**

[gfpeddle@bensonbuffett.com](mailto:gfpeddle@bensonbuffett.com)

#### **DEBORAH HUTCHINGS**

[dhutchings@bensonbuffett.com](mailto:dhutchings@bensonbuffett.com)

+1 709-579-2081

[www.bensonbuffett.com](http://www.bensonbuffett.com)



**Population:** 519,716

**Capital:** St. John's

**Geographic Area:** 405,212 km<sup>2</sup>  
(combined Newfoundland and Labrador)

**GDP:** \$31.112 billion

**Major Centres:**

- St. John's (108,860)
- Conception Bay (26,199)
- Mount Pearl (22,957)
- Paradise (21,389)
- Corner Brook (19,806)

**Major Industries:**

- Oil and Gas
- Information Technology
- Fishing
- Mining
- Manufacturing
- Hydro-electricity
- Pulp and Paper

Newfoundland and Labrador was officially founded by a European expedition in 1497 but remained under British rule until joining Canada in 1949. The province has strong Irish roots due to the large number of people who emigrated from Ireland in the late 1700s to take advantage of the fertile fishing grounds, resulting in the province's often being dubbed as "the most Irish place outside of Ireland". From its earliest days the province has been valued for its natural resources. Its major industries are comprised of mining, forestry, tourism, fisheries and energy, including its abundance of oil, natural gas, hydroelectricity and wind resources.

The city of St. John's, the capital of Newfoundland and Labrador, is the most easterly point and one of the oldest cities in North America. Featuring unique style and architecture, the city is on the cutting edge of today's global economy, becoming a hub for innovation and a hot spot for companies in offshore industries. Many large oil and technology companies have offices located in St. John's due to its strategic location, and contribute significantly to the province's economy.

The province is home to Memorial University of Newfoundland and Labrador, which houses campuses on both its east and west coasts and has an enrollment of 18,000 students annually. The University offers a wide range of academic programs, highlighted by its medicine, engineering and business programs.

Today, the province's economy is tied closely to the oil and gas industry. There are currently four major offshore oil fields in production, and exploration continues with the expectation that further oil fields will be developed in the future. The province's location makes it strategically positioned on international shipping lanes, giving it unique access to global petroleum markets. On a per capita basis, the province is one of the world's largest petroleum producers with discovered and potential non-renewable oil and gas resources totaling over eight billion barrels of oil and 70 trillion cubic feet of natural gas. By 2015, the industry contributed 16.7% of the province's GDP and 3% of the employment for the province, and in 2017, oil and gas comprised of two thirds of the \$8.4 billion of total exports to the global market.

Newfoundland and Labrador also has a strong tourism industry. The province features some of the most unique wildlife in the world, such as seabirds, moose, caribou and rich marine life. The province is home to three national parks featuring over 29,000 km of dramatic coastlines, thick boreal forests and ancient rock formations. Additionally, Newfoundland and Labrador sits in close proximity to "Iceberg Alley" providing breathtaking views of icebergs as they pass by the coast. As a result, the province has become an increasingly popular cruise destination with over 50,000 cruise passengers visiting the province in 2017.

The most prominent feature of Newfoundland and Labrador is undoubtedly the culture and hospitality of its people. The down-to-earth and welcoming nature of the province is also a hallmark of its business community and creates a unique experience for those doing business in the province.

Find more information about doing business in Newfoundland and Labrador at:

Tourism: <http://www.newfoundlandlabrador.com>

Business and Economic Development: <https://www.gov.nl.ca/business-and-economic-development>





# NORTHWEST TERRITORIES

## FIRM PROFILE:

### McLENNAN ROSS LLP

McLennan Ross LLP is a full service law firm committed to serving the legal needs of Albertans and Northerners. Founded over a century ago, McLennan Ross has grown today to more than 100 lawyers and an extensive support staff, with offices in Edmonton, Calgary and Yellowknife.

Our firm has the largest most experienced management-side labour and employment practice group in Alberta and the North, one of the West's premier litigation groups, a widely credited environmental and energy team, and a solid team of corporate commercial securities professionals. McLennan Ross has a reputation for service excellence in all practices serving our business clients.

Over the years, McLennan Ross and its legal professionals have been involved in numerous landmark cases, at all levels of the Canadian judicial system including the Supreme Court of Canada. The outcomes of these cases have often had a profound effect on the legal framework in which many businesses operate today.

## CONTACT:

**ED GULLBERG**  
egullberg@mross.com

**MICHELLE THÉRIAULT**  
mtheriault@mross.com

+1 867-766-7677  
www.mross.com





**Population:** 41,786

**Capital:** Yellowknife

**Geographic Area:** 1,143,793 km<sup>2</sup>

**GDP:** \$2.8 billion

**Major Centres:**

- Yellowknife (20,969)

**Major Industries:**

- Mining
- Oil and Gas
- Commercial Fishing
- Tourism

The Northwest Territories (NWT) is the second-largest and most populous of the three territories in Canada.

The economy in the Northwest Territories relies heavily on resource industries with mining noted as the largest private sector industry. The focus has recently moved from base and precious metals to diamonds and tungsten, with mining employing approximately 14% of the NWT work force. The abundance of diamonds makes this Territory the third largest producer of rough-cut diamonds in the world. Key projects in the diamond sector are the Diavik, Ekati and Gahcho Kué diamond mines, the latter of which opened in late 2016 and is expected to inject \$6.7 billion into the economy.

Other important industries in the NWT include oil and gas exploration and development, hunting, fishing and tourism. With a variety of landscapes of natural beauty, five national parks, fishing, wildlife observation and the potential to see the Aurora Borealis, tourism is a year-round industry.

Aboriginal people represent approximately half of the population with eleven official languages spoken in the NWT.

NWT has one of the lowest tax rates (below the Canadian average inflation rate) and fastest growing GDPs in Canada, and features federal and territorial incentive programs for business and investment.

Find more information about doing business in the Northwest Territories at:

Government of the Northwest Territories:

[www.gov.nt.ca](http://www.gov.nt.ca)

Tourism:

[www.spectacularnwt.com](http://www.spectacularnwt.com)



# NUNAVUT TERRITORY

## **FIRM PROFILE:**

### **McLENNAN ROSS LLP**

McLennan Ross LLP is a full service law firm committed to serving the legal needs of Albertans and Northerners. Founded over a century ago, McLennan Ross has grown today to more than 100 lawyers and an extensive support staff, with offices in Edmonton, Calgary and Yellowknife.

Our firm has the largest most experienced management-side labour and employment practice group in Alberta and the North, one of the West's premier litigation groups, a widely credited environmental and energy team, and a solid team of corporate commercial securities professionals. McLennan Ross has a reputation for service excellence in all practices serving our business clients.

Over the years, McLennan Ross and its legal professionals have been involved in numerous landmark cases, at all levels of the Canadian judicial system including the Supreme Court of Canada. The outcomes of these cases have often had a profound effect on the legal framework in which many businesses operate today.

## **CONTACT:**

**JEFFREY WEIDMAN**  
jweidman@mross.com  
403-543-9120

**CHARLES RUSSELL**  
crussell@mross.com  
+1 780-482-9200

[www.mross.com](http://www.mross.com)



**Population:** 35,944

**Capital:** Iqaluit

**Geographic Area:** 1,877,779 km<sup>2</sup>

**GDP:** \$2.443 billion

**Major Centres:**

- Iqaluit (7,082)

**Major Industries:**

- Mining
- Mineral Exploration
- Fishing
- Art

Created in 1999 out of the eastern portion of the Northwest Territories, Nunavut encompasses the traditional lands of the Inuit. This territory recognizes three official languages, the Inuit Language (Inuktitut and Inuinn-aqtun), English and French.

Similar to the Northwest Territories, Nunavut's economy is centered around mining, oil and gas, mineral exploration, tourism, arts and crafts, hunting, fishing, transportation, education, housing, military and research.

Nunavut currently has three major mines in operation; Agnico-Eagle Mines Ltd., Meadowbank Division, mining gold; Mary River, mining iron ore; and Doris North, mining gold.

The government is also making an effort to use more renewable energy sources as the population primarily relies on diesel fuel to run generators and heat homes, with fossil fuel shipments coming in by plane or boat.

For more information about doing business in Nunavut visit:

Government of Nunavut  
[www.gov.nu.ca](http://www.gov.nu.ca)

Tourism  
[www.nunavuttourism.com](http://www.nunavuttourism.com)



# NOVA SCOTIA

## **FIRM PROFILE: PATTERSON LAW**

Patterson Law is a full service law firm comprised of 44 lawyers and 95 staff with a wealth of experience and knowledge. Our team is experienced in many areas of the law including corporate/commercial, corporate finance and securities, tax, commercial litigation, civil litigation, commercial real estate, construction, intellectual property, municipal law, criminal, family and health law. Our four offices throughout the province allow our firm to service clients across Nova Scotia and provide strategic legal advice tailored to our clients' unique goals.

### **CONTACT:**

**MICHAEL KENNEDY**  
mkennedy@pattersonlaw.ca

**JARED SCHWARTZ**  
jschwartz@pattersonlaw.ca

+1 902-405-8000  
www.pattersonlaw.ca





**Population:** 923,598

**Capital:** Halifax

**Geographic Area:** 55,284 km<sup>2</sup>

**GDP:** \$41.726 billion (2016)

**Major Centres:**

- Halifax (403,131)
- Cape Breton (94,285)

**Major Industries:**

- Fisheries
- Defence and Aerospace
- Technology
- Agriculture
- Offshore Oil and Gas
- Tourism
- Manufacturing

Nova Scotia is a province shaped by its geography and ideal location on the Atlantic Ocean. With approximately 13,300 km of coastline, the province's economy finds much of its strength in marine-based sectors, including transportation and logistics, fisheries and aquaculture, shipbuilding and coastal tourism. Given its location, it is not surprising that the first permanent European settlement north of Florida was located in Nova Scotia in 1604.

The port of Halifax is strategically located between major North American, European and Asian markets. Halifax is 1,500 nautical miles closer to India than any other North American west coast port, and one full day closer to Southeast Asia than any other North American east coast container port. The province's ice-free shipping ports, including the largest port in Halifax, remain important shipping access points to North America and Europe and are bolstered by the North American Free Trade Agreement and the Canadian-European Free Trade Association. Rail and land transportation provide efficient transportation links to the inland destination points in Canada and the United States.

Nova Scotia has the highest concentration of defence spending in Canada. It is home to more than 30% of Canada's top defence companies, attracting globally recognized companies in the areas

of naval defence, shipbuilding, sonar and sensing. The Federal Government recently awarded an Atlantic Canadian company \$25 billion to build Canada's next generation of combat vessels in Halifax.

Nova Scotia has experienced both an ocean resource and technology boom in recent years and is now home to a vibrant and expanding IT sector. Halifax is now Canada's fifth largest tech-hub. Low business costs, a generous R&D incentive, and strategic location are rapidly attracting a growing number of tech businesses to the province. Dalhousie University, located in Halifax, is internationally recognized in the area of ocean research and science.

For over 200 years Nova Scotia has been a destination for many students seeking to further their education. Nova Scotia has the most academic institutions per capita than anywhere else in Canada and many locations throughout the world. As a result, Nova Scotia benefits from a highly educated and accessible workforce.

Find more information about doing business in Nova Scotia at:

Nova Scotia Business Inc.: <https://novascotiabusiness.com>

Business Immigration: <https://novascotiainmigration.com/move-here/entrepreneur/>

Tourism: <http://www.novascotia.com/>



# ONTARIO (OTTAWA)

## FIRM PROFILE:

### BRAZEAU SELLER LAW

At Brazeau Seller Law we focus on supporting the legal needs of businesses and individuals in the city of Ottawa, across the province of Ontario, and globally. We work extensively with family-owned businesses, entrepreneurs, corporations of various sizes, government, unions and professionals around the globe. Founded in 1989, we are currently 20 lawyers with an extensive support team.

At Brazeau Seller Law we are known for our deal making and problem solving across our expansive practice areas: corporate and commercial, litigation, business transfers and acquisitions, labour and employment, cannabis law, tax law, intellectual property, wills and estate planning, family business, municipal, nonprofit and charity law, and real estate development. We look for and adapt to changing market conditions to help our clients (and future clients) that are looking to grow and expand their footprint in their market in both traditional and nontraditional industries.

Our goal is to be the best law firm our clients have ever worked with – period. We pride ourselves on building deep relationships with each client so that we can best represent their interests to protect, maintain and grow their wealth and business interests.

## CONTACT:

**FRED SELLER**  
fseller@brazeauseller.com

**DONALD BRAZEAU**  
dbrazeau@brazeauseller.com

+1 613-237-4000  
www.brazeauseller.com



**Population:** 1,323,783

**Geographic Area:** 2,796 km<sup>2</sup>

**GDP:** over \$40 billion

**Major Industries:**

- Construction
- Finance
- Insurance
- Real Estate
- Tourism
- Trade

Ottawa is the capital of Canada and is located in the province of Ontario. It is 200 km west of Montreal, Quebec, and approximately 400 km northeast of Toronto, Ontario, Canada's two largest cities. Ottawa, itself, is the fourth largest city and the fourth largest census metropolitan area within Canada. The city name "Ottawa" was chosen in reference to the Ottawa River, being the principal river adjacent to which it is located. The name is derived from the Algonquin Odawa, meaning "to trade". The Ottawa River was a primary trade route for the indigenous people and early settlers of Canada. The city is bilingual, English and French, with 37% of its citizens being able to speak both official languages of Canada. In fact, in order to be an employee of the public sector, you must be able to provide services in both official languages.

As our nation's capital, Ottawa has the highest concentration of jobs in the public sector. With two universities and two colleges, Ottawa has one of the most highly educated populations among Canadian cities. In addition, it has one of the highest standards of living in the nation, along with one of the lowest levels of unemployment. It

ranked second nationally and 24th worldwide in the quality of life index and is consistently rated as one of the best places to live in Canada. As noted above, top industries in Ottawa include the high-tech industry (telecommunications, software development, and environmental technology), tourism, healthcare, finance, insurance, real estate, education and medical and scientific research. Ottawa has been home to a number of start-up companies that went on to become globally known enterprises, such as Nortel, Corel, Mitel, Cognos, Halogen Software, Shopify and JDS Uniphase. It remains a city that is the destination of many businesses looking to relocate or expand.

Ottawa is becoming known as the place where talent wants to work, play and grow!

To learn more about Ottawa, please visit:

<https://ottawa.ca/en/visitors>

<https://www.investottawa.ca/why-ottawa/>

<http://www.international.gc.ca/investors-investisseurs/cities-villes/ottawa.aspx?lang=eng>





**CANADA**

# ONTARIO (TORONTO)

## **FIRM PROFILE:**

### **MINDEN GROSS LLP**

Minden Gross LLP is a full service business law firm providing representation and assistance in the broad areas of real estate, corporate and commercial transactions, litigation, securities and capital markets, and employment and labour law. We also counsel and assist clients in personal matters related to their tax and estate planning. Our services are scalable and tailored to meet the specific needs of our clients, from large international and national organizations to small business enterprises and individuals. We seek solutions that are practical, effective and timely for our clients.

## **CONTACT:**

**KENNETH KALLISH**  
kkallish@mindengross.com

**IRVIN SCHEIN**  
ischein@mindengross.com

+1 416-362-3711  
www.mindengross.com





**Population:** 13,448,494

**Capital:** Toronto

**Geographic Area:** 1.076 million km<sup>2</sup>

**GDP:** \$794.835 billion

**Major Centres:**

- Toronto: 2,731,571
- Ottawa: 934,243
- Mississauga: 721,599
- Brampton: 593,638
- Hamilton: 536,917
- London: 383,822
- Markham: 328,966
- Vaughan: 306,233
- Kitchener: 233,222
- Windsor: 217,188

**Major Industries:**

- Manufacturing
- Financial Services and Banking
- Mining
- Technology
- Agriculture
- Forestry

Ontario is Canada's most populous province, accounting for almost 40% of the country's population and it is Canada's second-largest province. Ontario's long history goes back more than 12,000 years when Algonquin- and Iroquoian-speaking Aboriginals settled the land prior to the European settlers. Today, nearly 30% of Ontario's population is made up of foreign-born people. Nearly half of the 250,000 individuals who immigrate to Canada each year choose to live in Ontario.

Not only is Ontario's population diverse, but so is its economy which thrives through its unique combination of resources, manufacturing expertise, exports, business services, renewable energy, life sciences, research and development and a drive for innovation. Ontario generates 37% of the national GDP and is home to almost 50% of all employees in high tech, financial services and other knowledge-intensive industries. Ontario lies in the core of the North American Free Trade area, which includes more than 460 million people and generates a combined GDP of more than \$18 trillion.

Ontario is suitably situated within a day's drive of over 40% of North America's population. Ontario has 14 convenient land border crossings into the United States in addition to rail border crossings, ports and five international airports. This central location, along with its competitive business costs and highly skilled workforce, make it the perfect location for your business expansion into North America. Ontario offers companies, of any market capitalization, an economy that is big enough to grow in.

Ontario's industries range from cultivating crops, to mining minerals, to manufacturing automobiles, to designing and implementing software and leading-edge technology. Above all, Ontario is part of the North American manufacturing heartland. Ontario is home to one of the largest manufacturing sectors in North America, making it one of the top economic leaders on the continent. After California and Texas, Ontario has the most manufacturing employees of any jurisdiction in Canada and the

United States.

With a strong agricultural industry, Ontario makes up almost one-quarter of all farm revenue in Canada. There are over 51,000 farms in Ontario, which comprise more than half of the highest quality farmland in Canada. In addition to strong agriculture, Ontario is a global leader in the mining industry as a Top Ten producer for nickel and platinum group metals, along with gold, copper, zinc, cobalt and silver.

Ontario is the leading province for film and television production, book and magazine publishing, and sound recording. The Toronto International Film Festival, one of the largest and most influential film festivals in the world, is an annual event. As well, Ontario is an internationally recognized hub for the interactive digital media industry and produces various cutting-edge digital products and services.

Ontario is home to approximately 20 universities and 24 colleges of applied arts and technology. About 68% of Ontario residents have completed post-secondary schooling.

Find more information about doing business in Ontario at:

Invest in Ontario: <https://www.investinontario.com/about-ontario>

Business and Economy: <https://www.ontario.ca/page/business-and-economy>

Tourism: <https://www.ontariotravel.net/en/home>



# PRINCE EDWARD ISLAND

## FIRM PROFILE:

### KEY MURRAY LAW

*Summerside and Charlottetown*

Key Murray Law is the largest independent legal firm in Prince Edward Island. We are an experienced and dedicated team who provide our clients with effective and efficient legal services. We offer a full range of legal services and continue to build on our strong reputation. With PEI locations in Charlottetown, Summerside and O'Leary, we are well positioned to help you win.

## CONTACT:

*Charlottetown:*

**LYNN MURRAY**

[lynn.murray@keymurraylaw.com](mailto:lynn.murray@keymurraylaw.com)

+1 902-894-7051

*Summerside:*

**DEREK KEY**

[derek.key@keymurraylaw.com](mailto:derek.key@keymurraylaw.com)

+1 902-436-4851

[www.keymurraylaw.com](http://www.keymurraylaw.com)





**Population:** 152,021 (2017)

**Capital:** Charlottetown

**Geographic Area:** 5,660 km<sup>2</sup>

**GDP:** \$6.321 billion (2016)

**Major Centres:**

- Charlottetown (36,094)
- Summerside (14,829)

**Major Industries:**

- Agriculture
- Fisheries
- Tourism
- Bioscience
- Aerospace
- Renewable Energy

Prince Edward Island, better known to its inhabitants as the Island, has a geography that is unique and full of quiet character. The Island is constituted of 5,660 km<sup>2</sup> of beautiful rolling hills, pristine forests and amazing beaches. The 1,100-kilometer-long coastline is indented by numerous bays, coves and small inlets where you can often see the red sandstone cliffs that are a hallmark of Island scenery.

The Island economy features a mix of traditional industries (agriculture, fisheries and tourism) which continue to grow with modernization, and has also seen the rise of new industries including aerospace, bioscience, information technology and the development of renewable energy.

Traditional industries remain relevant to the Island economy. Over the last few hundred years, farming on the Island has grown into a major economic industry. Record high production of potatoes, soybeans and blueberries are still expanding. Island fisheries also continue to grow; however, due to the Island's populations being too small to absorb this production, exports provide other opportunities as well. There are more than 4,500 fishers and approximately 60 registered processing facilities working and operating on the Island. The Island has continuously been an immensely popular tourist destination in Canada. Historically, visitors have come from all over the world to relax, golf, eat and generally enjoy the Island's world-renowned hospitality. With its busiest months being June, July and August, the Island hosts more than 1.5 million visitors annually.

Beyond farming, fishing and tourism, the Island economy has expanded into several other innovative and growth-oriented industries. For instance, aerospace is one of the fastest-growing sectors in Prince Edward Island. Slemon Park, located in Summerside, is the only aerospace park in Canada that offers an on-site customized training centre. The Island's bioscience sector is also expanding. There are over 45 bioscience companies in Prince Edward Island, producing various animal and human-health products, treatments

for diseases, and many other natural products. The Island is quickly becoming a leading innovator in renewable energy. Over 30% of the Island's electrical needs are furnished through various wind developments. The Island is committed to remaining a leader in wind energy driven by research and development in the burgeoning renewable energy industry.

The Island population continues to grow and diversify. In recent years, the Island has been at or near the highest percentage of population growth amongst Canada's provinces. This trend looks to continue as the Island currently has many incentives for business owners looking to immigrate and participate in the Island's business community. Support from the active Chambers of Commerce and engaged newcomers' programs help ensure that this positive growth will continue in the years to come.

Find more information about doing business in Prince Edward Island at:

The Mighty Island: <https://www.princeedwardisland.ca/en/topic/mighty-island>

Innovation PEI: <http://www.innovationpei.com/>

Office of Immigration: <https://www.princeedwardisland.ca/en/topic/office-immigration>



CANADA

# QUÉBEC

## FIRM PROFILE:

### BCF LLP

*Québec City and Montréal*

Established in 1995, BCF has, in just over 20 years, become the reference for all matters relating to business law in Québec. Deeply rooted in the business community as well as in the entrepreneurial ecosystem of Québec, BCF and its professionals are recognized as being effective strategic consultants for their clients. BCF's more than 250 professionals (lawyers, notaries, patent and trademark agents, and paralegals) leverage the firm's extensive business network to advise Québec clients who are seeking to expand their activities in Canada or abroad as well as Canadian and international firms seeking to grow their activities in Québec.

BCF's key practice sectors include mergers and acquisitions, wealth management, Canadian and international taxation, commercial litigation and intellectual property, business immigration and labour and employment law, as well as an extensive and global patent practice, private placements and private equity, class action defence, media crisis management and a very distinctive and comprehensive practice dedicated to technology startups. BCF Business Law is the only Québec law firm to have been recognized by the Canada's Best Managed Companies program. With its 425 employees located in its Montréal and Québec City offices, BCF is the fifth largest law firm in the Province of Québec according to Les Affaires's ranking. BCF is generally recognized as a leading firm in Québec, and the third largest firm in the Province.

## CONTACT:

*Québec City:*

**JULES TURCOTTE**

[jules.turcotte@bcf.ca](mailto:jules.turcotte@bcf.ca)

418-266-4500

*Montréal:*

**ANDRÉ RYAN**

[ar@bcf.ca](mailto:ar@bcf.ca)

+1 514-397-8500

[www.bcf.ca](http://www.bcf.ca)





**Population:** 8,164,361

**Capital:** Québec City

**Geographic Area:** 1.542 million km<sup>2</sup>

**GDP:** \$380.972 billion

**Major Centres:**

- Montreal (1,704,694)
- Québec City (531,902)
- Laval (422,993)
- Gatineau (276,245)
- Longueuil (239,700)
- Sherbrooke (161,323)
- Saguenay (145,949)
- Lévis (143,414)
- Trois-Rivières (134,413)

**Major Industries:**

- Manufacturing
- Electric Power
- Aerospace
- Software
- Agri-food
- Mining
- Pulp and Paper
- Forestry

At more than 1.5 million km<sup>2</sup>, Québec is the largest Canadian province. It is also the largest French-speaking one. It shares borders with three other provinces (Ontario, New Brunswick and Newfoundland and Labrador), one federal territory (Nunavut) and four American states (Maine, New Hampshire, New York and Vermont), and is ideally located at the entry of the St. Lawrence River, making Québec a natural gateway to North America.

With almost half of its territory covered with forest and more than 500,000 lakes and rivers, Québec is extremely rich in natural resources. The forestry industry alone employs almost 60,000 people and accounts for 1.9% of the Province's GDP. For its part, with 22 plants, the pulp and paper industry acts as the main wood export subsector. Québec is also one of the most important players in the hydroelectricity field worldwide. Electricity produced in Québec represents 32% of the total Canadian production while contributing less than 1% of the greenhouse gas emitted by Canadian electricity companies. With its 63 hydroelectric plants, Québec has access to great quantities of low-cost energy. Québec's agri-food industry also acts as a major contributor to the province's economy. Contributing to 7.3% of the GDP, this industry is thriving in all sectors. The food processing sector alone employs roughly 66,000 workers in more than 2,000 businesses. The growth of exports in Québec has exceeded Canadian and worldwide averages in the last decade, making Québec a clear leader in the industry. In addition, the province ranks among the top ten actors in the mining

sector worldwide. One-fifth of Canadian production originates from Québec. With the exploitation of 15 metals and 13 non-metallic minerals, Québec has the most diversified production of all provinces. To develop this industry even more, Québec's government announced a plan for tax relief of \$1.3 billion in 2017-2018.

The manufacturing industry is also of major importance in Québec. Five years ago, manufacturing activities accounted for almost 14% of the province's GDP and for 11.7% of all jobs. Since then, these numbers have been on the rise. Montréal, the biggest city in the province, is one of the three most important aerospace innovation hubs in the world. More than 50% of Canadian aerospace production comes from Québec. Last year alone, the aerospace industry generated sales of more than \$14 billion. Québec is also a leader in software development. Many digital entertainment multinational companies, such as Ubisoft and Electronic Arts, operate a base or a branch in the province. These companies offer a diverse array of expertise in interactive games, animation, special effects, etc. and a number of these have earned international reputations over the years. Today, the province is seen as a pioneer in virtual reality.

Find more information about doing business in Québec at:

Invest in Québec: <http://www.investquebec.com/quebec/en>

Entreprises Québec: <https://www2.gouv.qc.ca/entreprises/portail/quebec?lang=en>

Tourism: <http://www.tourisme.gouv.qc.ca/index.php>



## SASKATCHEWAN

### **FIRM PROFILE:**

### **ROBERTSON STROMBERG LLP**

For the past century, Robertson Stromberg LLP has offered quality legal services for its clients in Saskatchewan and beyond. The firm's roots, which include legal pioneers Arthur Moxon, first Dean of the College of Law at the University of Saskatchewan, and J. Wilfred Estey, Justice of the Supreme Court, command a tradition of independent thinking and innovative solutions. The expectation of excellence continues today with an impressive number of Robertson Stromberg lawyers being honoured with Queen's Counsel and other prestigious designations.

Our size and experience allow us to provide superior, personalized legal services to our clients in a manner that is both efficient and cost-effective. Working in every major area of the law, we are committed to strong client and community relationships that have helped us build a portfolio of individual, corporate and institutional clients across the province and the country.

### **CONTACT:**

**CHRISTOPHER DONALD**  
c.donald@rslaw.com

**MELVIN GERSPACHER**  
m.gerspacher@rslaw.com

+1 306-652-7575  
www.rslaw.com



**Population: 1,098,352**

**Capital: Regina**

**Geographic Area: 651,900 km<sup>2</sup>**

**GDP: \$79.415 billion**

**Major Centres:**

- **Saskatoon (295,095)**
- **Regina (215,106)**
- **Prince Albert (35,926)**
- **Moose Jaw (33,890)**

**Major Industries:**

- **Oil and Gas**
- **Agriculture**
- **Forestry and Fishing**
- **Mining**
- **Potash and Uranium**

Located in the heart of the Canadian prairies, Saskatchewan has some of the most productive land in the world, laying claim to nearly 40% of Canada's arable land. The province is the world's largest exporter of lentils, dried peas, mustard, flaxseed and canola. With its traditional roots in agriculture, the province has grown a strong agri-food sector and is a leading exporter of agri-food products.

Saskatchewan has a diversity of resources that has enabled it to weather global economic cycles. Recently, the province has seen record population, employment, investment and export growth. The province's rich, diverse resource

sectors are led by mining and oil and gas, which together account for close to a quarter of the province's total real GDP by industry. Saskatchewan has the largest potash industry in the world, accounting for about one-third of annual global production and hosting nearly half of the world's known resources. The quality of uranium ore bodies found in Saskatchewan is one hundred times higher than the average found across the globe.

Forestry is northern Saskatchewan's second largest industry. The province's forests are sustainably managed and well positioned for continuous growth with investment opportunities existing within the emerging bio-economy and other value-added products.

Manufacturing continues to be an important industrial sector for purposes of economic growth and diversification in Saskatchewan. With a competitive business environment and good access to markets, Saskatchewan was among the top-performing provinces for growth of manufacturing GDP in seven of the past ten years. Programs like Saskatchewan Trade and Export Partnership and Saskatchewan Commercial Innovation Incentive create a positive atmosphere for innovation and open doors in other provinces and other countries around the world.

The United States is Saskatchewan's top export market, receiving almost 50% of total exports. China is the second largest export market, followed by India, Japan and Mexico.

Universities are critical assets for social and cultural impact and economic development in the 21st century, and the importance of the University of Saskatchewan to the province's economy cannot be overstated. The university has emerged as one of Saskatchewan's engines for economic diversification and growth. Through the strength of its educational programs and research facilities, the University of Saskatchewan attracts new talent, research and business to the province that otherwise would not come to Saskatchewan. At the same time, the university creates opportunities for local people and businesses that might leave the province or have less work.

It has long been said that "people come for the jobs, and stay for the lifestyle". Saskatchewan has two national parks, 34 provincial parks, 100,000 lakes and rivers, and more golf courses per capita than any other place in North America.

Find more information about doing business in Saskatchewan at:

Government of Saskatchewan  
<http://www.saskatchewan.ca/invest>  
<https://www.saskatchewan.ca/business/investment-and-economic-development>

Saskatchewan Trade and Export Partnership:  
<https://www.sasktrade.com/>

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Canada Regional Director:  
**Dawn Iacarella**  
diacarella@meritas.org



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LAW FIRMS WORLDWIDE

**www.meritas.org**

800 Hennepin Avenue, Suite 600  
Minneapolis, Minnesota 55403 USA  
+1.612.339.8680